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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket No. FCIC–14–0004]**

**RIN 0563–AC44**

## Common Crop Insurance Regulations; Macadamia Tree Crop Insurance Provisions and Macadamia Nut Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions and the Macadamia Nut Crop Insurance Provisions. The intended effect of this action is to provide policy changes and to better meet the needs of the producers. The proposed changes will be effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts.

**DATES:** This rule is effective May 18, 2015.

**FOR FURTHER INFORMATION CONTACT:** Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Macadamia Tree Crop Insurance Provisions and Macadamia Nut Crop Insurance Provisions that were published by FCIC on August 1, 2014, as a notice of proposed rulemaking in the **Federal Register** at 79 FR 44719–44722. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 23 comments were received from two commenters. The commenters were an insurance service organization and a producer association.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

*Macadamia Tree Crop Insurance Provisions*

Section 1

*Comment:* One commenter agrees with the proposal to add definitions for ''damaged'' and ''scaffold limb.''

*Response:* FCIC thanks the commenter for its review and its support of the addition of these two definitions.

Section 2

*Comment:* One commenter states the first sentence in redesignated paragraph (a) states that optional units by legal description or by irrigated/non-irrigated practices are not applicable; and the second sentence states that ''. . . Optional units may be established ONLY if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement'' [emphasis added]. The commenter states that neither sentence addresses the possibility of optional units for organic and conventional practices, which is allowed according to section 34(c)(3) of the Basic Provisions. As written, this provision appears to mean that separate optional units for organic and conventional acreage would be possible only if they happen to be on non-contiguous land or unless allowed by written agreement. If that is the intention, it would be clearer to include ''organic practices'' in the first sentence as not applicable. If it is not intended to exclude optional units by organic/conventional practices, the second sentence should be revised to clarify that optional units by non-contiguous land may be ''in addition to'' the optional units by organic/conventional allowed in section 34(c)(3) of the Basic Provisions.

*Response:* FCIC intends for optional units to be allowed on acreage located on non-contiguous land or on acreage grown and insured under an organic farming practice. FCIC does not intend to require that optional units distinguished by organic and conventional practices must also be located on non-contiguous land. FCIC has revised the provisions accordingly.

*Comment:* One commenter states the ''Background'' explains that the proposal to remove the 80-acre minimum requirement for optional units is because most macadamia tree orchards are smaller than that, and the other proposed changes (requiring a clear and discernible break, and records) ''. . . will mitigate any potential abuse from this change.'' The commenter has no objection to this change.

*Response:* FCIC agrees with the commenter and thanks it for its support. FCIC also notes that the planned removal of this 80-acre optional unit minimum requirement was inadvertently described in the proposed rule summary. The discussion of this requirement removal was also described in specific detail under the description of changes for this rule at Section 2. Therefore, FCIC removed this inadvertent reference from the final rule summary because specific mention of this proposal in the proposed rule summary was inadvertent and duplicative. This removal of the duplicative language from the proposed rule summary does not affect the commenter's agreement with the proposal: FCIC continues to agree with the commenter, and the proposal as originally proposed has been adopted.

*Comment:* One commenter states if the current section 2(a) is deleted as proposed, then Basic Provisions sections 34(b)(1), (3) and (4) will apply, meaning optional units will require a clear and discernible break, and acceptable and verifiable records. The commenter has no objection to this change.

*Response:* FCIC agrees with the commenter that by deleting section 2(a) of the Macadamia Tree Crop Provisions, sections 34(b)(1), (3) and (4) of the Basic Provisions will apply. FCIC thanks the commenter for its support.

*Comment:* One commenter states the proposed change would require that optional units must have a ''clear and discernable break between optional units.'' This is clarified further by stating ''optional units may be established only if each optional unit is located on non-contiguous land.'' There is no clear definition of what constitutes a ''clear and discernable break.'' It does disqualify optional units determined by ''section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices.''

Without a clear specification for what actually fits their definition for the ''clear and discernable break,'' there is great potential for a broad interpretation from the Risk Management Agency that would ultimately prohibit larger operations from using optional units at all. Since large operations have significantly varied conditions over the span of their operations that can cause production loss over only certain sections (such as differences in rainfall, elevation, soil-type, disease and pest-incidence, etc.), optional units are important and necessary to provide operations with some security to protect from losses. Without the optional units, an operation becomes far more vulnerable, since only significant orchard-wide production losses would ever qualify for a claim. It becomes financially infeasible to even have insurance for many producers with such limitations. This rule change should not pass without explicit definitions of what would qualify as a ''clear and discernible break.''

Based on how the insurance companies had treated boundaries in the past with regards to the formation of optional units, a clear and discernible break should be defined by a designated production area (for instance, a block or field) with a set acreage that has enough production statistics for the APH to qualify for insurance. For instance, in our operation, we have had the same fields that have remained consistent since planting. Each field should be able to qualify as a block, as production statistics are kept for each field separately.

*Response:* FCIC agrees with the commenter that the proposed change to remove paragraph (a) requires optional units to have a clear and discernible break. Paragraph (a) states sections 34(b)(1), (3) and (4) of the Basic Provisions are not applicable. These sections of the Basic Provisions state, among other things, that the crop must be planted in a manner such that there is a clear and discernible break between optional units. By removing paragraph (a), sections 34(b)(1), (3) and (4) of the Basic Provisions now become applicable. Under the current policy, insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is

no current requirement for discernible breaks between units. FCIC believes this requirement will minimize program abuse as it relates to unit division. Based on a previous comment, FCIC has revised Section 2 to clarify that optional units are allowed by non-contiguous land or by organic and conventional acreage, thereby giving producers multiple options to insure their acreage under optional units. FCIC does not define ''clear and discernible break'' in its policy; however, in general, when a term is not specifically defined in the policy, its common or ordinary meaning may be applicable as found in a standard dictionary. Examples of a clear and discernible break are highways, railroads and rivers. No change has been made.

Section 7

*Comment:* One commenter recommends deleting the first comma in the following sentence: ''In lieu of the provisions in section 9 of the Basic Provisions, that prohibit insurance attaching to a crop planted with another crop . . .'' The commenter says this change will be consistent with a similar change proposed in section 8 of the Macadamia Nut Crop Provisions.

*Response:* FCIC agrees with the commenter. The comma is not necessary and its removal does not change the meaning of the provision. FCIC has revised the provisions accordingly.

Section 10

*Comment:* One commenter states the proposed rule adds a phrase about destroyed trees in the following phrase so it would read: ''. . . allow us to inspect all insured acreage before pruning any damaged trees, removing any damaged trees, or removing any destroyed trees.'' This can be left as written, but consider if either of these alternatives might be preferable:

- ''. . . before pruning or removing any damaged trees, or removing any destroyed trees.'' This keeps the current wording about the two possible actions for damaged trees, and adds the new phrase about removing destroyed trees.
- ''. . . before pruning any damaged trees, or removing any damaged or destroyed trees.'' This would put ''pruning'' in one phrase (applying only to damaged trees) and ''removing'' in another (whether the trees are damaged or destroyed).

*Response:* FCIC appreciates the recommendations. However, FCIC believes its proposed language offers the option of the possibilities least likely to create misunderstanding because each action word is individually paired with the tree type (damaged vs. destroyed) for which the action is prohibited.

*Comment:* One commenter states that, concerning halting of cleanup following tree damage, during the most recent experience with Hurricane Iselle, it took the insurance companies around two weeks, and in some cases longer, to fly appraisers to Hawaii to assess storm damage. For any agricultural operation, especially during harvest season, waiting that long to remove damaged trees, branches, and other debris can pose not only safety hazards, but can also limit movement throughout orchards and can lead to crop loss due to the inability of harvest equipment and crews to safely traverse through the areas of damage.

The majority of the insurance companies are located on the continental United States, so they typically wait to hear from all of the insured operations in Hawaii before deploying loss adjusters. This is due to the distance and the large expense of sending people back and forth. In light of these limitations, it is not practical or fair to make farms wait so long before cleaning up. The alternatives to these rule changes would be either to not change this rule or to add to the change a requirement for tree loss appraisers to be on-site no later than three days after notice of a major crop or tree loss.

*Response:* FCIC understands that it may take insurance companies additional time to travel to Hawaii than to travel within the continental United States. This inspection requirement is consistent with the provisions in other Crop Provisions, such as the Hawaii Tropical Tree Crop Provisions, which also provide coverage for crops in Hawaii. Travel could be difficult after a catastrophic event, such as a named storm. Therefore, a regulatory provision always requiring insurance company presence on-site within three days after notice of a loss is inappropriate in part because not all circumstances will always allow such Loss Adjuster to arrive within that timeframe. A three-day arrival expectation may be appropriate in some, though not necessarily all, instances of loss. Insurance companies are required to arrive onsite after receiving a notice of loss within appropriate time frames. For example, the current Loss Adjustment Manual (LAM), in paragraph 41(A)(3), provides guidance that insurance companies must assign notice of damage to adjusters as quickly as possible to assure timely service to the insured. FCIC will, as it generally does in widespread loss situations, monitor the performance of and loss adjustment service provided by insurance companies in responding to a loss event.

Section 11

*Comment:* One commenter states with the example added in section 11(b)(4), consider if the parenthetical example in section 11(b)(3)(iii) is still useful or if it could be deleted. If it is kept, consider deleting the phrase ''. . . specified in section 11(b)(3) . . .'' since it is part of 11(b)(3).

*Response:* Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. No change has been made.

*Comment:* One commenter states the calculations in paragraph (b)(4) at step (3)(ii) and (iii) do not appear to correspond to the description of those steps in paragraph (b)(3) because the example includes additional calculations as well. The example appears to work out correctly, but it might be worth considering the following:

- In paragraph (b)(4) at step (3)(ii), if the calculation of the ''actual percent of loss'' should be identified as such, or included in the introductory paragraph instead; and/or
- In paragraph (b)(4) at step (3)(iii), if the calculation of the dollar amount of loss [''. . . and $58,500 total amount of insurance × 6.0 percent loss = $3,510 loss''] should be better identified [since step (3) says only to divide the previous result by the coverage level] or perhaps moved to be part of the final step (4).

*Response:* FCIC agrees with the commenter that the steps in paragraph (b) do not correspond with the calculations in the settlement of claim example. FCIC agrees with both of the commenters' recommendations to clarify the steps in paragraph (b). FCIC has revised the provisions as recommended, has made additional clarifications in the steps in paragraph (b), and has revised the settlement of claim example at redesignated paragraph (b)(5) to reflect the revisions in paragraph (b).

*Comment:* One commenter recommends, in the introduction of paragraph (b)(4) of the settlement of claim example, to add a hyphen in ''Thirty five trees. . . .'' so it reads, ''Thirty-five trees . . .''

*Response:* FCIC agrees with the commenter and has revised the provisions in redesignated paragraph (b)(5) accordingly.

*Macadamia Nut Crop Insurance Provisions*

Section 1

*Comment:* One commenter recommends correcting the spelling of ''floatation'' to ''flotation'' in the definition of ''floaters.''

*Response:* FCIC agrees with the commenter, even though ''floatation'' is an accepted spelling of ''flotation,'' and has revised the provisions accordingly.

*Comment:* One commenter states the definition of ''wet in-shell'' is revised to say that it excludes floaters and peewees, which FCIC claims are terms commonly used in the Macadamia industry. While the terms are sometimes used, there are some issues with the suggested use of these terms and how the FCIC defines them. For starters, there was no consultation with processors or husking operations to ascertain what the industry-accepted definition of ''wet in-shell'' is. Furthermore, the term ''floater'' has a different definition to the Macadamia nut industry than is suggested by FCIC and in actuality is seldom used. This is primarily because float grading is not a common practice for Macadamia nut husking or processing and when it is employed, it is typically performed at a different stage in the husking operation than what FCIC has suggested in their interpretation of the rules. It is believed that the reason that the FCIC is recommending this change is in response to a claim dispute, in order to validate FCIC's stance against the industry standards. The commenter states FCIC would essentially create an ultimatum for the industry that producers would either need to request their processors to change their processing methods or face the penalty of not qualifying for crop insurance. The cost of making infrastructural changes in order to comply with these proposed changes would be high, so many processors may be discouraged from making these changes, given that many only purchase nuts from producers and have no stake in the rules governing crop insurance. The rule change would essentially create an impossible standard for producers to ever qualify for crop insurance.

Though it was stated in the past that the industry was consulted in the development of the Macadamia nut policy, the policy as it is currently written does not reflect this. It is recommended that (1) the definition of ''wet in-shell'' be amended, (2) the industry be given an opportunity to provide input on how things operate in Hawaii, and (3) how the policy could be amended to better represent reality.

The revision to the definition of ''wet in-shell'' should be according to what is common to the industry. Wet in-shell (WIS) nuts are the result after husking has been implemented; this WIS weight is considered a gross number; the ''extraneous materials'' percentage is used to calculate the amount to subtract from the WIS number to come up with a net WIS. The ''extraneous materials'' percentage or trash is calculated in a quality analysis lab using samples obtained from the husking operation. While sample collection may vary from one operation to the next, this method of determining the net WIS is basically the same across the industry.

*Response:* FCIC disagrees with the commenter's understanding of changes to the ''wet in-shell'' definition. The language FCIC proposes to incorporate in the Crop Provisions definition is derived from the Special Provisions as well as the Macadamia Nut Loss Adjustment Standards Handbook (LASH). The Special Provisions and LASH are part of the policy or are used to service the policy. FCIC is not changing the definition meaning by incorporating the Special Provisions and LASH statements into the definition. The Special Provisions statement has been in effect since the 2006 crop year and the LASH definition has been in effect since the 2005 crop year.

The commenter says they believe the reason FCIC is recommending the change to the definition of ''wet in-shell'' is in response to a claim dispute, in order to validate FCIC's stance against the industry standards. The commenter says FCIC would essentially create an ultimatum for the industry that producers would either need to request their processors to change their processing methods or face the penalty of not qualifying for crop insurance. The commenter says the change would essentially create an impossible standard for producers to ever qualify for crop insurance. As mentioned in the previous paragraph, FCIC is not making a substantial change to the definition of ''wet in-shell.'' The primary change is to incorporate language contained in the Special Provisions and LASH that are currently in effect and have been in effect since the 2006 and 2005 crop years, respectively. Since this change is not substantial, this definition has already existed in large part, and was required for use in policy servicing, FCIC does not agree that such change creates an ultimatum for producers.

Furthermore, FCIC's definition of ''wet in-shell,'' as now updated, corresponds with the definition the commenter seeks for the industry concerns. The commenter says wet in-shell nuts are the result after husking has been implemented (gross weight) and the ''extraneous materials'' percentage or trash is used to calculate the amount that is subtracted from the gross weight. The difference between the gross weight and the ''extraneous materials'' percentage or trash is the wet in-shell net weight. FCIC's definition says the wet in-shell weight is the weight after removal of the husk (gross weight) and excluding floaters and peewees (extraneous material or trash) but prior to being dried. The industry agrees FCIC should not include floaters and peewees in the wet in-shell weight for purposes of production to count, and refers to such floaters and peewees as ''trash'' or ''extraneous materials.'' FCIC understands the comment to assume FCIC requires all macadamia nut production to be float graded using water flotation for insurance purposes. However, this assumption is incorrect. Under the policy, float grading using water flotation is only one acceptable method of determining floaters to exclude from production to count. To clarify and specifically address the commenter's concern regarding industry practices, FCIC has specifically added to the definition of wet in-shell, through the component definition of floaters, a reference that laboratory testing for floater determination is also acceptable as an alternative to float grading using water floatation. In sum, FCIC requires that the reported production must not include floaters and peewees, or, in other words, the weight of the trash, which the industry and FCIC now similarly define.

In the proposed rule, FCIC proposed to define the terms ''floaters'' and ''peewees'' because those terms are used in the Special Provisions statement and LASH definitions that were proposed for incorporation into the ''wet in-shell'' definition. Those terms were not previously defined within the Crop Provisions, but they were defined in the Macadamia Nut LASH. The LASH has contained those terms and their definitions since the 2005 crop year.

The proposed rule comment period is an opportunity for the public to provide input on changes FCIC proposes to make to the Crop Provisions. Interested parties are permitted to provide comments during that time. If the commenter had specific suggestions for recommended changes to this portion of the Macadamia Nut Crop Provisions, the commenter had an opportunity to provide specific proposed changes on this issue during the proposed rule comment period. However, FCIC has made an addition to the definition that

will address the commenter's industry concern.

*Comment:* One commenter recommends deleting the comma in the phrase ''wet, in-shell pounds'' in the definition of ''production guarantee (per acre)'' to match the defined term of ''wet in-shell,'' as was done in sections 6(d) and 11(c).

*Response:* FCIC agrees with the commenter that the comma should be removed from the sentence. The comma is not necessary and its removal does not change the meaning of the provision. FCIC has revised the provisions accordingly.

*Comment:* One commenter recommends adding a comma before the added phrase ''. . . excluding floaters and peewees . . .'' in the definition of ''wet in-shell.''

*Response:* FCIC disagrees with the commenter. A comma would not add clarity.

Section 2

*Comment:* One commenter states if the current paragraph (a) is deleted as proposed, then Basic Provisions section 34(b)(1) will apply, meaning optional units will require a clear and discernible break, and acceptable and verifiable records. The commenter has no objection to this change.

*Response:* FCIC agrees with the commenter that by deleting paragraph (a) of the Macadamia Tree Crop Provisions, section 34(b)(1) of the Basic Provisions will apply. FCIC thanks the commenter for its support.

*Comment:* One commenter states that the first sentence in section 2 states that optional units by legal description or by irrigated/non-irrigated practices are not applicable; and the second sentence states that ''. . . Optional units may be established ONLY if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement'' [emphasis added]. The commenter states that neither sentence addresses the possibility of optional units for organic and conventional practices, which is allowed according to section 34(c)(3) of the Basic Provisions. As written, this provision appears to mean that separate optional units for organic and conventional acreage would be possible only if they happen to be on non-contiguous land or unless allowed by written agreement. If that is the intention, it would be clearer to include ''organic practices'' in the first sentence as not applicable. If it is not intended to exclude optional units by organic/conventional practices, the second sentence should be revised to clarify that optional units by non-contiguous land may be ''in addition to'' the optional units by organic/conventional allowed in section 34(c)(3) of the Basic Provisions.

*Response:* FCIC intends for optional units to be allowed on acreage located on non-contiguous land or grown and insured under an organic farming practice. FCIC does not intend to require that optional units distinguished by organic and conventional practices must also be located on non-contiguous land. FCIC has revised the provisions accordingly.

*Comment:* One commenter states the ''Background'' explains that the proposal to remove the 80-acre minimum requirement for optional units is because most macadamia tree orchards are smaller than that, and the other proposed changes (requiring a clear and discernible break, and records) ''. . . will mitigate any potential abuse from this change.'' The commenter has no objection to this change.

*Response:* FCIC agrees with the commenter and thanks it for its support.

Section 3

*Comment:* One commenter recommends shifting the following phrase in paragraph (b): ''. . . on the yield potential of the insured crop'' from the end of the first sentence to be ahead of the list, so it would read: ''. . . based on our estimate of the effect on the yield potential of the insured crop of the following: Interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance. If you fail . . .''

*Response:* Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. In addition, this language is consistent with other Crop Provisions, such as Texas Citrus Fruit and Arizona-California Citrus. No change has been made.

*Comment:* One commenter recommends revising the following sentence in paragraph (d), ''Each crop year you must report your production from two crop years ago . . .'' to ''. . . from two crop years before . . .''

*Response:* Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. In addition, this language is consistent with other Crop Provisions, such as Texas Citrus Fruit and Arizona-California Citrus. No change has been made.

Section 6

*Comment:* One commenter agrees the wording change from ''. . . we may agree in writing . . .'' to ''. . . we may give our approval in writing . . .'' in paragraph (d) makes it less likely for this to be taken as a reference to a written agreement.

*Response:* FCIC agrees with the commenter and thanks it for its support.

*Comment:* One commenter states the second sentence in paragraph (d) sounds a bit odd when it refers to ''. . . approval in writing to insure ACREAGE that has not yet reached this age . . .'', referring to the requirement in the first sentence that the insured crop be ''. . . grown on TREES that have reached at least the fifth growing season . . .'' Since the second sentence goes on to say coverage on this under-age acreage can be approved ''. . . if IT has produced at least 200 pounds of (wet in-shell) macadamia nuts per ACRE in a previous crop year'', maybe the word ''acreage'' is correct and no change is needed. But one possible alternative to consider might be: ''. . . to insure acreage of trees that have not reached this age . . .''

*Response:* Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. In addition, the original Macadamia Nut Crop Provisions are written with this language because nut production, not nut trees, is insured under these particular Crop Provisions. No change has been made.

Section 8

*Comment:* One commenter states the proposal is to add the phrase ''or as specified in the Special Provisions'' to paragraph (a)(2), so paragraph (a)(2) would read as follows: ''The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches, or as specified in the Special Provisions.'' According to the ''Background'', this ''. . . will provide flexibility to update this date if the need arises.'' The commenter does not object to providing flexibility to make the program work better, though it can also add some complexity by making the calendar date subject to change, meaning it must be looked up in the Special Provisions for the applicable county to be certain the date is unchanged.

*Response:* FCIC agrees with the commenter that the added phrase provides flexibility to make the program work better. This flexibility eliminates the administrative burden of revising

the regulation if FCIC determines the calendar date for the end of insurance period should be different than what is stated in the Crop Provisions. In addition, the change does not add the complexity issue raised by the commenter because a policyholder must always read the Special Provisions to ensure it is aware of any changes to any issue covered by the Special Provisions, which may extend beyond changes to the end of the insurance period. No change has been made.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Macadamia tree and macadamia nut, Reporting and recordkeeping requirements.

**Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1) and 1506(o).

■ 2. Amend § 457.130 as follows:
■ a. In the introductory text by removing ''2011'' and adding ''2016'' in its place;
■ b. In section 1 by adding in alphabetical order definitions of ''Damaged'' and ''Scaffold limb'';
■ c. By revising section 2;
■ d. In section 3 by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in paragraphs (a) introductory text and (b);
■ e. In section 4 by removing the phrase ''(Contract Changes)'';
■ f. In section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'';
■ g. In section 6 introductory text by removing the phrase ''(Insured Crop)'';
■ h. In section 7 by removing the phrase ''(Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit'' and adding in its place the phrase ''of the Basic Provisions (§ 457.8) that prohibit'';
■ i. In section 8 by removing the phrase ''(Insurance Period)'' in paragraphs (a) introductory text and (b) introductory text;
■ j. In section 9 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) introductory text and (b) introductory text;
■ k. By revising section 10; and
■ l. In section 11:
■ i. By revising paragraph (b)(3);
■ ii. By redesignating paragraph (b)(4) as paragraph (b)(5);
■ iii. By adding paragraph (b)(4); and
■ iv. By revising newly redesignated paragraph (b)(5) and paragraphs (c) introductory text and (c)(1).

The revisions and additions read as follows:

**§ 457.130 Macadamia tree crop insurance provisions.**

* * * * *

1. Definitions

* * * * *

*Damaged.* Injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the macadamia tree due to an insured cause of loss that occurs during the insurance period.

* * * * *

*Scaffold limb.* A major limb attached directly to the trunk.

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice, unless otherwise allowed by written agreement.

(b) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

* * * * *

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning any damaged trees, removing any damaged trees, or removing any destroyed trees.

11. Settlement of Claim

* * * * *

(b) * * *

* * * * *

(3) Determine the applicable percent of loss, which is calculated as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Determine the actual percent of loss, which is determined as follows:

(A) Divide the number of trees destroyed by the total number of trees to calculate the percent loss;

(B) Divide the number of trees damaged by the total number of trees to calculate the percent of damage;

(C) Add the results of sections 11(b)(3)(ii)(A) and (B).

(iii) Subtract the result obtained in section 11(b)(3)(i) from section 11(b)(3)(ii);

(iv) Divide the result in section 11(b)(3)(iii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows: 100% − 75% = 25%; 70% − 25% = 45%; 45% ÷ 75% = 60%.);

(4) Multiply the result of section 11(b)(3) by the total dollar amount of insurance obtained in section 11(b)(2); and

(5) Multiply the result in section 11(b)(4) by your share.

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of 9-year-old macadamia trees in the unit. Your share is 100 percent. The amount of insurance per acre is $5,850. There are 90 trees per unit. Thirty-five trees are destroyed. Your indemnity would be calculated as follows:

(1) 10 acres × $5,850 = $58,500;

(3)(i) 100 percent − 65 percent = 35 percent deductible;

(ii) 35 destroyed trees ÷ 90 total unit trees = 38.9 percent loss;

(iii) 38.9 percent loss − 35 percent deductible = 3.9 percent;

(iv) 3.9 percent ÷ 65 percent coverage level = 6.0 percent loss;

(4) $58,500 total amount of insurance × 6.0 percent loss = $3,510 loss; and

(5) $3,510 loss × 100 percent share = $3,510 indemnity payment.

(c) The total amount of loss will include both damaged trees and destroyed trees as follows:

(1) Any orchard with over 80 percent of the actual trees damaged or destroyed due to an insured cause of loss will be considered to be 100 percent damaged; and

* * * * *

■ 3. Amend § 457.131 as follows:
■ a. In the introductory text by removing ''2012'' and adding ''2017'' in its place;
■ b. In section 1:
■ i. By adding definitions in alphabetical order of ''Floaters'' and ''Peewees''; and
■ ii. By revising the definition of ''Wet in-shell'';
■ c. By revising section 2;
■ d. In section 3:
■ i. In the introductory text and paragraph (b) introductory text by

removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'';
■ ii. In paragraph (b)(4) introductory text by removing the word ''anytime'' and adding in its place the phrase ''any time''; and
■ iii. By revising paragraph (d);
■ e. In section 4 by removing the phrase ''(Contract Changes)'';
■ f. In section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'';
■ g. In section 6:
■ i. By removing the phrase ''(Insured Crop)'' in the introductory text; and
■ ii. By revising paragraph (d);
■ h. In section 7:
■ i. By removing the phrase ''(Insurable Acreage)''; and
■ ii. By removing the comma after the phrase ''Basic Provisions (§ 457.8)'';
■ i. In section 8:
■ i. By removing the phrase ''(Insurance Period)'' in paragraphs (a) introductory text and (b) introductory text; and
■ ii. By revising paragraph (a)(2);
■ j. In section 9 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) introductory text and (b) introductory text;
■ k. In section 10 introductory text by removing the phrase ''(Duties in the Event of Damage or Loss)'';
■ l. In section 11:
■ i. In paragraph (b)(4) by removing the phrase ''if applicable, (see section 11(c))'' and adding in its place the phrase ''if applicable (see section 11(c)),'';
■ ii. By adding a settlement of claim example after paragraph (b)(7); and
■ iii. In paragraph (c) by removing the phrase ''(wet, in-shell pounds)'' and adding in its place the phrase ''(wet in-shell pounds)''.

The revisions and additions read as follows:

**§ 457.131 Macadamia nut crop insurance provisions.**

* * * * *

1. Definitions

* * * * *

*Floaters.* Inedible, husked ''field run'' nuts identified by water flotation or laboratory testing.

* * * * *

*Peewees.* Mature and immature wet in-shell nuts that are smaller than 16 mm (5/8 inch) in diameter.

* * * * *

*Wet in-shell.* The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk and excluding floaters and peewees but prior to being dried.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice, unless otherwise allowed by written agreement.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions, there is a one-year lag period. Each crop year you must report your production from two crop years ago, *e.g.,* on the 2016 crop year production report, you will provide your 2014 crop year production.

* * * * *

6. Insured Crop

* * * * *

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may give our approval in writing to insure acreage of trees that has not reached this age if it has produced at least 200 pounds of (wet in-shell) macadamia nuts per acre in a previous crop year; and

* * * * *

8. Insurance Period

(a) * * *

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches, or as specified in the Special Provisions.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) * * *

For example:

You select the 65 percent coverage level and 100 percent of the price election on 10 acres of macadamia nuts in the unit. Your share is 100 percent. Your production guarantee (per acre) is 4,000 pounds. The price election is $0.78. You are able to harvest 25,000 pounds. Your indemnity would be calculated as follows:

(1) 10 acres × 4,000 pounds = 40,000 pounds guarantee;

(2) 40,000 pounds × $0.78 price election = $31,200 total value of guarantee;

(4) 25,000 pounds production to count × $0.78 price election = $19,500 value of production to count;

(6) $31,200 total value of guarantee − $19,500 value of production to count = $11,700 loss; and

(7) $11,700 loss × 100 percent share = $11,700 indemnity payment.

* * * * *

Signed in Washington, DC, on April 9, 2015.

**Brandon Willis,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2015–08690 Filed 4–15–15; 8:45 am]

BILLING CODE 3410–08–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9713]**

**RIN 1545–BL46; 1545–BM60**

## Reporting for Premium; Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations; correction.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD 9713) that were published in the **Federal Register** on March 13, 2015 (80 FR 13233). The final regulations are relating to information reporting by brokers for bond premium and acquisition premium.

**DATES:** This correction is effective on April 16, 2015 and applicable beginning March 13, 2015.

**FOR FURTHER INFORMATION CONTACT:** Pamela Lew at (202) 317–7053 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final and temporary regulations (TD 9713) that are the subject of this correction is under section 6045 of the Internal Revenue Code.

### Need for Correction

As published, the final and temporary regulations (TD 9713) contains errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the final and temporary regulations (TD 9713), that are the

subject of FR Doc. 2015–05648, are corrected as follows:

■ 1. On page 13234, in the preamble, the first column, the twenty-sixth line from the top of the column, the language ''customer has not make the election. The'' is corrected to read ''customer has not made the election. The''.

■ 2. On page 13235, in the preamble, the first column, the fifth line from the bottom of the column, the language ''for income and basis. Under section'' is corrected to read ''for income and basis. Under § ''.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2015–08746 Filed 4–15–15; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2015–0185]**

**RIN 1625–AA08**

## Special Local Regulation; Glass City Scrimmage; Maumee River, Toledo, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary Special Local Regulation on the Maumee River, Toledo, Ohio. This Special Local Regulation is necessary to protect race participants from other vessel traffic. This temporary Special Local Regulation is intended to restrict vessels from a portion of the Maumee River during the Glass City Scrimmage.

**DATES:** This rule will be effective from 6 a.m. until 1 p.m. on April 18, 2015.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2015–0185. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* inserting USCG–2015–0185 in the ''Keyword'' box, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, contact or email MST1 Brett A. Kreigh, U.S. Coast Guard Marine Safety Unit Toledo, at (419) 418–6046 or *brett.a.kreigh@uscg.mil* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable. Additional details regarding this emergent event were received from the event sponsor after the annual permitting process but not received in sufficient time for the Coast Guard to publish an NPRM and solicit public comments before the occurrence of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from hazards associated with the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

### B. Basis and Purpose

On Saturday, April 18, 2015, from 6 a.m. to 1 p.m. an organized racing event will take place on the Maumee River where participants will row shell boats from the Craig Memorial Bridge at River Mile 3.30 to the Martin Luther King Jr. Memorial Bridge at River Mile 4.30 on the Maumee River in Toledo, OH. The Captain of the Port Detroit has determined that this boat race, due to its close proximity to watercraft and being in the shipping channel, poses extra and unusual hazards to public safety and property, including potential collisions, allisions, and individuals falling into the water. Establishing a special local regulated area is necessary to protect persons and property at these events and help minimize the associated risks.

### C. Discussion of Rule

This rule will be enforced 6 a.m. until 1 p.m. on April 18, 2015. The Coast Guard requires that all vessels transiting the area proceed at a no-wake speed and maintain extra vigilance at all times.

Vessel traffic may proceed down the West side of the river at a no wake speed during racing. The races will stop for oncoming freighter or commercial traffic. The on-scene representative or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state or local law enforcement vessel assigned to patrol the event.

This temporary Special Local Regulation will encompass all U.S. waters on the Maumee River, Toledo, OH from the Craig Memorial Bridge at River Mile 3.30 to the Martin Luther King Jr. Memorial Bridge at River Mile 4.30.

The Captain of the Port will notify the affected segments of the public of the enforcement of this Special Local Regulation by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We conclude that this temporary final rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any

grant or loan recipients, and will not raise any novel legal or policy issues. The temporary Special Local Regulation will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the portion of the Maumee River discussed above from 6 a.m. until 1 p.m. on April 18, 2015.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This temporary final rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade and therefore is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. During the annual permitting process for this boat racing event an environmental analysis was conducted to include the effects of this special local regulation.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T–0185 to read as follows:

**§ 100.35T–0185 Special Local Regulation, Glass City Scrimmage, Toledo, OH.**

*(a) Location.* The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, from the Craig Memorial Bridge at River Mile 3.30 to the Martin Luther King Jr. Memorial Bridge at River Mile 4.30.

*(b) Enforcement period.* This section will be enforced from 6 a.m. until 1 p.m. on April 18, 2015.

*(c) Regulations.* (1) Consistent with § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant at all times. Additionally, vessels within the regulated area must yield right-of-way for event participants and event safety craft. Commercial vessels will have right-of-way over event participants, and event safety craft.

(2) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

(3) Vessel operators entering or operating in the special local regulated area must comply with all directions given to them by the Captain of the Port, Sector Detroit or his on-scene representative.

Dated: March 31, 2015.

**Scott B. Lemasters,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2015–08758 Filed 4–15–15; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2015–0190]**

**RIN 1625–AA08**

## Special Local Regulation; Hebda Cup Rowing Regatta; Detroit River, Wyandotte, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation on the Trenton Channel of the Detroit River, Wyandotte, Michigan. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Hebda Cup Rowing Regatta. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of the Trenton Channel. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

**DATES:** This rule will be effective from 7 a.m. until 4:30 p.m. on April 25, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2015–0190. To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email MST1 Todd Manow, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, email *todd.m.manow@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, or 1–800–647–5527.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NAD 83 North American Datum of 1983
§ Section

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because waiting for a notice and comment period to run would be impracticable. The final details of this boat race were not provided from the event sponsor to the Coast Guard with sufficient time for the Coast Guard to publish an NPRM and solicit public comments before the occurrence of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard's ability to protect the public from the hazards associated with this boat race.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

### B. Basis and Purpose

On April 25, 2015, the Wyandotte Boat Club is holding a rowing race that will require the immediate area to be clear of all vessel traffic. The rowing race will occur from 7 a.m. until 4:30 p.m. The Captain of the Port Detroit has determined that the likely combination of recreation vessels, commercial vessels, and large numbers of spectators in close proximity to the boat race along the water pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation around the location of the race's course will help minimize risks to safety of life and property during this event.

### C. Discussion of Rule

This rule will be enforced from 7 a.m. until 4:30 p.m. on April 25, 2015. It will encompass all waters of the Detroit River, Trenton Channel between the following two lines going from bank-to-bank: The first line is drawn directly across the channel from position *42°10′58″ N., 083°9′23″ W.* (NAD 83); the second line, to the north, is drawn directly across the channel from position *42°11′44″ N., 083°8′56″ W.* (NAD 83). This regulation will be enforced on April 25, 2015, from 7 a.m. until 4:30 p.m.

Two thirds of the Trenton Channel on the western portion of the regulated area, from the Wyandotte shoreline to a point approximately 670 feet east into the channel, will be designated as the race zone, while the remaining third portion on the eastern side of the regulated area, approximately 330 feet in width, will be designated as a spectator zone for pleasure crafts.

Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. Entry into and transiting within the spectator zone of the

regulated area is only authorized at no-wake speed and requires the authorization of the Captain of the Port or his designated on-scene representative. The races will stop for oncoming freighter or commercial traffic. The on-scene representative or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state or local law enforcement vessel assigned to patrol the event.

The Captain of the Port or his designated on-scene representative will notify the affected segments of the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on several of these statutes or executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Coast Guard's use of this special local regulation will be of relatively small size and short duration, and it is designed to minimize the impact on navigation. Moreover, vessels may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulations. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Trenton Channel near Wyandotte, MI between 7 a.m. until 4:30 p.m. on April 25, 2015.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect and enforced for less than 10 hours on one day. The race event will be temporarily stopped for any deep draft vessels transiting through the shipping lanes. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule to that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade, and, therefore it is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. During the annual permitting process for this event an environmental analysis was conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add § 100.35T09–0190 to read as follows:

### § 100.35T09–0190 Special Local Regulation; Hebda Cup Rowing Regatta, Trenton Channel; Wyandotte, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Trenton Channel between the following two lines going from bank-to-bank: The first line is drawn directly across the channel from position *42°10′58″ N., 083°9′23″ W.;* the second line, to the north, is drawn directly across the channel from position *42°11′44″ N., 083°8′56″ W.* All geographic coordinates are North American Datum of 1983 (NAD 83). Two thirds of the Trenton Channel on the western portion of the regulated area, from the Wyandotte shoreline to a point approximately 670 feet east into the channel, will be designated as the race zone, while the remaining third portion on the eastern side of the of the regulated area, approximately 330 feet in width, will be designated as a spectator zone for pleasure crafts.

(b) *Enforcement period.* This regulation will be enforced from 7 a.m. until 4:30 p.m. on April 25, 2015.

(c) *Regulations.* (1) No vessel may enter, transit through, or anchor within the race zone of the regulated area unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) No vessels may enter and transit through the spectator zone on the eastern side of regulated area without authorization of the Captain of the Port or his designated on scene representative. Any vessel granted permission to enter the spectator zone must not exceed a no-wake speed.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port, Sector Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464.

(5) Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port, Sector Detroit, or his on-scene representative.

(6) If the Captain of the Port, Sector Detroit grants permission for a deep draft vessel to transit through the regulated area in the shipping lanes, the race event will be temporarily stopped during deep draft vessel's transit.

Dated: March 27, 2015.

**Scott B. Lemasters,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2015–08761 Filed 4–15–15; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 100 and 165

**[Docket Number USCG–2014–1011]**

**RIN 1625–AA00, AA08**

## Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule that revises the list of special local regulations and safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. Under this rule, the list of recurring marine events requiring special local regulations or safety zones is updated with revisions, additional events, and removal of events that no longer take place in the Fifth Coast Guard District. When these regulations are enforced, certain restrictions are placed on marine traffic in specified areas. This rulemaking project promotes efficiency by eliminating the need to produce a separate rule for each individual recurring event, and serves to provide notice of the known recurring events requiring a special local regulation or safety zone throughout the year.

**DATES:** This rule is effective May 18, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2014–1011]. To view documents mentioned in this preamble as being

available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division, (757) 398–6204, *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or obtaining documents from the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

## A. Regulatory History and Information

The special local regulations listed in 33 CFR 100.501 and safety zones listed in 33 CFR 165.506 were last amended on July 21, 2014 (79 FR 42197).

On February 13, 2015, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays within the Fifth Coast Guard District'' in the **Federal Register** (80 FR 7994). We received one favorable comment on the proposed rule.

No public meeting was requested, and none was held.

## B. Basis and Purpose

This rulemaking is authorized by 33 U.S.C. 1231, 1233; 33 CFR 1.05–1, 160.5; and DHS Delegation No. 0170.1. It updates the list of permanent special local regulations at 33 CFR 100.501 and safety zones at 33 CFR 165.506, established for recurring marine events and fireworks displays at various locations within the Fifth Coast Guard District area of responsibility (AOR). The Fifth Coast Guard District AOR is defined in 33 CFR 3.25.

Publishing these regulatory updates in a single rulemaking promotes efficiency and provides the public with notice through publication in the **Federal Register** of the upcoming recurring marine events and fireworks displays and their accompanying regulations, special local regulations, and safety zones.

## C. Discussion of Comments, Changes and the Final Rule

Coast Guard Sector Baltimore, MD submitted changes for a special local regulation for marine event and a safety zone for fireworks display that were published on February 13, 2015 in the notice of proposed rulemaking. The changes are included in the Table to § 100.501, (b.) line 23, Date. The date for this marine event was expanded to include the 3rd Sunday. Change was made to the Table to § 165.506, (b.) line 1, Regulated Area. The regulated area for this fireworks display was changed to 500 yard radius. This change was made to provide a larger safety buffer within Washington Channel due to the anticipated high density of spectator vessels that typically congregate for this event. These changes do not affect the location or total number of regulated areas previously listed in the NPRM.

One commenter generally supported the proposed listing of all marine events in the Fifth District area of responsibility. No changes were made to the proposed rule based upon this comment.

*Special Local Regulations*

This rule adds 2 new special local regulations for marine events, removes 1 regulation and revises 10 previously established regulations for marine events listed in the Table to § 100.501. Other than changes to the dates and locations of certain events, the other provisions in 33 CFR 100.501 remain unchanged.

The Coast Guard has revised regulations at 33 CFR 100.501 by adding 2 new special local regulations. The special local regulations are listed in Table 1, including reference by section as printed in the Table to § 100.501.

TABLE 1

[Special local regulated areas added to 33 CFR 100.501]

| Table to § 100.501 section | Location |
|---|---|
| 1. (b.) 12 | Rock Hall Harbor, Rock Hall, MD. |
| 2. (b.) 23 | Nanticoke River, Bivalve channel and harbor, Bivalve, MD. |

One previously published special local regulation for marine event was removed from 33 CFR 100.501, *i.e.* ''Ragin on the River'' power boat race that took place on the Susquehanna River, near Port Deposit, MD.

This rule revises 10 preexisting special local regulations that involve change to marine event date(s) and/or coordinates. These events are listed in Table 2, with reference by section as printed in the Table to § 100.501.

TABLE 2

[Changes to special local regulation date(s) and coordinates]

| Table to § 100.501 Section | Location | Revision (date/coordinates) |
|---|---|---|
| 1. (a.) 9 | Sunset Lake, NJ | dates. |
| 2. (a.) 13 | New Jersey Intra Coastal Waterway, Ocean City, NJ | dates. |
| 3. (a.) 14 | New Jersey Intra Coastal Waterway, Atlantic City, NJ | dates. |
| 4. (b.) 3 | Middle River, Essex, MD | coordinates. |
| 5. (b.) 6 | Upper Potomac River, Washington, DC | dates. |
| 6. (b.) 7 | Severn River, Annapolis, MD | coordinates. |
| 7. (b.) 15 | Tred Avon River, Oxford, MD | dates, coordinates. |
| 8. (b.) 17 | Spa Creek, Annapolis, MD | dates. |
| 9. (b.) 20 | Patuxent River, Solomons, MD | dates. |
| 10. (b.) 21 | North Atlantic Ocean, Ocean City, MD | dates. |

Based on the nature of marine events, large number of participants and spectators, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if

normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes special local regulations for the time and location of each marine event.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port (COTP), or designated Coast Guard Patrol Commander. The designated ''Patrol Commander'' includes Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on their behalf. On-scene patrol commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

*Safety Zones*

This rule adds 6 new safety zones, removes 1 safety zone and revises 12 previously established safety zones listed in the Table to § 165.506. Other than changes to the dates and locations of certain safety zones, the other provisions in 33 CFR 165.506 remain unchanged.

The Coast Guard has revised the regulations at 33 CFR 165.506 by adding 6 new safety zone locations to the permanent regulations listed in this section. The new safety zones are listed in Table 3, including reference by section as printed in the Table to § 165.506.

TABLE 3

[Safety zones added to 33 CFR 165.506]

| Table to § 165.506 section | Location |
|---|---|
| 1. (b.) 4 | Upper Potomac River, Washington, DC |

TABLE 3—Continued

[Safety zones added to 33 CFR 165.506]

| Table to § 165.506 section | Location |
|---|---|
| 2. (c.) 22 | Urbanna Creek, Urbanna, VA. |
| 3. (c.) 23 | Elizabeth River—Eastern Branch, Norfolk, VA. |
| 4. (d.) 16 | Shallowbag Bay, Manteo, NC. |
| 5. (d.) 17 | Pasquotank River, Elizabeth City, NC. |
| 6. (d.) 18 | Atlantic Intracoastal Waterway, Bogue Inlet, Swansboro, NC. |

One safety zone was removed from 33 CFR 165.506, specifically, the fireworks display that took place over the Potomac River, near Newburg, MD.

The rule revises 12 preexisting safety zones that involve change to event date(s) and coordinates. These revised safety zones are shown in Table 4, with reference by section as printed in the Table to § 165.506.

TABLE 4

[Changes to safety zone date(s) and coordinates]

| Table to § 165.506 Section | Location | Revision (date/coordinates) |
|---|---|---|
| 1. (a.) 1 | North Atlantic Ocean, Bethany Beach, DE | dates. |
| 2. (a.) 3 | North Atlantic Ocean, Rehoboth Beach, DE | dates. |
| 3. (a.) 4 | North Atlantic Ocean, Avalon, NJ | dates. |
| 4. (a.) 6 | North Atlantic Ocean, Cape May, NJ | dates. |
| 5. (a.) 7 | Delaware Bay, North Cape May, NJ | dates. |
| 6. (a.) 9 | Metedeconk River, Brick Township, NJ | dates. |
| 7. (a.) 10 | North Atlantic Ocean, Atlantic City, NJ | dates, coordinates. |
| 8. (a.) 11 | North Atlantic Ocean, Ocean City, NJ | dates. |
| 9. (a.) 13 | Little Egg Harbor, Parker Island, NJ | dates. |
| 10. (b.) 1 | Upper Potomac River, Washington Channel, Washington, DC | coordinates. |
| 11. (b.) 20 | Upper Potomac River, Washington, DC | dates, coordinates. |
| 12. (c.) 9 | North Atlantic Ocean, Virginia Beach, VA | dates. |

Each year, organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the COTP or designated Coast Guard patrol commander on scene, as provided for in 33 CFR 165.23. This rule provides for the safety of life on navigable waters during the events.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This finding is based on the short amount of time that vessels will be restricted from regulated areas, and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications would also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most

events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these special local regulated areas and safety zones will only be enforced one to three times per year.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in these regulated areas during the times the zones are enforced.

(2) These special local regulated areas and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of event participants and spectators. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the regulated area. Generally, blanket permission to enter, remain in, or transit through these regulated areas will be given, except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States. Some marine events by their nature may introduce potential for adverse impact on the safety or other interest of waterway users or waterfront infrastructure within or close proximity to the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming

events, crew racing, and sail board racing. This section of the rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are not required for this section of the rule.

This rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are generally launched from or immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from barges or at the shoreline that generally rely on the use of navigable waters as a safety buffer. Fireworks displays may introduce potential hazards such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This section of the rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. In § 100.501, revise Table to § 100.501 to read as follows:

**§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.**

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| **(a.) Coast Guard Sector Delaware Bay—COTP Zone** | | | | |
| 1. | June—1st Sunday. ..... | Atlantic County Day at the Bay | Atlantic County, New Jersey. | The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: the area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N.; and bounded to the west by a line that runs along longitude 074°37′00″ W. |
| 2. | May—3rd Sunday; September—3rd Saturday. | Annual Escape from Fort Delaware Triathlon. | Escape from Fort Delaware Triathlon, Inc. | All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N., longitude 075°35′25.6″ W, thence southeast to latitude 39°34′57.3″ N., longitude 075°33′23.1″ W, thence southwest to latitude 39°34′11.9″ N., longitude 075°34′28.6″ W, thence northwest to latitude 39°35′52.4″ N., longitude 075°36′33.9″ W, thence to point of origin. |
| 3. | June—last Saturday. | Westville Parade of Lights. | Borough of Westville and Westville Power Boat. | All waters of Big Timber Creek in Westville, New Jersey from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River. |
| 4. | June—4th Sunday. | OPA Atlantic City Grand Prix. | Offshore Performance Assn. (OPA). | The waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: from a point along the shoreline at latitude 39°21′50″ N., longitude 074°24′37″ W, thence southeasterly to latitude 39°20′40″ N., longitude 074°23′50″ W, thence southwesterly to latitude 39°19′33″ N., longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N., longitude 074°27′40″ W, thence northeasterly along the shoreline to point of origin at latitude 39°21′50″ N., longitude 074°24′37″ W. |
| 5. | July—on or about July 4th. | U.S. holiday celebrations | City of Philadelphia ..... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 6. | August—2nd Friday, Saturday and Sunday. | Point Pleasant OPA/NJ Offshore Grand Prix. | Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn. | The waters of the North Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N., longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N., longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N., longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N., longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin. |
| 7. | July—3rd Wednesday and Thursday. | New Jersey Offshore Grand Prix. | Offshore Performance Assn. & New Jersey Offshore Racing Assn. | The waters of the Manasquan River from the New York and Long Branch Railroad Bridge to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N.; southward to Seaside Park, New Jersey latitude 39°55′00″ N., from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles. |
| 8. | August—3rd Friday. | Thunder Over the Boardwalk Air show. | Atlantic City Chamber of Commerce. | The waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: from a point along the shoreline at latitude 39°21′31″ N., longitude 074°25′04″ W, thence southeasterly to latitude 39°21′08″ N., longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N., longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N., longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N., longitude 074°25′04″ W. |
| 9. | September—2nd, 3rd or 4th Friday, Saturday and Sunday; October—1st Friday, Saturday and Sunday. | Sunset Lake Hydrofest ... | Sunset Lake Hydrofest Assn. | All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N. |
| 10. | October—2nd Saturday and Sunday. | The Liberty Grand Prix ... | Offshore Performance Assn. (OPA). | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 11. | October—1st Monday (Columbus Day). | U.S. holiday celebrations | City of Philadelphia ..... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 12. | December 31st (New Year's Eve). | U.S. holiday celebrations | City of Philadelphia ..... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 13. | September—2nd or 3rd Sunday. | Ocean City Air Show ..... | Ocean City, NJ ..... | All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°15′57″ N., longitude 074°35′09″ W. thence northeast to latitude 39°16′34″ N., longitude 074°33′54″ W. thence southeast to latitude 39°16′17″ N., longitude 074°33′29″ W. thence southwest to latitude 39°15′40″ N., longitude 074°34′46″ W. thence northwest to point of origin, near Ocean City, NJ. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 14. | June—4th Sunday and August 2nd or 3rd Sunday. | Atlantic City International Triathlon. | Atlantic City, NJ ..... | All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°21′20″ N., longitude 074°27′18″ W. thence northeast to latitude 39°21′27.47″ N., longitude 074°27′10.31″ W. thence northeast to latitude 39°21′33″ N., longitude 074°26′57″ W. thence northwest to latitude 39°21′37″ N., longitude 074°27′03″ W. thence southwest to latitude 39°21′29.88″ N., longitude 074°27′14.31″ W. thence south to latitude 39°21′19″ N., longitude 074°27′22″ W. thence east to latitude 39°21′18.14″ N., longitude 074°27′19.25″ W. thence north to point of origin, near Atlantic City, NJ. |
| **(b.) Coast Guard Sector Baltimore—COTP Zone** | | | | |
| 1. | March—4th or last Saturday; or April—1st Saturday. | Safety at Sea Seminar. .. | U.S. Naval Academy ..... | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by the Naval Academy (SR–450) Bridge and bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W. |
| 2. | March—3rd, 4th or last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday. | USNA Crew Races. ..... | U.S. Naval Academy ..... | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′58″ N., longitude 076°31′32″ W. thence to the north shoreline at latitude 39°01′11″ N., longitude 076°31′10″ W. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W. |
| 3. | July—3rd, 4th or last Saturday, or Sunday. | Dinghy Poker Run ..... | Norris Trust Foundation .. | The waters of Middle River, from shoreline to shoreline, within an area bounded to the north by a line drawn along latitude 39°19′33″ N., and bounded to the south by a line drawn from latitude 39°17′24.4″ N., longitude 076°23′53.3″ W. to latitude 39°18′06.4″ N., longitude 076°23′10.9″ W., located in Baltimore County, at Essex, MD. |
| 4. | May—1st Sunday. | Nanticoke River Swim and Triathlon. | Nanticoke River Swim and Triathlon, Inc. | All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N., longitude 075°54′00″ W., thence westerly to latitude 38°18′00″ N., longitude 075°55′00″ W., thence northerly to latitude 38°20′00″ N., longitude 075°53′48″ W., thence easterly to latitude 38°19′42″ N., longitude 075°52′54″ W. |
| 5. | May—Saturday before Memorial Day. | Chestertown Tea Party Re-enactment Festival. | Chestertown Tea Party Festival. | All waters of the Chester River, within a line connecting the following positions: latitude 39°12′27″ N., longitude 076°03′46″ W.; thence to latitude 39°12′19″ N., longitude 076°03′53″ W.; thence to latitude 39°12′15″ N., longitude 076°03′41″ W.; thence to latitude 39°12′26″ N., longitude 076°03′38″ W.; thence to the point of origin at latitude 39°12′27″ N., longitude 076°03′46″ W. |
| 6. | May—3rd Friday, Saturday and Sunday. June 2nd or 3rd Friday, Saturday and Sunday. | Dragon Boat Races at Georgetown, Washington, DC. | Washington, D.C. Dragon Boat Festival, Inc. | The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 7. | May—Tuesday and Wednesday before Memorial Day (observed). | USNA Blue Angels Air Show. | U.S. Naval Academy ..... | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.02″ N., longitude 076°31′01.49″ W. thence to the north shoreline at latitude 39°00′52.7″ N., longitude 076°30′46.01″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 1500 yards ESE of Chinks Point, MD at latitude 38°57′41″ N., longitude 076°27′36″ W. thence northeast to Greenbury Point at latitude 38°58′27.66″ N., longitude 076°27′16.38″ W. |
| 8. | June—2nd Sunday. | The Great Chesapeake Bay Bridges Swim Races. | Great Chesapeake Bay Swim, Inc. | The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00′36″ N., longitude 076°23′05″ W. and thence eastward to the eastern shoreline at latitude 38°59′14″ N., longitude 076°20′00″ W., and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′16″ N., longitude 076°24′30″ W. and thence eastward to the eastern shoreline at latitude 38°58′38.5″ N., longitude 076°20′06″ W. |
| 9. | June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday. | Maryland Swim for Life ... | District of Columbia Aquatics Club. | The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N., near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N. by the Maryland S.R. 213 Highway Bridge. |
| 10. | June—last Saturday and Sunday or July—2nd Saturday and Sunday. | Bo Bowman Memorial—Sharptown Regatta. | Virginia/Carolina Racing Assn. | All waters of the Nanticoke River near Sharptown, MD, from shoreline to shoreline, bounded to the south by Maryland S.R. 313 Highway Bridge and bounded to the north by a line drawn from latitude 38°33′09″ N., longitude 075°42′45″ W., thence southeasterly to latitude 38°33′04″ N., longitude 075°42′37″ W. |
| 11. | June—2nd, 3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday. | Thunder on the Narrows | Kent Narrows Racing Assn. | All waters of Prospect Bay enclosed by the following points: latitude 38°57′52″ N., longitude 076°14′48″ W., thence to latitude 38°58′02″ N., longitude 076°15′05″ W., thence to latitude 38°57′38″ N., longitude 076°15′29″ W., thence to latitude 38°57′28″ N., longitude 076°15′23″ W., thence to point of origin at latitude 38°57′52″ N., longitude 076°14′48″ W. |
| 12. | May/June—Saturday and Sunday after Memorial Day (observed); and October—1st Saturday and Sunday. | Rock Hall and Waterman's Triathlon Swims. | Kinetic Endeavors, LLC .. | The waters of Rock Hall Harbor from shoreline to shoreline, bounded by a line drawn from latitude 39°07′59″ N., longitude 076°15′03″ W. to latitude 39°07′50″ N., longitude 076°14′41″ W., located at the entrance to Rock Hall, MD. |
| 13. | September—2nd Saturday or the Saturday after Labor Day. | Dragon Boat Races in the Inner Harbor. | Associated Catholic Charities, Inc. | The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W. |
| 14. | June—3rd, 4th or last Saturday or Sunday. | Baltimore Dragon Boat Challenge. | Baltimore Dragon Boat Club. | The waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′ W. and bounded on the west by a line drawn along longitude 076°36′ W. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 15. | May—2nd, 3rd 4th or last Saturday. June—1st, 2nd or 3rd Saturday. | Oxford-Bellevue Sharkfest Swim. | Enviro-Sports Productions Inc. | The waters of the Tred Avon River from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N., longitude 076°10 ′45″ W., thence south to latitude 38°41′37″ N., longitude 076°10′26″ W., and bounded on the west by a line drawn from latitude 38°41′58″ N., longitude 076°11′04″ W., thence south to latitude 38°41′25″ N., longitude 076°10′49″ W., thence east to latitude 38°41′25″ N., longitude 076°10′30″ W., located at Oxford, MD. |
| 16. | June—1st Sunday. | Swim Across the Potomac. | U.S. Open Water Swimming Assn.—Wave One Swimming. | The waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn that originates at Jones Point Park, VA at the west shoreline latitude 38°47′35″ N., longitude 077°02′22″ W., thence east to latitude 38°47′2″ N., longitude 077°00′58″ W., at east shoreline near National Harbor, MD. The regulated area is bounded to the south by a line drawn originating at George Washington Memorial Parkway highway overpass and Cameron Run, west shoreline latitude 38°47′23″ N., longitude 077°03′03″ W. thence east to latitude 38°46′52″ N., longitude 077°01′13″ W., at east shoreline near National Harbor, MD. |
| 17. | October—last Saturday; or November—1st or 2nd Saturday. | The MRE Tug of War ..... | Maritime Republic of Eastport. | The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N., longitude 076°29′03.8″ W. on the Annapolis shoreline to a position at latitude 38°58′26.4″ N., longitude 076°28′53.7″ W. on the Eastport shoreline. |
| 18. | December—2nd Saturday. | Eastport Yacht Club Lighted Boat Parade. | Eastport Yacht Club ..... | The waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58″ N., longitude 076°27′40″ W., thence to Horn Point Warning Light (LLNR 17935), at 38°58′24″ N., longitude 076°28′10 W., thence to Horn Point, at 38°58′20″ N., longitude 076°28′27″ W., and bounded on the north by Naval Academy SR 450 Bridge. |
| 19. | Memorial Day weekend—Thursday, Friday, Saturday and Sunday; or Labor Day weekend—Thursday, Friday, Saturday and Sunday. | NAS Patuxent River Air Expo. | U.S. Naval Air Station Patuxent River, MD. | All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N., longitude 076°25′47″ W.; thence to latitude 38°17′47″ N., longitude 076°26′00″ W.; thence to latitude 38°18′09″ N., longitude 076°25′40″ W.; thence to latitude 38°18′00″ N., longitude 076°25′25″ W., located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N., longitude 076°23′43″ W.; to latitude 38°18′16″ N., longitude 076°22′35″ W.; thence to latitude 38°18′12″ N., longitude 076°22′37″ W.; thence to latitude 38°18′36″ N., longitude 076°23′46″ W., located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 20. | September—2nd, 3rd or 4th Friday, Saturday and Sunday. October—1st Friday, Saturday and Sunday. | Chesapeake Challenge/ Solomons Offshore Grand Prix. | Chesapeake Bay Powerboat Association. | All waters of the Patuxent River, within boundary lines connecting the following positions; originating near north entrance of MD Route 4 bridge, latitude 38°19′45″ N., longitude 076°28′06″ W., thence southwest to south entrance of MD Route 4 bridge, latitude 38°19′24″ N., longitude 076°28′30″ W., thence south to a point near the shoreline, latitude 38°18′32″ N., longitude 076°28′14″ W., thence southeast to a point near the shoreline, latitude 38°17′38″ N., longitude 076°27′26″ W., thence northeast to latitude 38°18′00″ N., longitude 076°26′41″ W., thence northwest to latitude 38°18′59″ N., longitude 076°27′20″ W., located at Solomons, MD, thence continuing northwest and parallel to shoreline to point of origin. |
| 21. | May—1st or 2nd Saturday and Sunday; | Ocean City Maryland Offshore Grand Prix. | Offshore Performance Assn. Racing, LLC. | The waters of the North Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N., longitude 075°03′06″ W.; thence east southeast to latitude 38°25′30″ N., longitude 075°02′12″ W., thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N., longitude 075°03′48″ W.; thence west northwest to the shoreline at latitude 38°19′30″ N., longitude 075°05′00″ W. |
| 22. | June—1st or 2nd Thursday, Friday, Saturday and Sunday. | Ocean City Air Show ..... | Town of Ocean City, Maryland. | All waters of the North Atlanta Ocean within an area bounded by the following coordinates: latitude 38°21′38″ N., longitude 075°04′04″ W.; latitude 38°21′27″ N., longitude 075°03′29″ W.; latitude 38°19′35″ N., longitude 075°04′19″ W.; and latitude 38°19′45″ N., longitude 075°04′54″ W., located at Ocean City, MD. |
| 23. | June—3rd, 4th or last Sunday. | Coastal Aquatics Swim Team Open Water Summer Shore Swim. | Coastal Aquatics Swim Club. | All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N., longitude 075°54′00″ W., thence westerly to latitude 38°18′00″ N., longitude 075°55′00″ W., thence northerly to latitude 38°20′00″ N., longitude 075°53′48″ W., thence easterly to latitude 38°19′42″ N., longitude 075°52′54″ W. |
| **(c.) Coast Guard Sector Hampton Roads—COTP Zone** | | | | |
| 1. | May—last Friday, Saturday and Sunday and/or June—1st Friday, Saturday and Sunday. | Blackbeard Festival ..... | City of Hampton ..... | The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the I–64 Bridge over the Hampton River and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03″ N., longitude 76°20′26″ W., to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N., longitude 76°20′32″ W.<br>Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48″ N., longitude 76°20′22″ W., across the river to the eastern shore at latitude 37°01′44″ N., longitude 76°20′13″ W., and to the north by the I–64 Bridge over the Hampton River. The anchorage area will be marked by orange buoys.<br>Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26″ N., longitude 76°20′24″ W., latitude 37°01′22″ N., longitude 76°20′26″ W., and latitude 37°01′22″ N., longitude 76°20′23″ W. The anchorage area will be marked by orange buoys. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 2. | June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday. | Norfolk Harborfest. ..... | Norfolk Festevents, Ltd ... | The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51″ N., longitude 076°18′09″ W. and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00″ N., longitude 076°17′52″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50″ N., longitude 076°18′10″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29″ N., longitude 076°17′52″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10″ N., longitude 076°17′47″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08″ N., longitude 076°17′39″ W.; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W. |
| 3. | June—2nd or 3rd Saturday. | Cock Island Race. ..... | Portsmouth Boat Club & City of Portsmouth, VA. | The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51″ N., longitude 076°18′09″ W. and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′0″ N., longitude 076°17′52″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50″ N., longitude 076°18′10″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29″ N., longitude 076°17′52″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10″ N., longitude 076°17′47″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08″ N., longitude 076°17′39″ W.; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W. |
| 4. | June—last Saturday or July—1st Saturday. | RRBA Spring Radar Shootout. | Rappahannock River Boaters Association (RRBA). | The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W., and bounded on the east by a line running along longitude 076°56′00″ W. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 5. | July—last Wednesday and following Friday; or August—1st Wednesday and following Friday. | Pony Penning Swim ..... | Chincoteague Volunteer Fire Department. | The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N., longitude 075°22′40″ W., thence south to latitude 37°54′50″ N., longitude 075°22′46″ W.; and to the southwest by a line drawn from latitude 37°54′54″ N., longitude 075°23′00″ W., thence east to latitude 37°54′49″ N., longitude 075°22′49″ W. |
| 6. | August 1st or 2nd Friday, Saturday and Sunday. | Hampton Cup Regatta .... | Hampton Cup Regatta Boat Club. | The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: to the north, a line drawn along latitude 37°01′00″ N., to the east a line drawn along longitude 076°18′30″ W., to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge. |
| 7. | September 1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday. | Hampton Virginia Bay Days Festival. | Hampton Bay Days Inc ... | The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the I–64 Bridge over the Hampton River and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03″ N., longitude 076°20′26″ W., to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N., longitude 076°20′32″ W. |
| 8. | September—last Sunday or October—1st Sunday. | Poquoson Seafood Festival Workboat Races. | City of Poquoson ..... | The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N., bounded on the south by a line drawn along latitude 37°06′15″ N., bounded on the east by a line drawn along longitude 076°18′52″ W. and bounded on the west by a line drawn along longitude 076°19′30″ W. |
| 9. | June—3rd Saturday and Sunday or 4th Saturday and Sunday. | Mattaponi Drag Boat Race. | Mattaponi Volunteer Rescue Squad and Dive Team. | All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W., near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W. just north of Wakema, Virginia. |
| **(d.) Coast Guard Sector North Carolina—COTP Zone** | | | | |
| 1. | June—1st Saturday and Sunday. | Carolina Cup Regatta ..... | Virginia Boat Racing Assn. | The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N., longitude 076°12′00″ W., thence southwesterly to latitude 36°17′35″ N., longitude 076°12′18″ W. at Cottage Point. |
| 2. | August—1st Friday, Saturday and Sunday. | SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix. | Super Boat International Productions (SBIP), Inc. | The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee (North Carolina) at latitude 35°28′23″ N., longitude 076°59′23″ W., to Broad Creek Point at latitude 35°29′04″ N., longitude 076°58′44″ W., and bounded on the north by the Norfolk Southern Railroad Bridge. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| 3. | September—3rd and or 4th or last Sunday. | Crystal Coast Grand Prix | North Carolina East Sports, Inc. N/P. | The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N., longitude 076°42′48″ W., thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N., longitude 076°42′11″ W., thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N., longitude 076°41′20″ W., thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N., longitude 076°40′52″ W., thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N., longitude 076°4052 W., thence northerly along the shoreline to approximate position latitude 34°43′00″ N., longitude 076°41′25″ W., thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N., longitude 076°42′12″ W., thence westerly to the southern tip of Sugar Loaf Island the point of origin. |
| 4. | September—3rd, 4th or last Saturday; October—last Saturday; November—1st and or 2nd Saturday. | Wilmington YMCA Triathlon. | Wilmington, NC, YMCA .. | The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N., longitude 077°48′10″ W., to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N., longitude 77°48′53″ W. |
| 5. | August—2nd Saturday. | The Crossing ..... | Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, AKA O'SAIL. | All waters of Lake Gaston, from shoreline to shoreline, directly under the length of Eaton Ferry Bridge (NC State Route 903), latitude 36°31′06″ N., longitude 077°57′37″ W., bounded to the west by a line drawn parallel and 100 yards from the western side of Eaton Ferry Bridge near Littleton, NC. |

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 4. In § 165.506, revise Table to § 165.506 to read as follows:

**§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.**

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| **(a.) Coast Guard Sector Delaware Bay—COTP Zone** | | | |
| 1. ..... | July 3rd, 4th or 5th ..... | North Atlantic Ocean, Bethany Beach, DE; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N., longitude 075°03′15″ W., adjacent to shoreline of Bethany Beach, DE. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 2. ..... | Labor Day ..... | Indian River Bay, DE; Safety Zone ..... | All waters of the Indian River Bay within a 700 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N., longitude 075°08′18″ W. |
| 3. ..... | July 3rd or 4th ..... | North Atlantic Ocean, Rehoboth Beach, DE; Safety Zone. | All waters of the North Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N., longitude 075°04′21″ W., approximately 400 yards east of Rehoboth Beach, DE. |
| 4. ..... | July 3rd, 4th or 5th ..... | North Atlantic Ocean, Avalon, NJ; Safety Zone ..... | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N., longitude 074°42′02.15″ W., in the vicinity of the shoreline at Avalon, NJ. |
| 5. ..... | July 4th, or September 1st—2nd Saturday. | Barnegat Bay, Barnegat Township, NJ; Safety Zone | The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N., longitude 074°11′21″ W., approximately 500 yards north of Conklin Island, NJ. |
| 6. ..... | July 3rd, 4th or 5th ..... | North Atlantic Ocean, Cape May, NJ; Safety Zone .. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N., longitude 074°55′26″ W., immediately adjacent to the shoreline at Cape May, NJ. |
| 7. ..... | July 3rd, 4th or 5th ..... | Delaware Bay, North Cape May, NJ; Safety Zone ... | All waters of the Delaware Bay within a 360 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N., longitude 074°58′30″ W. |
| 8. ..... | August—3rd Sunday ..... | Great Egg Harbor Inlet, Margate City, NJ; Safety Zone. | All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N., longitude 074°31′28″ W., on the Intracoastal Waterway near Margate City, NJ. |
| 9. ..... | July 3rd, 4th or 5th August every Thursday; September 1st Thursday. | Metedeconk River, Brick Township, NJ; Safety Zone | The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N., longitude 074°06′42″ W., near the shoreline at Brick Township, NJ. |
| 10. ..... | July—3rd, 4th or 5th ..... | North Atlantic Ocean, Atlantic City, NJ; Safety Zone | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N., longitude 074°25′58″ W., and within 500 yard radius of a fireworks barge located at latitude 39°21′12″ N., longitude 074°25′06″ W., near the shoreline at Atlantic City, NJ. |
| 11. ..... | July 3rd, 4th or 5th. October—1st or 2nd Saturday. | North Atlantic Ocean, Ocean City, NJ; Safety Zone | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N., longitude 074°33′54″ W., in the vicinity of the shoreline at Ocean City, NJ. |
| 12. ..... | May—4th Saturday ..... | Barnegat Bay, Ocean Township, NJ; Safety Zone ... | All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N., longitude 074°10′46″ W. |
| 13. ..... | July 3rd, 4th or 5th ..... | Little Egg Harbor, Parker Island, NJ; Safety Zone .... | All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N., longitude 074°14′43″ W., approximately 100 yards north of Parkers Island. |
| 14. ..... | September—3rd Saturday | Delaware River, Chester, PA; Safety Zone ..... | All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N., longitude 075°22′42″ W. |
| 15. ..... | September—3rd Saturday | Delaware River, Essington, PA; Safety Zone ..... | All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N., longitude 075°18′57″ W. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 16. ..... | July 3rd, 4th or 5th; Columbus Day; December 31st, January 1st. | Delaware River, Philadelphia, PA; Safety Zone ..... | All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29.1″ N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge. |
| **(b.) Coast Guard Sector Baltimore—COTP Zone** | | | |
| 1. ..... | April—1st or 2nd Saturday. | Washington Channel, Upper Potomac River, Washington, D.C.; Safety Zone. | All waters of the Upper Potomac River within a 500 yard radius of the fireworks barge in approximate position latitude 38°52′20″ N., longitude 077°01′17″ W., located within the Washington Channel in Washington Harbor, DC. |
| 2. ..... | July 4th December—1st and 2nd Saturday; December 31st. | Severn River and Spa Creek, Annapolis, MD; Safety Zone. | All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′43.75″ N., longitude 076°28′01.42″ W.; thence to latitude 38°58′21.14″ N., longitude 076°28′22.12″ W.; thence to latitude 38°58′39.47″ N., longitude 076°28′48.72″ W.; thence to latitude 38°58′53″ N., longitude 076°28′33.74″ W., thence to latitude 38°58′57.22″ N., longitude 076°28′39.83″ W., thence to latitude 38°59′02.15″ N., longitude 076°28′34.61″ W., thence to point of origin; located near the entrance to Spa Creek and Severn River, Annapolis, MD. |
| 3. ..... | July—4th, or Saturday before or after Independence Day holiday. | Middle River, Baltimore County, MD; Safety Zone ... | All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N., longitude 076°23′49″ W., approximately 300 yards east of Rockaway Beach, near Turkey Point. |
| 4. ..... | July—1st, 2nd or 3rd Saturday. | Upper Potomac River, Washington, D.C.; Safety Zone. | All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′14″ N., 077°02′00″ W., located near the waterfront (King Street) at Alexandria, Virginia. |
| 5. ..... | June 14th; July 4th; September—2nd Saturday; December 31st. | Northwest Harbor (East Channel), Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N., 076°34′33″ W., located adjacent to the East Channel of Northwest Harbor. |
| 6. ..... | May—2nd or 3rd Thursday or Friday; July 4th; December 31st. | Baltimore Inner Harbor, Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N., longitude 076°36′31″ W., located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3. |
| 7. ..... | May—2nd or 3rd Thursday or Friday; July 4th December 31st.. | Baltimore Inner Harbor, Patapsco River, MD; Safety Zone. | The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N., longitude 076°36′36″ W., located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1. |
| 8. ..... | July 4th; December 31st. | Northwest Harbor (West Channel) Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N., longitude 076°34′38″ W., located adjacent to the West Channel of Northwest Harbor. |
| 9. ..... | July—4th, or Saturday before or after Independence Day holiday. | Patuxent River, Calvert County, MD; Safety Zone ... | All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N., longitude 076°27′45″ W., approximately 800 feet from shore at Solomons Island, MD. |
| 10. ..... | July 3rd ..... | Chesapeake Bay, Chesapeake Beach, MD; Safety Zone. | All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N., longitude 076°31′30″ W., and within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N., longitude 076°31′29″ W., located near Chesapeake Beach, Maryland. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 11. ..... | July 4th ..... | Choptank River, Cambridge, MD; Safety Zone ..... | All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N., longitude 076°04′46″ W. |
| 12. ..... | July—2nd or 3rd Saturday and last Saturday. | Potomac River, Fairview Beach, Charles County, MD; Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°19′57″ N., longitude 077°14′40″ W., located north of the shoreline at Fairview Beach, Virginia. |
| 13. ..... | May—last Saturday; July 4th. | Potomac River, Charles County, MD; Mount Vernon, Safety Zone. | All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N., longitude 077°04′47″ W.; thence to latitude 38°42′18″ N., longitude 077°04′42″ W.; thence to latitude 38°42′11″ N., longitude 077°05′10″ W.; thence to latitude 38°42′22″ N., longitude 077°05′12″ W.; thence to point of origin located along the Potomac River shoreline at George Washington's Mount Vernon Estate, Fairfax County, VA. |
| 14. ..... | October—1st Saturday .... | Dukeharts Channel, Potomac River, MD; Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N., longitude 076°44′48″ W., located adjacent to Dukeharts Channel near Coltons Point, Maryland. |
| 15. ..... | July—day before Independence Day holiday and July 4th; November—3rd Thursday, 3rd Saturday and last Friday; December—1st, 2nd and 3rd Friday. | Potomac River, National Harbor, MD; Safety Zone .. | All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N., longitude 077°00′58″ W.; thence to latitude 38°46′51″ N., longitude 077°01′15″ W.; thence to latitude 38°47′25″ N., longitude 077°01′33″ W.; thence to latitude 38°47′32″ N., longitude 077°01′08″ W.; thence to the point of origin, located at National Harbor, Maryland. |
| 16. ..... | Sunday before July 4th, July 4th.. | Susquehanna River, Havre de Grace, MD; Safety Zone. | All waters of the Susquehanna River within a 300 yard radius of approximate position latitude 39°32′06″ N., longitude 076°05′22″ W., located on the island at Millard Tydings Memorial Park. |
| 17. ..... | June and July—Saturday before Independence Day holiday. | Miles River, St. Michaels, MD; Safety Zone ..... | All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N., longitude 076°12′51″ W., located at the entrance to Long Haul Creek. |
| 18. ..... | July 3rd ..... | Tred Avon River, Oxford, MD; Safety Zone ..... | All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N., longitude 076°10′37″ W., approximately 500 yards northwest of the waterfront at Oxford, MD. |
| 19. ..... | July 3rd ..... | Northeast River, North East, MD; Safety Zone ..... | All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N., longitude 075°57′00″ W., approximately 400 yards south of North East Community Park. |
| 20. ..... | December 31st. ..... | Upper Potomac River, Washington, D.C.; Safety Zone. | All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′38″ N., 077°01′56″ W., located east of Oronoco Bay Park at Alexandria, Virginia. |
| 21. ..... | March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park. | Anacostia River, Washington, D.C.; Safety Zone ..... | All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N., longitude 077°00′16″ W., located near the Washington Nationals Ball Park. |
| 22. ..... | June—last Saturday or July—1st Saturday; July—3rd, 4th or last Saturday or Sunday. | Potomac River, Prince William County, VA; Safety Zone. | All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′08″ N., longitude 077°15′38″ W., located near Cherry Hill, Virginia. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 23. ..... | July 4th ..... | North Atlantic Ocean, Ocean City, MD; Safety Zone | All waters of the North Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N., longitude 075°05′03.2″ W.; thence to latitude 38°19′36.7″ N., longitude 075°04′53.5″ W.; thence to latitude 38°19′45.6″ N., longitude 075°04′49.3″ W.; thence to latitude 38°19′49.1″ N., longitude 075°05′00.5″ W.; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach. |
| 24. ..... | May—Sunday before Memorial Day (observed). June 29th; July 4th and July every Sunday. August—1st Sunday and Sunday before Labor Day (observed). | Isle of Wight Bay, Ocean City, MD; Safety Zone ..... | All waters of Isle of Wight Bay within a 200 yard radius of the fireworks barge in approximate position latitude 38°22′31″ N., longitude 075°04′34″ W. |
| 25. ..... | July 4th ..... | Assawoman Bay, Fenwick Island—Ocean City, MD; Safety Zone. | All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′55″ N., longitude 075°03′53″ W. |
| 26. ..... | July 4th; December 31st. | Baltimore Harbor, Baltimore Inner Harbor, MD; Safety Zone. | All waters of Baltimore Harbor, Patapsco River, within a 280 yard radius of a fireworks barge in approximate position latitude 39°16′36.7″ N., longitude 076°35′53.8″ W., located northwest of the Domino Sugar refinery wharf at Baltimore, Maryland. |
| **(c.) Coast Guard Sector Hampton Roads—COTP Zone** | | | |
| 1. ..... | July 4th ..... | Linkhorn Bay, Virginia Beach, VA; Safety Zone ..... | All waters of the Linkhorn Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′20″ N., longitude 076°00′38″ W., located near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia. |
| 2. ..... | September—last Friday or October—1st Friday. | York River, West Point, VA; Safety Zone ..... | All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N., longitude 076°47′19″ W. |
| 3. ..... | July 4th ..... | York River, Yorktown, VA; Safety Zone ..... | All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N., longitude 076°30′02″ W., located near Yorktown, Virginia. |
| 4. ..... | July 4th, July 5th, July 6th, or July 7th. | James River, Newport News, VA; Safety Zone ..... | All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N., longitude 076°26′19″ W., located in the vicinity of the Newport News Shipyard, Newport News, Virginia. |
| 5. ..... | June—4th Friday; July—1st Friday; July 4th. | Chesapeake Bay, Norfolk, VA; Safety Zone ..... | All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N., longitude 076°15′00″ W., located near Ocean View Fishing Pier. |
| 6. ..... | July 4th or 5th. ..... | Chesapeake Bay, Virginia Beach, VA; Safety Zone | All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N., longitude 076°03′27″ W., located at the First Landing State Park at Virginia Beach, Virginia. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 7. ..... | July 4th; December 31st; January—1st. | Elizabeth River, Southern Branch, Norfolk, VA; Safety Zone. | All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N., longitude 076°18′10.7″ W.; thence to latitude 36°51′7.9″ N., longitude 076°18′01″ W.; thence to latitude 36°50′45.6″ N., longitude 076°17′44.2″ W.; thence to latitude 36°50′29.6″ N., longitude 076°17′23.2″ W.; thence to latitude 36°50′7.7″ N., longitude 076°17′32.3″ W.; thence to latitude 36°49′58″ N., longitude 076°17′28.6″ W.; thence to latitude 36°49′52.6″ N., longitude 076°17′43.8″ W.; thence to latitude 36°50′27.2″ N., longitude 076°17′45.3″ W. thence to the point of origin. |
| 8. ..... | July—3rd Saturday ..... | John H. Kerr Reservoir, Clarksville, VA; Safety Zone | All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N., longitude 078°32′50″ W., located near the center span of the State Route 15 Highway Bridge. |
| 9. ..... | June, July, August, September, and October—every Wednesday, Thursday, Friday, Saturday and Sunday July 4th. | North Atlantic Ocean, Virginia Beach, VA; Safety Zone A. | All waters of the North Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N., longitude 075°58′06″ W., located off the beach between 17th and 31st streets. |
| 10. ..... | September—last Saturday or October—1st Saturday. | North Atlantic Ocean, VA Beach, VA; Safety Zone B | All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N., longitude 075°58′09″ W., located on the 14th Street Fishing Pier. |
| 11. ..... | Friday, Saturday and Sunday Labor Day Weekend. | North Atlantic Ocean, VA Beach, VA; Safety Zone C | All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N., longitude 075°58′00″ W., located off the beach between 2nd and 6th streets. |
| 12. ..... | July 4th ..... | Nansemond River, Suffolk, VA; Safety Zone ..... | All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N., longitude 076°34′42″ W., located near Constant's Wharf in Suffolk, VA. |
| 13. ..... | July 4th ..... | Chickahominy River, Williamsburg, VA; Safety Zone | All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N., longitude 076°52′17″ W., near Barrets Point, Virginia. |
| 14. ..... | July—3rd, 4th and 5th ..... | Great Wicomico River, Mila, VA; Safety Zone ..... | All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position latitude 37°50′31″ N., longitude 076°19′42″ W. near Mila, Virginia. |
| 15. ..... | July—1st Friday, Saturday and Sunday. | Cockrell's Creek, Reedville, VA; Safety Zone ..... | All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N., longitude 076°16′44″ W. near Reedville, Virginia. |
| 16. ..... | May—last Sunday ..... | James River, Richmond, VA; Safety Zone ..... | All waters of the James River located within a 420 foot radius of the fireworks display at approximate position latitude 37°31′13.1″ N., longitude 077°25′07.84″ W. near Richmond, Virginia. |
| 17. ..... | June—last Saturday ..... | Rappahannock River, Tappahannock, VA; Safety Zone. | All waters of the Rappahannock River located within a 400 foot radius of the fireworks display at approximate position latitude 37°55′12″ N., longitude 076°49′12″ W. near Tappahannock, Virginia. |
| 18. ..... | July 4th ..... | Cape Charles Harbor, Cape Charles, VA; Safety Zone. | All waters of Cape Charles Harbor located within a 375 foot radius of the fireworks display at approximate position latitude 37°15′46.5″ N., longitude 076°01′30.3″ W. near Cape Charles, Virginia. |
| 19. ..... | July 3rd or 4th ..... | Pagan River, Smithfield, VA; Safety Zone ..... | All waters of the Pagan River located within a 420 foot radius of the fireworks display at approximate position latitude 36°59′18″ N., longitude 076°37′45″ W. near Smithfield, Virginia. |
| 20. ..... | July 4th ..... | Sandbridge Shores, Virginia Beach, VA; Safety Zone. | All waters of Sandbridge Shores located within a 300 foot radius of the fireworks display at approximate position latitude 36°43′24.9″ N., longitude 075°56′24.9″ W. near Virginia Beach, Virginia. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 21. ..... | July 4th, 5th or 6th ..... | Chesapeake Bay, Virginia Beach, VA; Safety Zone | All waters of Chesapeake Bay located within a 600 foot radius of the fireworks display at approximate position latitude 36°54′58.18″ N., longitude 076°06′44.3″ W. near Virginia Beach, Virginia. |
| 22. ..... | July 3rd, 4th and 5th ..... | Urbanna Creek, Urbanna, VA; Safety Zone ..... | All waters of Urbanna Creek within a 350 foot radius of the fireworks launch site at latitude 37°38′09″ N., longitude 076°34′03″ W., located on land near the east shoreline of Urbanna Creek and south of Bailey Point. |
| 23. ..... | April–August, every Friday and Saturday; July 2nd, 3rd, 4th and 5th; and Friday, Saturday and Sunday of Labor day weekend. | Elizabeth River Eastern Branch, Norfolk, VA; Safety Zone. | All waters of the Eastern Branch of Elizabeth River within the area along the shoreline immediately adjacent to Harbor Park Stadium ball park and outward into the river bound by a line drawn from latitude 36°50′29.65″ N., longitude 076°16′48.9″ W., thence south to 36°50′28.79″ N., longitude 076°16′49.12″ W., thence east to 36°50′26.74″ N., longitude 076°16′39.54″ W., thence north to 36°50′27.7″ N., longitude 076°16′39.36″ W. terminating at the SW. corner of Harbor Park finger pier. |
| **(d.) Coast Guard Sector North Carolina—COTP Zone** | | | |
| 1. ..... | July 4th; October—1st Saturday. | Morehead City Harbor Channel, NC; Safety Zone ... | All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N., longitude 076°42′59.6″ W., a position located at the west end of Sugar Loaf Island, NC. |
| 2. ..... | April—2nd Saturday; July 4th; August—3rd Monday; October—1st Saturday. | Cape Fear River, Wilmington, NC; Safety Zone ..... | All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N., longitude 077°57′06″ W.; thence northeast to latitude 34°13′57″ N., longitude 077°57′05″ W.; thence north to latitude 34°14′11″ N., longitude 077°57′07″ W.; thence northwest to latitude 34°14′22″ N., longitude 077°57′19″ W.; thence east to latitude 34°14′22″ N., longitude 077°57′06″ W.; thence southeast to latitude 34°14′07″ N., longitude 077°57′00″ W.; thence south to latitude 34°13′54″ N., longitude 077°56′58″ W.; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge. |
| 3. ..... | July—1st Saturday and July 4th. | Green Creek and Smith Creek, Oriental, NC; Safety Zone. | All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N., longitude 076°42′10.4″ W., located near the entrance to the Neuse River in the vicinity of Oriental, NC. |
| 4. ..... | July 4th ..... | Pasquotank River, Elizabeth City, NC; Safety Zone | All waters of the Pasquotank River within a 300 yard radius of the fireworks launch barge in approximate position latitude 36°17′47″ N., longitude 076°12′17″ W., located approximately 400 yards north of Cottage Point, NC. |
| 5. ..... | July 4th, or July 5th ..... | Currituck Sound, Corolla, NC; Safety Zone ..... | All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N., longitude 075°49′56.3″, located near Whale Head Bay. |
| 6. ..... | July 4th; November—3rd Saturday. | Middle Sound, Figure Eight Island, NC; Safety Zone | All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N., longitude 077°45′32″ W., thence east along the marsh to a position located at latitude 34°16′19″ N., longitude 077°44′55″ W., thence south to the causeway at position latitude 34°16′16″ N., longitude 077°44′58″ W., thence west along the shoreline to position latitude 34°16′29″ N., longitude 077°45′34″ W., thence back to the point of origin. |
| 7. ..... | June—2nd Saturday; July 4th. | Pamlico River, Washington, NC; Safety Zone ..... | All waters of Pamlico River and Tar River within a 300 yard radius of latitude 35°32′25″ N., longitude 077°03′42″ W., a position located on the southwest shore of the Pamlico River, Washington, NC. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

| No. | Date | Location | Regulated area |
|---|---|---|---|
| 8. | July 4th | Neuse River, New Bern, NC; Safety Zone | All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N., longitude 077°01′35.8″ W.; located 420 yards north of the New Bern, Twin Span, high-rise bridge. |
| 9. | July 4th | Edenton Bay, Edenton, NC; Safety Zone | All waters within a 300 yard radius of position latitude 36°03′04″ N., longitude 076°36′18″ W., approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC. |
| 10. | July 4th November—Saturday following Thanksgiving Day. | Motts Channel, Banks Channel, Wrightsville Beach, NC; Safety Zone. | All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N., longitude 077°48′27″ W., approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC. |
| 11. | July 4th | Cape Fear River, Southport, NC; Safety Zone | All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N., longitude 078°01′18″ W., approximately 700 yards south of the waterfront at Southport, NC. |
| 12. | July 4th | Big Foot Slough, Ocracoke, NC; Safety Zone | All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N., longitude 075°59′24″ W., approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC. |
| 13. | August—1st Tuesday | New River, Jacksonville, NC; Safety Zone | All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N., longitude 077°26′18″ W., approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina. |
| 14. | July 4th | Pantego Creek, Belhaven, NC; Safety Zone | All waters on the Pantego Creek within a 600 foot radius of the launch site on land at position 35°32′35″ N., 076°37′46″ W. |
| 15. | July 4th | Atlantic Intracoastal Waterway, Swansboro, NC; Safety Zone. | All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of approximate position latitude 34°41′02″ N., longitude 077°07′04″ W., located on Pelican Island. |
| 16. | September—4th or last Saturday. | Shallowbag Bay, Manteo, NC; Safety Zone | All waters of Shallowbag Bay within a 200 yard radius of a fireworks barge anchored at latitude 35°54′31″ N., longitude 075°39′42″ W. |
| 17. | May—3rd Saturday | Pasquotank River; Elizabeth City, NC; Safety Zone | All waters of the Pasquotank River within a 300 yard radius of the fireworks barge at latitude 36°17′47″ N., longitude 076°12′17″ W., located north of Cottage Point at the shoreline of the Pasquotank River. |
| 18. | October—2nd Saturday | Atlantic Intracoastal Waterway; Bogue Inlet, Swansboro, NC; Safety Zone. | All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of the fireworks launch site at latitude 34°41′02″ N., longitude 077°07′04″ W., located at Bogue Inlet, near Swansboro, NC. |

Dated: April 3, 2015.

**Stephen P. Metruck,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2015–08756 Filed 4–15–15; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2014–0213]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Coquille River, Bandon, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating schedule that governs the U.S. 101 highway drawbridge also known as Bullard's Drawbridge, near Bandon, Oregon. The change will allow the drawbridge to permanently remain in the closed-to-navigation position, no longer opening for vessel traffic. While there is vessel traffic on this waterway, no one has requested a drawbridge opening since 1998. Oregon Department of Transportation (ODOT) owns the bridge and requested to update the operating schedule accordingly.

**DATES:** This rule is effective May 18, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2014–0213. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
§ Section Symbol
U.S.C. United States Code

## A. Regulatory History and Information

On December 22, 2014, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Coquille River, Coos Bay, OR'' in the **Federal Register** (79 FR 76249). We received four comments on the proposed rule but these comments did not address the substance of this rulemaking. No public meeting was requested, and none was held.

## B. Basis and Purpose

ODOT owns and operates the US 101 Highway Bridge also known as Bullard's Drawbridge on the Coquille River in Bandon, Oregon. ODOT requested that the drawbridge regulation be amended to allow the bridge to remain in the permanently closed-to-navigation position. ODOT provided the Coast Guard with bridge logs which indicated no request for bridge openings have been received since 1998.

The Coast Guard believes this rule change is reasonable, and will continue to meet the present and future needs of navigation. Based on the records provided by ODOT to the Coast Guard, it is expected that the new rule will have no known impact to navigation or other waterway users.

US 101 Highway Bridge, in the closed-to-navigation position, provides 28.1 feet of vertical clearance at mean high water and 35 feet at low water.

## C. Discussion of Proposed Rule

The operating regulations at 33 CFR 117.875 will change the operation of the US 101 Highway Bridge, also known as Bullard's Drawbridge, on the Coquille River in Bandon, Oregon such that it will not be required to open for marine traffic at any time. The change was requested by ODOT, the owner of the bridge, because there have not been any request to open for marine traffic since 1998.

## D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

### *1. Regulatory Planning and Review*

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the bridge has remained in the closed position for the last 16 years without any impacts to waterway users.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard received no comments on the NPRM for this rule and there is no indication that any small entities will be affected by this rule since the bridge has remained in the closed position for the last 16 years without any impacts to waterway users.

### *3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *4. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### *6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### *7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.875 to read as follows:

**§ 117.875 Coquille River.**

The draws of the US 101 highway bridge, mile 3.5 at Bandon, Oregon, need not be opened for the passage of vessels; however, the draws shall be restored to operable condition within 6 months after notification by the District Commander to do so.

Dated: April 2, 2015.

**R.T. Gromlich,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 2015–08757 Filed 4–15–15; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2015–0236]**

**RIN 1625–AA00**

## Safety Zone; Sabine River, Orange, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Sabine River in Orange, TX in support of Deep South Racing Association boat races. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a boat race competition. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective on May 30 and 31, 2015. This rule will be enforced from 8:30 a.m. until 6:00 p.m. on May 30 and May 31, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2015–0236]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Scott Whalen, U.S. Coast Guard MSU Port Arthur, (409) 719–5086 or email, *scott.k.whalen@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

BNM Broadcast Notices to Mariners
DSRA Deep South Racing Association
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on March 16, 2015 that this event is planned to take

place May 30 and 31, 2015. Upon full review of the event details, the Coast Guard determined that additional safety measures are necessary. Completing the full NPRM process would be impracticable, delaying the effective date for this safety zone. Immediate action is necessary to protect event participants and members of the public from hazards associated with high speed boat races on the waterway. This event is advertised and the local community has planned for this event. Delaying the safety zone may also unnecessarily interfere with the planned event and possible contractual obligations.

The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM) and will be published in the Local Notice to Mariners (LNM).

**B. Basis and Purpose**

The Deep South Racing Association (DSRA) is holding a two day watercraft race competition on the Sabine River in Orange, TX on May 30 and 31, 2015. This event poses a hazard to life and property as it involves high speed watercraft racing in a narrow waterway used by other commercial and recreational vessel traffic. Additionally, the race event is likely to attract spectator craft to the area. The Coast Guard determined that a temporary safety zone is needed to protect spectators as well as persons participating in the event. The legal basis and authorities for this rulemaking establishing a safety zone are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

**C. Discussion of the Temporary Final Rule**

The Coast Guard is establishing a temporary safety zone encompassing all waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′50″ N. 93°43′15″ W. then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N. (NAD83).

This safety zone is needed to protect mariners and event participants from hazards associated with high speed boat races. No person or vessel may enter into or remain in the zone without permission of the Captain of the Port.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: (1) The rule will be enforced for 9.5 hours each day for two days; (2) scheduled breaks will be provided to allow waiting vessels to transit safely through the affected area; (3) persons and vessels may enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the Captain of the Port or the designated representative; and (4) advance notification will be made to the maritime community via BNM and LNM. Therefore, the Coast Guard enforcement of this safety zone is not a significant regulatory action.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through or remain in the safety zone area. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 8:30 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone established for the protection of spectators from the hazards associated with a personal watercraft race competition. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A checklist and categorical exclusion determination will be provided in the docket accessible as indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary section, § 165.T08–0236, is added to read as follows:

**§ 165.T08–0236 Safety Zone; Sabine River, Orange, TX.**

(a) *Location.* The following area is a safety zone: All waters of the Sabine River, shoreline to shoreline, adjacent to the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of old Navy Pier One at 30°05′50″ N. 93°43′15″ W. then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N. (NAD83).

(b) *Effective dates and enforcement times.* This rule is effective on May 30 and 31, 2015. This rule will be enforced from 8:30 a.m. until 6:00 p.m. on May 30 and 31, 2015.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter into or remain in the zone without permission of the Captain of the Port.

(2) Persons or vessels requiring entry into or passage through the zone may contact the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF–FM Channels 16, or by phone at (409) 719–5070.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Information Broadcasts.* The Captain of the Port, Port Arthur or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: March 31, 2015.

**R.S. Ogrydziak,**

*Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.*

[FR Doc. 2015–08759 Filed 4–15–15; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52

**[EPA–R04–OAR–2014–0220; FRL–9926–34–Region 4]**

## Air Quality Implementation Plan; Florida; Attainment Plan for the Hillsborough Area for the 2008 Lead National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the state implementation plan (SIP), submitted by the State of Florida through the Florida Department of Environmental Protection (FL DEP), on June 29, 2012, as amended on June 27, 2013, for the purpose of providing for attainment of the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) in the Hillsborough 2008 Lead nonattainment area (hereafter referred to as the ''Hillsborough Area'' or ''Area''). The Hillsborough Area is comprised of a portion of Hillsborough County in Florida surrounding EnviroFocus Technologies, LLC (hereafter referred to as ''EnviroFocus''). The attainment plan

includes the base year emissions inventory, an analysis of reasonably available control technology (RACT) and reasonably available control measures (RACM), reasonable further progress (RFP) plan, modeling demonstration of lead attainment, and contingency measures for the Hillsborough Area. This action is being taken in accordance with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective May 18, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0220. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch, Air (formerly the Air Planning Branch), Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Zuri Farngalo, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Zuri Farngalo may be reached by phone at (404) 562–9152 or via electronic mail at *farngalo.zuri@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What is the background for this action?

On November 12, 2008 (73 FR 66964), EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter (μg/m$^3$) to 0.15 μg/m$^3$ calculated over a three-month rolling average. EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years 2007–2009, where there was sufficient data to support a nonattainment designation. Designations for all remaining areas were completed on November 22, 2011 (76 FR 72097), which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008–2010. Effective December 31, 2010, the Hillsborough Area was designated as nonattainment for the 2008 Lead NAAQS. This designation triggered a requirement for Florida to submit a SIP revision with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable, but no later than December 31, 2015.

FL DEP submitted its 2008 Lead NAAQS attainment SIP for the Hillsborough Area on June 29, 2012, as amended on June 27, 2013, which included the base year emissions inventory and the attainment demonstration. EPA proposed to approve the Hillsborough Area attainment SIP for the 2008 Lead NAAQS on February 5, 2015. EPA's analysis of the submitted attainment demonstration included a review of the pollutant addressed, emissions inventory requirements, modeling, RACT and RACM requirements, RFP plan, and contingency measures for the Hillsborough Area. Refer to EPA's February 5, 2015, proposed rulemaking for a detailed rationale on EPA's analysis of the Hillsborough area attainment demonstration. *See* 80 FR 6485.

## II. What is the action EPA is taking?

EPA is taking final action to approve Florida's SIP submittal for the Hillsborough Area, as submitted through FL DEP to EPA on June 29, 2012, as amended on June 27, 2013, for the purpose of demonstrating attainment of the 2008 Lead NAAQS. Florida's lead attainment plan for the Hillsborough Area includes a base year emissions inventory, a modeling demonstration of lead attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures.

EPA has determined that Florida's attainment plan for the 2008 Lead NAAQS for the Hillsborough Area meets the applicable requirements of the CAA. Thus, EPA is taking final action to approve Florida's attainment plan for the Hillsborough Area. EPA's analysis for this final action is discussed in Section IV of EPA's February 5, 2015, proposed rulemaking. *See* 80 FR 6485.

## III. Why is EPA taking this action?

EPA has determined that all the criteria for Florida's lead attainment plan for the Hillsborough Area have been met. EPA has determined that Florida's June 29, 2012, SIP submission, as amended on June 27, 2013, meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Florida's June 29, 2012, SIP submission (as amended on June 27, 2013), which includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

## IV. EPA's Response to Comments

EPA received one comment on March 9, 2015, from the Center for Biological Diversity and Center for Environmental Health (hereafter referred to as the ''Commenter''), in response to EPA's proposed rule to approve the attainment demonstration for the Hillsborough Area for the 2008 Lead NAAQS. A summary of the comment and EPA's response is provided below.

*Comment:* The Commenter mentions that FDEP fails to account for the significant lead air pollution being generated by leaded aviation fuel (''avgas'') from regional airports. Specifically, the Commenter states that that the ''SIP must address the significant contributions of lead air pollution from Hillsborough County's regional aviation airports and include Reasonably Available Control Technology and Reasonably Available Control Measures (''RACT/RACM'') to reduce those lead air pollution threats.''

*Response:* EPA does not believe that it is necessary for the attainment demonstration for the Hillsborough Area for the 2008 lead NAAQS to regulate the lead emissions resulting from avgas emitted by aircrafts using regional airports that are located near to the nonattainment area. First, although this is not determinative, there are no airports within the 2008 Lead nonattainment boundary for the Hillsborough Area to which RACT/RACM could be applied. Second, and more importantly, available information does not indicate that lead emissions

from nearby airports or from general aviation aircrafts that use them are impacting receptors in the Hillsborough Area. The nonattainment area is about a 1.14 mile radius circle encompassing the EnviroFocus facility, the source that available information indicates is the sole cause of the lead NAAQS violations in this nonattainment area. Prior to making the determination concerning the appropriate boundary for the nonattainment area, EPA reviewed the technical supporting data [1] and considered all the potential sources of lead in Hillsborough County. EPA determined, based on this information that lead emissions from aircraft combusting avgas and using the regional airports did not cause or contribute to the monitored violations of the 2008 Lead NAAQS. Therefore, the designation of the Hillsborough County area excluded those airports. The closest airport where leaded avgas is used, Tampa Executive Airport is located approximately 4 miles outside the designated nonattainment boundary. Monitoring data from other locations confirm that there is a sharp decrease in lead concentrations as the distance from a lead source increases. The available technical data for the Hillsborough Area continues to support the EPA's prior conclusion that the airport sources of lead are located too distant from the area to contribute significantly to receptors in the designated nonattainment area. Consequently, EPA believes that the control measures described in the proposed rule for the EnviroFocus facility should be adequate to bring this area into attainment with the 2008 Lead NAAQS.

## V. Final Action

EPA is taking final action to approve Florida's lead attainment plan for the Hillsborough Area. EPA has determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Florida's June 29, 2012, SIP submission (as amended on June 27, 2013), which includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2015.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

Therefore, 40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart K—Florida

■ 2. In § 52.520, the table in paragraph (e) is amended by adding entries for ''2008 Lead Attainment Demonstration for the Hillsborough Area'' and ''2008 Lead Attainment Demonstration for Hillsborough Area Amendment'' at the end of the table to read as follows:

[1] The analysis of the technical data supporting the boundary can be found in the 2008 Lead Designation Technical Support Document (TSD) for Florida. *See* EPA–HQ–OAR–2009–0443–0316. This document can also be found in EPA–R04–OAR–2014–0220.

**§ 52.520 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA approval date | Federal Register notice | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 2008 Lead Attainment Demonstration for Hillsborough Area. | 6/29/2012 | 4/16/2015 | [Insert **Federal Register** citation]. | |
| 2008 Lead Attainment Demonstration for Hillsborough Area Amendment. | 6/27/2013 | 4/16/2015 | [Insert **Federal Register** citation]. | |

[FR Doc. 2015–08666 Filed 4–15–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 745

**[EPA–HQ–OPPT–2014–0304; FRL–9925–71]**

**RIN 2070–AK04**

## Lead-Based Paint Programs; Extension of Renovator Certifications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Agency is extending the certifications of certain renovators under the Lead Renovation, Repair, and Painting (RRP) rule. In January 2015, the Agency published a proposed rule that would, among other things, change the requirements for the refresher training course that renovators must take to become recertified. EPA is extending certifications of thousands of renovators that will otherwise expire before that rule can be finalized. EPA is taking this action so that, if and when the changes in the proposed rule are finalized, these renovators can take advantage of the changes.

**DATES:** This final rule is effective on April 16, 2015.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0304, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Marc Edmonds, National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0758; email address: *edmonds.marc@epa.gov*.

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are an individual who must be certified to conduct renovation activities in accordance with 40 CFR 745.90. This rule applies only in states, territories, and tribal areas that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States, territories, and Tribes, contact the National Lead Information Center at 1–800–424–LEAD (5323).

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Building construction (NAICS code 236), *e.g.,* single-family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), *e.g.,* plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), *e.g.,* lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), *e.g.,* elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), *e.g.,* training providers.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. Background

*A. What action is the agency taking?*

On January 14, 2015, EPA published a proposed rule (Ref. 1) that would, among other things, amend the RRP rule's refresher training requirements (Ref 2). Specifically, EPA proposed to eliminate the hands-on requirement in the refresher training that renovators must take to maintain their certification as required by the RRP rule. This change would make it easier for renovators to take the refresher training, especially renovators who live far from a training facility. Renovators would save time and travel costs by taking the course from a single location, possibly their own home. If taking the training is made easier, EPA believes that more renovators would take the refresher training and become recertified. Having more renovators take the refresher training would lead to a higher number of certified renovators, resulting in a workforce better able to perform renovations in a lead-safe manner.

If the Agency issues a final rule eliminating the hands-on requirement, it would not happen until near the end of 2015. Unfortunately, many renovator certifications will expire before the final rule can be published. In light of this,

EPA is extending certifications of a portion of certified renovators until after the expected publication of the final rule to ensure that the benefit of such elimination, if promulgated, is not denied to renovators who were among the first to take the initial training course. Under today's action, renovators who received certification on or before March 31, 2010, now have until March 31, 2016, to get recertified. Renovators who received certification between April 1, 2010 and March 31, 2011, will have one year added to their 5-year certification. Subsequent certifications for renovators receiving the extension will be five years. These extensions only apply to renovators that fall under EPA's renovation program and not to renovators under authorized state programs.

EPA is creating two sets of extensions for two reasons. First, the Agency does not want to extend the certifications more than is necessary to accommodate the potential finalization of the proposed amendments. Renovator certifications from March 2010 and before need to be extended beyond one year so they will expire after any potential changes are finalized. Second, EPA is extending an additional group of renovator certifications for one year because the Agency does not want all of the extended certifications to expire on the same day. This will prevent hundreds of thousands of renovators from seeking recertification at the same time, which could overwhelm training providers.

EPA specifically requested comment on such an extension of certifications for certain renovators and the Agency received several comments regarding an extension. Of those comments, the majority were in favor of the extension. In supporting the extension of renovator certifications, one commenter stated that it would alleviate burden on contractors that have difficulty finding a training course within a reasonable distance of them. Another commenter stated that the extension will help ensure that as many certified renovators as possible can take advantage of the burden savings associated with removing the hands-on requirement. Other commenters similarly believe that the certifications should be extended to allow renovators to take advantage of any potential changes that may be finalized. EPA agrees with these commenters and has, accordingly, extended certifications for a portion of renovators.

Several commenters who supported the extension stated that EPA should announce the extension immediately, before renovators start taking the refresher training that includes the hands-on learning. One of the commenters urged the Agency to bifurcate the certification extension from the other parts of the proposed rule in order to expedite the extension. EPA agrees that it is important to extend the certifications as soon as possible. In order to expedite the extension, the Agency has finalized it separately from the other possible changes from the proposed rule allowing it to be finalized sooner than if it were part of the larger rule that could not be finalized until later in the year.

One commenter who opposed the extension believes that it will confuse renovators in authorized states because renovators will assume the EPA extension applies to their state's program. To prevent any potential confusion, EPA would like to clarify that this final rule applies only in states where EPA implements the program and not in authorized states.

Some commenters stated that the 5-year renovator certification is too long and therefore should not be extended. The Agency disagrees about extending the certifications. EPA believes that a one-time extension is justified to allow more renovators to realize the benefits of any potential changes. By extending the certifications, EPA believes that more renovators will seek recertification leading to a higher number of certified renovators resulting in a workforce better able to perform renovations in a lead-safe manner. EPA previously explained in the preamble to the RRP rule why the Agency promulgated 5-year renovator certifications (Ref. 2)

As proposed, EPA finds under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), that good cause exists to dispense with the 30-day delay in the effective date of this final rule, for the reasons explained in the proposed rule and in this Unit. The Agency believes it is in the public interest to relieve the certification deadline for the renovators identified in this Unit, so that they may benefit from any upcoming amendments to the refresher training requirements. EPA also believes that such action would relieve a restriction in accordance with 5 U.S.C. 553(d)(1). EPA therefore issues this final rule making this change effective upon publication in the **Federal Register**.

*B. What is the agency's authority for taking this action?*

This final rule is being issued under the authority of sections 402(a) and 402(c)(3) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2682(a) and 2682(c)(3).

## III. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Lead-based Paint Programs; Amendment to Jurisdiction-Specific Certification and Accreditation Requirements and Renovator Refresher Training Requirements. **Federal Register** (80 FR 1873, January 14, 2015) (FRL–9920–85).
2. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7).

## IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.,* because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0155.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule

extends the certifications for subset of renovators. Those are the only small entities directly subject to this action, and the action has a positive economic effect on them. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Because this rulemaking does not involve technical standards, Section 12(d) of NTTAA, 15 U.S.C. 272 note, does not apply to this action.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

**V. Congressional Review Act (CRA)**

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 745**

Environmental protection, Lead, Lead-based paint, Renovation.

Dated: April 8, 2015.

**Gina McCarthy,**

*Administrator.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. In § 745.90, revise paragraph (a)(4) to read as follows:

**§ 745.90 Renovator certification and dust sampling technician certification.**

(a) * * *

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification.

* * * * *

[FR Doc. 2015–08789 Filed 4–15–15; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 140117052–4402–02]**

**RIN 0648–XD874**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2015 commercial summer flounder quota to the Commonwealth of Virginia. These quota adjustments are necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provision. This announcement is intended to inform the public of the revised commercial quota for each state involved.

**DATES:** Effective April 15, 2015, through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Reid Lichwell, Fishery Management Specialist, 978–281–9112.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are in 50 CFR 648.100–648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.10(c)(1)(i).

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan provided a mechanism for summer flounder quota

to be transferred from one state to another (December 17, 1993; 58 FR 65936). Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) when evaluating requests for quota transfers or combinations.

North Carolina has agreed to transfer 11,108 lb (5,039 kg) of its 2015 commercial summer flounder quota to Virginia. This transfer was prompted by landings of the F/V *Captain Ed,* a North Carolina vessel that was granted safe harbor in Virginia due to mechanical failure, on March 3, 2015. As a result of these landings, a quota transfer is necessary to account for an increase in Virginia landings that would have otherwise accrued against the North Carolina quota.

The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The transfer is consistent with the criteria because it will not preclude the overall annual quota from being fully harvested, the transfer addresses an unforeseen variation or contingency in the fishery, and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The revised summer flounder commercial quotas for calendar year 2015 are: Virginia, 2,394,228 lb (1,086,003 kg); and North Carolina, 2,983,583 lb (1,353,330 kg).

## Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 13, 2015.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–08735 Filed 4–15–15; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 80, No. 73
Thursday, April 16, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 204

**[Docket No. R–1513]**

**RIN 7100–AE31**

## Regulation D: Reserve Requirements for Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Board is requesting comment on proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) regarding the payment of interest on certain balances maintained at Federal Reserve Banks by or on behalf of eligible institutions. Specifically, the Board proposes to amend Regulation D to permit interest payments on certain balances to be based on a daily rate rather than on a maintenance period average rate. The proposed amendments should help to enhance the role of such rates of interest in moving the federal funds rate into the target range established by the FOMC, particularly on occasions when changes in those rates do not coincide with the beginning of a maintenance period.

**DATES:** Comments must be received by May 18, 2015.

**FOR FURTHER INFORMATION CONTACT:** Sophia H. Allison, Special Counsel (202/452–3565), Legal Division, or Thomas R. Keating, Financial Analyst (202/973–7401), or Jeffrey W. Huther, Senior Economist (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions. Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, in the form of a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[1] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates. Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include the institutions described in section 19(b)(1)(A) of the Act[2] and any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).[3] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings to the depository institutions that maintain balances or on whose behalf balances are maintained, and the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained in a Federal Reserve bank by any such entity on behalf of depository institutions.[4]

Regulation D currently requires Reserve Banks to pay interest on balances up to the top of the penalty-free band at a rate of ¼ percent, and on excess balances at a rate of ¼ percent.[5] Regulation D defines ''top of the penalty-free band'' to mean an amount equal to an institution's reserve balance requirement plus an amount that is the greater of 10 percent of the institution's reserve balance requirement or $50,000.[6] Regulation D defines ''excess balances'' to mean the average balance maintained in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period (''maintenance period'') that exceeds the top of the penalty-free band.[7] As such, the balances on which interest is currently payable under Regulation D are balances that are defined as maintenance period average balances.

Currently, interest on balances up to the top of the penalty-free band and on excess balances of eligible institutions at Reserve Banks is, in each case, calculated by multiplying the average applicable interest rate over the maintenance period by the amount that the institution maintains, on average, over the maintenance period. If the rate of interest on excess balances were to change at a time other than at the beginning of a maintenance period, the interest on excess balances would be the average interest rate for excess balances over the maintenance period multiplied by the average excess balances maintained over the maintenance period. For example, if the interest rate on excess balances were to increase in the middle of a maintenance period from 25 basis points (¼ percent) to 50 basis points (½ percent), the interest on excess balances for that maintenance period would be the average excess balances maintained over the maintenance period multiplied by the average excess balance rate, *i.e.,* 37.5 basis points. As a result, the full effect of the increase in the excess balance rate

[1] 12 CFR 204.5(a)(1).

[2] Section 19(b)(1)(A) defines ''depository institution'' as any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is an eligible to make application to become an insured credit union pursuant to section 201 of such Act; any member as defined in section 2 of the Federal Home Loan Bank Act; and any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act. *See* 12 U.S.C. 461(b)(1)(A).

[3] Federal Reserve Act section 19(b)(12)(C), 12 U.S.C. 461(b)(12)(C), *see* 12 CFR 204.2(y) (definition of ''eligible institution'').

[4] *See* Federal Reserve Act section 19(b)(12), 12 U.S.C. 461(b)(12).

[5] *See* § 204.10(b)(1) and (2) of Regulation D, 12 CFR 204.10(b)(1) and (2).

[6] *See* § 204.2(gg) of Regulation D, 12 CFR 204.2(gg).

[7] *See* § 204.2(z) of Regulation D, 12 CFR 204.2(z).

to 50 basis points may not show through to market rates until some number of days following the announcement of the new rate.

## II. Summary of Proposal

*In General*

The Board proposes to amend Regulation D to permit interest payments on certain balances to be based on a daily rate rather than on a maintenance period average rate. The proposed amendments would define an ''IORR [8] rate'' and calculate interest on balances maintained up to the top of the penalty-free band as the average IORR rate over a maintenance period multiplied by the average balances maintained up to the top of the penalty-free band over the maintenance period. The proposed amendments would also define an ''IOER [9] rate'' and, for institutions that maintain balances in excess of the top of the penalty-free band on average over the maintenance period, would calculate interest as daily total balances multiplied by the daily IOER rate, reduced by an adjustment to avoid double payment of interest on balances up to the top of the penalty-free band. The proposed amendments would therefore facilitate the calculation of interest paid at the IOER rate on a daily basis applied to a daily balance, while preserving the calculation of interest paid at the IORR rate as a maintenance period average rate applied to a maintenance period average balance. The proposed amendments should allow the full effect of an increase in the IOER rate to show through to the daily level of short-term market rates when an IOER rate change does not coincide with the beginning of a maintenance period.

The proposed amendments would make other changes to Regulation D to conform certain provisions to current practices as well as to improve organization and make other clarifications. Currently, § 204.10(b)(3) of Regulation D provides for payment of interest on term deposits at any other rate or rates as determined by the Board from time to time, not to exceed the general level of short term interest rates. The proposed amendments would reflect current practices for term deposit offerings by providing that interest on term deposits is either the amount equal to the principal amount of the term deposit multiplied by a rate specified in advance, or multiplied by the rate determined by a term deposit auction. The proposed amendments would also make a conforming change to current § 204.10(d), governing ''excess balance accounts,'' [10] to provide for interest on such balances to be paid at the IOER rate.

The proposed amendments would make other changes to improve the organization of the section, including placing provisions generally applicable to payments of interest together into one section (proposed § 204.10(a)). The proposed amendments would also add a new provision to proposed § 204.10(a) specifying that the amount of a balance maintained in a Reserve Bank account is determined at the close of the Reserve Bank's business day. This provision would eliminate potential confusion over which balance (*e.g.,* intra-day balance or end-of-day balance) would be used as the basis for the calculation of interest.

Finally, the proposed amendments would delete the provision currently in § 204.10(b) of Regulation D providing that interest rates are as determined by the Board from time to time. The Board proposes to announce future changes to the IORR rate or the IOER rate, or to the mechanisms for calculating the interest on term deposits, through amendments to Regulation D. The proposed amendments would add § 204.10(f) to Regulation D, providing that generally no public comment will be sought on future changes to such rates or mechanisms, and that the effective date of such future changes will generally not be delayed.

Following the detailed description of the proposal below are numerical examples illustrating the key features of the proposed amendments in cases when the IORR and IOER rates change in the middle of the reserve maintenance period.

*Detailed Description of Proposal*

1. Proposed Calculation of Interest

Currently, the amount of interest payable on balances maintained at a Reserve Bank by or on behalf of an eligible institution is equal to the sum of IORR and IOER. IORR is currently calculated as the arithmetic average of the daily IORR rates in effect over a maintenance period multiplied by the average level of balances up to the top of the penalty-free band maintained over that maintenance period. IOER is currently calculated as the arithmetic average of the daily IOER rate in effect over a maintenance period multiplied by the institution's average level of excess balances maintained over that maintenance period.

As discussed above, the current methodology for calculating IOER implies that an increase in the IOER rate may not immediately show through fully to short-term market rates in cases when an IOER rate change does not coincide with the beginning of a maintenance period. To address this issue, for institutions that maintain balances on average over the maintenance period in excess of the top of the penalty-free band, the proposed amendments to Regulation D would implement the IOER rate by multiplying the IOER rate in effect each day of the maintenance period by the institution's *total* balances that day, less an adjustment to avoid the double payment of interest on balances maintained up to the top of the penalty-free band. The proposed amendments would make no changes to the calculation of IORR under the current provisions of Regulation D—that is, IORR would continue to be implemented by multiplying the average IORR rate over the maintenance period by the average level of balances up to the top of the penalty-free band maintained over the maintenance period.

The implementation of IOER as set forth in the proposed amendments—that is, calculating IOER based on the daily IOER rate rather than the average of the daily rates—should support the implementation of monetary policy in cases when changes in policy rates are implemented in the middle of a maintenance period. For example, under the proposed amendments, if the Board raised the IOER rate from 25 basis points to 50 basis points in the middle of a maintenance period, eligible institutions would likely base their asset-liability management decisions on the effective IOER rate of 50 basis points for the remainder of that maintenance period.

2. Addressing a Special Case: A Floor on Interest Payments for Institutions That Maintain Balances on Average Over a Maintenance Period in Excess of the Top of the Penalty-Free Band

Under the proposed amendments, an institution's daily pattern of balances maintained over the maintenance period

[8] *I.e.,* ''interest on required reserves.'' ''Required reserves'' is a term that historically referred to the amount that an institution must maintain on average over a maintenance period to satisfy its reserve balance requirement. Because Regulation D currently provides for a penalty-free band around an institution's reserve balance requirement, an institution's balances up to the top of the penalty-free band is the current equivalent of what was previously meant by ''required reserves.''

[9] *I.e.,* ''interest on excess reserves.''

[10] An *excess balance* account as an account at a Reserve Bank that is established by one or more eligible institutions through an agent and in which only excess balances of the participating eligible institutions may at any time be maintained. An excess balance account is not a pass-through account for purposes of this part.'' *See* Regulation D 12 CFR 204.2(aa).

in a Reserve Bank account would determine its IOER. There is a special case, however, in which an institution that maintained positive excess balances on average over a maintenance period could end up receiving less in total interest payments than if it had held balances equal to the top of the penalty-free band on average over the maintenance period. This special case would arise only in those maintenance periods in which a rate change does not coincide with the beginning of a maintenance period and the institution maintains relatively high levels of total balances in its Reserve Bank account on days when the IORR rate and the IOER rate are lower.

To address this special case, the proposed amendments specify a minimum interest payment, or floor, applicable to total interest payments for any institution that maintains balances on average over the maintenance period in excess of the top of the penalty-free band. Specifically, the proposed amendments set the floor for institutions maintaining excess balances [11] at an amount that would be equal to the interest payment that the institution would have received if it had maintained balances up to the top of its penalty-free band on average over the maintenance period. Including the interest payment floor in the proposed amendments for these institutions means that any institution that maintained balances in excess of the top of the penalty-free band on average over the maintenance period, but maintained balances each day of the period in a manner that would cause the special case above to apply, would be assured that it would receive interest payments no lower than the interest payments it would have received if it had maintained balances up to the top of the penalty-free band on average over the maintenance period.

At present and for the foreseeable future, the proposed floor is one that likely will have little practical significance for most institutions or for federal funds market activity. Given the very large quantities of excess balances currently in the banking system, the Board believes that there are very few institutions for which this special case would be relevant. Nonetheless, the inclusion of the interest payment floor in the proposed amendments avoids penalizing an institution that maintained positive excess balances on average over a maintenance period, but nevertheless would receive less in interest under the proposed methodology than it would if it had maintained balances up to the top of the penalty-free band.

3. Proposed Formulas for the Calculation of Interest and Examples

The proposed methodology calculates IOER by multiplying the IOER rate in effect each day of the maintenance period by the institution's total balances that day, less an adjustment to avoid the double payment of interest on balances maintained up to the top of the penalty-free band. Under the proposed methodology, the formulas used in determining interest payments distinguish between two basic cases—one in which institutions maintain, on average over the maintenance period, balances in excess of the top of the penalty-free band, and a second in which the institution maintains, on average over the maintenance period, balances that are equal to or lower than the top of the penalty-free band. In the first case, the proposed methodology would result in calculating the interest on balances in an account at a Reserve Bank as follows:

Equation (1)

$$Interest\ Payment = \overbrace{14 \times \frac{Avg.IORR\ rate}{360} \times BMRBR}^{IORR} + \overbrace{max[0, \sum_{t=1}^{14} \frac{(IOER\ rate_t}{360} \times Total\ Balances_t) - \left(14 \times \frac{Avg.IOER\ rate}{360} \times BMRBR\right)]}^{IOER}$$

Where:

*14 = the number of days in a reserve maintenance period*

*360 = the number of days in the year used to annualize interest*

*Avg. IORR rate = arithmetic average of the daily IORR rates in effect over a maintenance period*

*BMRBR = average balances maintained to satisfy a reserve balance requirement (up to the top of the penalty-free band) over a maintenance period*

*Avg. IOER rate = arithmetic average of the daily IOER rates in effect over a maintenance period*

*Total Balances = daily total balance held*

In the second case, the proposed methodology would result in calculating the interest as follows:

Equation (2)

$$Interest\ Payment = \overbrace{14 \times \frac{Avg.IORR\ rate}{360} \times BMRBR}^{IORR}$$

The following are examples of the application of the key features of the proposed amendments to a case where the IORR and IOER rates change in the middle of a maintenance period. Each of the examples assumes:

- The top of the penalty-free band is $100,000;

[11] Specifically, institutions that maintain balances that are, on average over the maintenance period, in excess of the top of the penalty-free band.

• Balances maintained are the same for each day of the calendar week of the two-week maintenance period. Thus, the average daily balance for each week is equal to the daily amount of balances maintained;

• The IORR and IOER annual rates are set at 0.36 percent in week one and at 0.72 percent in week two; and

• Interest is calculated based on a 360-day year.

As a baseline, Example 1 applies the current methodology for calculating IORR and IOER interest payments for an eligible institution that maintains an average daily balance of $150,000 throughout the maintenance period:

EXAMPLE 1—CURRENT CALCULATION OF IORR AND IOER

| Week | Balance | IORR Rate | IOER Rate |
|---|---|---|---|
| 1 | 150,000 | 0.0036 | 0.0036 |
| 2 | 150,000 | 0.0072 | 0.0072 |
| IORR Payment | | 21.00 | |
| IOER Payment | | 10.50 | |

In Example 1, the institution maintains a balance of $150,000 each day of the maintenance period. IORR is calculated as the average IORR rate (annualized using a 360-day year) over the maintenance period (0.54 percent) multiplied by average balances up to the top of the penalty free band over the maintenance period ($100,000) times the number of days in the maintenance period (14), resulting in an IORR payment of $21.00. IOER is similarly calculated as the average IOER rate (annualized using a 360-day year) over the maintenance period (0.54 percent) multiplied by average excess balances over the maintenance period ($50,000) times the number of days in the maintenance period (14), resulting in an IOER payment of $10.50. The institution thus receives $31.50 in total interest payments for the two week maintenance period.

EXAMPLE 2—PROPOSED AMENDMENTS: WEEK 1 BALANCES = WEEK 2 BALANCES

| Week 1 | Balance | IORR Rate | IEOR Rate |
|---|---|---|---|
| 1 | 150,000 | 0.0036 | 0.0036 |
| 2 | 150,000 | 0.0072 | 0.0072 |
| IORR Payment | | 21.00 | |
| IOER Payment | | 10.50 | |

In Example 2, the institution again maintains a balance of $150,000 each day of the maintenance period, but interest payments are calculated according to Equation (1) under the proposed amendments. The calculation of IORR is the same as in Example 1: The average IORR rate over the maintenance period (0.54 percent) multiplied by average balances up to the top of the penalty free band over the maintenance period ($100,000) times the number of days in the maintenance period (14), resulting in an IORR payment of $21.00. However, the calculation of IOER is based on the application of proposed § 204.10(b)(1)(B)(i) and (ii), where the amount of IOER is equal to the IOER rate in effect each day multiplied by the total balances maintained on that day for each day of the maintenance period, reduced by the amount specified in § 204.10(b)(1)(B)(ii). The amount of the reduction prescribed by proposed § 204.10(b)(1)(B)(ii) is equal to the average IOER rate over the maintenance period multiplied by the average balance up to the top of the penalty-free band maintained over the maintenance period. The proposed amendments described in Example 2 yield a total IOER payment of $10.50. Thus, the total interest payments in this case are exactly the same as in Example 1. For any institution that maintains excess balances, this is a general result: If balances are constant across all days of the maintenance period, the proposed methodology generates exactly the same interest payments as the calculation under current provisions of Regulation D.

EXAMPLE 3—PROPOSED AMENDMENTS: WEEK 2 BALANCES EXCEED WEEK 1 BALANCES

| Week 1 | Balance | IORR Rate | IOER Rate |
|---|---|---|---|
| 1 | 100,000 | 0.0036 | 0.0036 |
| 2 | 200,000 | 0.0072 | 0.0072 |
| IORR Payment | | 21.00 | |
| IOER Payment | | 14.00 | |

In Example 3, the eligible institution's maintenance of excess balances during the course of the maintenance period is tilted toward Week 2, when the higher IOER rate is in effect. The calculation for IORR under the proposed amendments is unchanged from Example 1 (current methodology), resulting in an IORR payment of $21.00. The calculation for IOER under the proposed amendments, however, results in an IOER payment of $14.00 calculated as follows:

IOER = ($100,000 * 0.0036) * 7/360 + ($200,000 * 0.0072) * 7/360 − (100,000 * 0.0054) * 14/360 [(Daily Balance Week 1 * IOER Week 1) + (Daily Balance Week 2 * IOER Week 2) − (Avg. Required Reserve Balance * Average IOER rate)].

IOER is higher under the proposed amendments as shown in Example 3 ($14.00) than under the current provisions of Regulation D as shown in

Example 1 ($10.50). This illustrates a key feature of the proposed amendments: when an IOER rate change occurs in the middle of a maintenance period, eligible institutions immediately begin receiving interest on balances in excess of the penalty-free band at the new IOER rate. In Example 3, the eligible institution begins earning the higher IOER rate of 0.72 percent as soon as the higher IOER rate becomes effective in the middle of the maintenance period. In contrast, as shown in Example 1, the effective IOER rate on balances in excess of the penalty-free band under the current provisions of Regulation D is 0.54 percent—the average of the IOER rates in weeks 1 and 2. In Example 1, the full effect of the increase in IOER to 72 basis points would not be reflected in interest payments until the beginning of a new maintenance period.

EXAMPLE 4—ROLE OF THE FLOOR ON INTEREST PAYMENTS IN PROPOSED METHODOLOGY

| Week 1 | Balance | IORR Rate | IOER Rate |
|---|---|---|---|
| 1 | 130,000 | 0.0036 | 0.0036 |
| 2 | 80,000 | 0.0072 | 0.0072 |
| IORR Payment | | 21.00 | |
| IOER Payment | | 0.00 | |
| Memo: IOER Payment (without Floor) | | −0.69 | |

In Examples 2 and 3, the provision in the proposed amendments for a floor on interest payments did not come into play. In Example 4, the institution's average total balances over the period are $105,000 (implying only $5,000 in excess), and the institution ends up holding higher balances during the first week of the maintenance period when the IOER rate is lower. As shown in the Example 4 table above, the institution maintains $130,000 in the first week of the maintenance period and $80,000 in the second week of the maintenance period. Calculating IOER under the proposed amendments would result in a ''pre-floor'' interest payment on excess balances of −$0.69. The negative ''interest payment'' results from the end of period adjustment factor in proposed § 204.10(b)(1)(B)(ii). That adjustment factor is equal to the average IOER rate over the maintenance period multiplied by the average balance up to the top of the penalty-free band maintained over the maintenance period. Since the institution held the majority of its balances that would receive the daily IOER rate when the daily IOER rate was below the average IOER rate, the adjustment factor in proposed § 204.10(b)(1)(B)(ii) was greater than the interest attributable to balances over the top of the penalty-free band in proposed § 204.10(b)(1)(B)(i). With the inclusion in the proposed amendments of the interest payment floor, however, the interest payment on excess balances is revised upwards to 0 and the eligible institution's total interest payment is $21.00—the same as the interest payments the institution would have earned had it held balances on average exactly equal to the top of the penalty-free band ($100,000) over the maintenance period.

EXAMPLE 5—BALANCES EQUAL TO OR LOWER THAN TOP OF PENALTY-FREE BAND

| Week 1 | Balance | IORR Rate | IOER Rate |
|---|---|---|---|
| 1 | 90,000 | 0.0036 | 0.0036 |
| 2 | 106,000 | 0.0072 | 0.0072 |
| IORR Payment | | 20.58 | |
| IOER Payment | | 0.00 | |

The first four examples involve eligible institutions that maintained balances, on average over the maintenance period, in excess of the top of their penalty-free bands. Example 5 involves an eligible institution that maintained balances on average over the maintenance period equal to $98,000, slightly lower than the top of the penalty-free band. Under the proposed amendments, the interest calculation method for institutions that hold average balances over the maintenance period equal to or lower than the top of the penalty-free band would not change from the current practice. For these institutions, interest would be calculated by taking the average IORR rate over the maintenance period (0.54 percent) multiplied by average balances up to the top of the penalty free band over the maintenance period ($98,000) times the number of days in the maintenance period (14), resulting in an IORR payment of $20.58. The institution does not hold balances above the top of the penalty-free band and thus would not receive an IOER payment nor would it benefit from holding larger balances on days when the higher IOER rate was in effect.

## III. Section by Section Analysis

*Section 204.10(a) General*

The Board proposes to amend § 204.10(a) to incorporate certain provisions of current § 204.10(b) and to add a new provision describing the amount of a ''balance'' in an account at a Reserve Bank for purposes of the section.

Proposed § 204.10(a)(1) incorporates part of current § 204.10(b)(3) into current § 204.10(a) and provides that, except as provided in § 204.10(c), interest on balances maintained at Reserve Banks by or on behalf of an eligible institution is established by the Board in accordance with this section, at a rate or rates not to exceed the general level of short-term interest rates.

Proposed § 204.10(a)(2) adds a new provision to Regulation D specifying that the amount of a ''balance'' in an account at a Reserve Bank for purposes of § 204.10 is determined at the close of the Reserve Bank's business day.

Proposed § 204.10(a)(3) moves the definition of ''short-term interest rates'' from current § 204.10(b)(3) into proposed § 204.10(a)(3).

Proposed § 204.10(a)(4) moves the provision in current § 204.10(a) regarding other terms and conditions for interest payments as the Board may prescribe into proposed § 204.10(a)(4).

*Section 204.10(b) Payment of interest*

Proposed § 204.10(b) relates to payments of interest on balances at Reserve Banks: excess balances, balances up to the top of the penalty-free band, and term deposits.

Proposed § 204.10(b)(1) and (2) set forth the amount of interest to be paid on balances of institutions that, on average over the maintenance period, maintain balances in excess of the top of the penalty-free band. These two paragraphs provide for interest at the IORR rate, interest at the IOER rate, the adjustment to interest at the IOER rate, and the minimum interest amount.

Proposed § 204.10(b)(3) provides that interest for institutions that, on average over the maintenance period, maintain balances that are equal to or lower than the top of the penalty-free band is the average IORR rate over the maintenance period multiplied by the average balances maintained over the maintenance period.

Proposed § 204.10(b)(4) provides for interest on term deposits. New § 204.10(b)(4)(A) provides for interest on term deposits at a rate specified in advance by the Board, in light of existing short-term market rates, to maintain the federal funds rate at a level consistent with monetary policy objectives. Section 204.10(b)(4)(B) provides for interest on term deposits at a rate determined by the auction through which such term deposits are offered.

Proposed § 204.10(b)(5) specifies the IORR rate used in proposed § 204.10(b)(1) and (3), and the IOER rate used in proposed § 204.10(b)(1)(B)(i) and (ii).

*Section 204.10(c) Pass-Through Balances*

Proposed § 204.10(c) sets forth the language of current § 204.10(c), with one change. In the second sentence of proposed § 204.10(c), the word ''shall'' is changed to ''may'' to conform the paragraph with the provisions of § 204.10(b).

*Section 204.10(d) Excess Balance Accounts*

Proposed § 204.10(d)(5) revises current § 204.10(d)(5) by specifying that interest on excess balance accounts is the amount equal to the IOER rate in effect each day multiplied by the total balances maintained on that day for each day of the maintenance period.

*Section 204.10(f) Procedure for Determination of Rates*

Proposed § 204.10(f) sets forth a provision not previously appearing in Regulation D governing the procedure for determination of rates. Specifically, proposed § 204.10(f) provides that the Board anticipates that it generally will not seek advance notice, public comment, or delayed effective dates with respect to changes in the rates of interest set forth in § 204.10. Proposed § 204.10(f) also specifies the reasons that the Board generally expects to apply in such cases.

**IV. Form of Comment Letters**

Comment letters should refer to Docket No. R–1513 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

**V. Solicitation of Comments Regarding Use of ''Plain Language''**

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rule is clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

**VI. Initial Regulatory Flexibility Analysis**

In accordance with Section 3(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), the Board has reviewed the proposed amendments to Regulation D. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing to amend Regulation D in order to facilitate the conduct of monetary policy. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. The Board proposes to amend Regulation D to facilitate the transmission of monetary policy through the rates of interest paid on balances of eligible institutions at Reserve Banks. Specifically, the Board proposes to amend Regulation D to permit interest payments on certain balances to be based on a daily rate rather than on a maintenance period average rate. The proposed amendments should help to enhance the role of such rates of interest in moving the federal funds rate into the target range established by the FOMC.

2. *Small entities affected by the proposal.* The proposal would affect all eligible institutions that maintain balances to satisfy reserve balance requirements or excess balances at a Reserve Bank. The Board estimates that there are currently approximately 8,725 eligible institutions that maintain such balances. The Board estimates that approximately 6,950 of these institutions could be considered small entities with assets of $550 million or less.

*3. Other federal rules.* The Board believes that no federal rules duplicate, overlap, or conflict with the proposed amendments.

4. *Significant alternatives to the proposed amendments.* The proposed amendments do not impose any burden on depository institutions of any size. The proposed amendments relate to payment of earnings on balances of eligible institutions and do not provide for any new or additional reporting or other obligations.

**VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

**List of Subjects in 12 CFR Parts 204**

Banks, Banking, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 204 as follows:

## PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraphs (a), (b), (c), and (d)(5), and adding paragraph (f) to read as follows:

**§ 204.10 Payment of interest on balances.**

(a) *General.* (1) Except as provided in paragraph (c) of this section, interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution shall be established by the Board in accordance with this section,

at a rate or rates not to exceed the general level of short-term interest rates.

(2) For purposes of this section, the amount of a ''balance'' in an account maintained by or on behalf of an eligible institution at a Federal Reserve Bank is determined at the close of the Federal Reserve Bank's business day.

(3) For purposes of this section, ''short-term interest rates'' are rates on obligations with maturities of no more than one year, such as the primary credit rate and rates on term federal funds, term repurchase agreements, commercial paper, term Eurodollar deposits, and other similar instruments.

(4) The payment of interest on balances under this section shall be subject to such other terms and conditions as the Board may prescribe.

(b) *Payment of interest.* Interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution is established as set forth in paragraphs (b)(1) through (4) of this section. The rates for IORR and IOER are set forth in paragraph (b)(5) of this section.

(1) For institutions that maintain balances that are, on average over the maintenance period, in excess of the top of the penalty-free band, interest is:

(A) The amount equal to the average IORR rate over the maintenance period multiplied by the average balance up to the top of the penalty-free band maintained over the maintenance period; plus

(B)(i) The amount equal to the IOER rate in effect each day multiplied by the total balances maintained on that day for each day of the maintenance period; minus

(ii) The amount equal to the average IOER rate over the maintenance period multiplied by the average balance up to the top of the penalty-free band maintained over the maintenance period.

(2) The interest amount under paragraph (b)(1) of this section shall not be less than an amount equal to the amount specified in paragraph (b)(1)(A) of this section.

(3) For institutions that maintain balances that are, on average over the maintenance period, equal to or lower than the top of the penalty-free band, interest is the amount equal to the average IORR rate over the maintenance period multiplied by the average balance maintained over the maintenance period.

(4) For term deposits, interest is:

(A) The amount equal to the principal amount of the term deposit multiplied by a rate specified in advance by the Board, in light of existing short-term market rates, to maintain the federal funds rate at a level consistent with monetary policy objectives; or

(B) The amount equal to the principal amount of the term deposit multiplied by a rate determined by the auction through which such term deposits are offered.

(5) The rates for IORR and IOER are:

| | Rate | Effective |
|---|---|---|
| IORR | ¼ percent. | |
| IOER | ¼ percent. | |

(c) *Pass-through balances.* A pass-through correspondent that is an eligible institution may pass back to its respondent interest paid on balances maintained to satisfy a reserve balance requirement of that respondent. In the case of balances maintained by a pass-through correspondent that is not an eligible institution, a Reserve Bank may pay interest only on the balances maintained to satisfy a reserve balance requirement of one or more respondents up to the top of the penalty-free band, and the correspondent shall pass back to its respondents interest paid on balances in the correspondent's account.

(d) * * *

* * * * *

(5) Interest on balances of eligible institutions maintained in an excess balance account is the amount equal to the IOER rate in effect each day multiplied by the total balances maintained on that day for each day of the maintenance period.

* * * * *

(f) *Procedure for determination of rates.* The Board anticipates that notice and public participation with respect to changes in the rate or rates of interest to be paid under this section will generally be impracticable, unnecessary, contrary to the public interest, or otherwise not required in the public interest, and that there will generally be reason and good cause in the public interest why the effective date should not be deferred for 30 days. The reason or reasons in such cases are generally expected to include that such notice, public participation, or deferment of effective date would prevent the action from becoming effective as promptly as necessary in the public interest, would permit speculators or others to reap unfair profits or to interfere with the Board's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country, would provoke other consequences contrary to the public interest, would not aid the persons affected, or would otherwise serve no useful purpose.

By order of the Board of Governors of the Federal Reserve System, April 13, 2015.

**Michael Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–08743 Filed 4–15–15; 8:45 am]

BILLING CODE 6210–01–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–143040–14]**

**RIN 1545–BM59**

## Reporting for Premium; Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–143040–14) that was published in the **Federal Register** on Friday, March 13, 2015 (80 FR 13292). The IRS is issuing temporary regulations relating to information reporting by brokers for transactions involving debt instruments and options.

**DATES:** Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking by cross-reference to temporary regulations published at 80 FR 13292, March 13,

2015, are still being accepted and must be received by June 11, 2015.

**FOR FURTHER INFORMATION CONTACT:** Pamela Lew at (202) 317–7053 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–143040–14) that is the subject of these corrections is under section 6045 of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–143040–14) contains errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–143040–14), that was the subject of FR Doc. 2015–05654, is corrected as follows:

1. On page 13293, in the preamble, first column, the second line of the third paragraph, the language ''contained in section 1.6045A–1 relating '' is corrected to read ''contained in § 1.6045A–1 relating''.

2. On page 13293, in the preamble, third column, the tenth line from the top of the column, the language ''not make the election. The temporary'' is corrected to read ''not made the election. The temporary''.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2015–08745 Filed 4–15–15; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 45 CFR Part 95

## Centers for Medicare & Medicaid Services

## 42 CFR Part 433

**[CMS–2392–P]**

**RIN 0938–AS53**

## Medicaid Program; Mechanized Claims Processing and Information Retrieval Systems (90/10)

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would extend enhanced funding for Medicaid eligibility systems as part of a state's mechanized claims processing system, and would update conditions and standards for such systems, including adding to and updating current Medicaid Management Information Systems (MMIS) conditions and standards. These changes would allow states to improve customer service and support the dynamic nature of Medicaid eligibility, enrollment, and delivery systems.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. June 15, 2015.

**ADDRESSES:** In commenting, please refer to file code CMS–2392–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2392–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2392–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–0265 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Victoria Guarisco (410) 786–0265, for issues related to administrative questions. Carrie Feher (410) 786–8905, for issues related to regulatory impact questions. Denise G. Osborn-Harrison (410) 786–1661 or Martin Rice (410) 786–2417, for general questions.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

### I. Executive Summary

#### *A. Purpose*

This proposed rule would revise the regulatory definition of Medicaid mechanized claims processing and information retrieval systems to include Medicaid eligibility and enrollment (E&E) systems, which would have the consequence of making available for E&E systems the enhanced federal financial participation (FFP) specified in section 1903(a)(3) of the Social

Security Act (the Act) on an ongoing basis. Enhanced FFP will be available, under certain circumstances, for costs of such systems at a 90 percent federal matching rate for design and development activities, and at a 75 percent federal matching rate for maintenance and operations activities. In addition to lifting the time limit that currently applies to the inclusion of E&E systems in the definition of mechanized claims processing and information retrieval systems, we are proposing changes to the standards and conditions applicable to such systems in order to access enhanced funding. We are also soliciting comment on new approaches to systems development, acquisition approvals and formal certification. Specifically, we are proposing new definitions for ''Commercial Off the Shelf (COTS) software'', ''open source,'' ''proprietary,'' ''shared services,'' and ''MMIS Module.''

*B. Summary of the Major Provisions*

We are proposing changes to §§ 433.110, 433.111, 433.112, 433.116, 433.119, and 433.120. These changes provide for the 90 percent enhanced FFP for design, development and implementation activities for E&E systems to continue on an ongoing basis. The proposed changes would allow the states to complete fully modernized E&E systems and will support the dynamics of national Medicaid enrollment and delivery system needs. The changes will also set forth additional criteria for the submission, review and approval of Advance Planning Documents (APDs).

In addition, we are proposing changes to provisions within 45 CFR part 95, subpart F, § 95.611. These changes align all Medicaid IT requirements with existing policy for Medicaid Management Information Systems (MMIS) pertaining to prior approvals when states release acquisition solicitation documents or execute contracts above a certain threshold amounts. In addition we propose to amend § 95.611(a)(2) by removing the reference to 45 CFR 1355.52.

*C. Summary of Costs and Benefits*

| Provision description | Total costs | Total benefits |
|---|---|---|
| 42 CFR part 433 | The federal net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately $3 billion. This includes approximately $5.1 billion in increased federal costs for system design and development, offset by lower anticipated maintenance and operations costs. These costs represent only the federal share. These figures were derived from states' actual system development and maintenance costs as the foundation for projected costs. | We project lower costs over the 10-year budget window due to the increased savings to operating one E&E system and eliminating legacy systems. The costs shift from mostly 90 percent FFP for design, development, and installation to 75 percent FFP for maintenance and operations over time. (federal share only). |
| 42 CFR part 433 | The state net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately −$1.1 billion. This includes approximately $572 million in state costs for system design and development, offset by lower anticipated maintenance and operations costs. These costs represent only the state share. | We project savings for states over the 10-year budget window due to moving away from operating two or more systems, and replacing legacy systems. |
| 45 CFR part 95, subpart F: § 95.611. | This is an administrative change with no associated costs. | This administrative change is expected to result in nominal savings from increased efficiency. |

* See section VI. of this proposed rule for the underlying assumptions in support of these totals and further explanation.

## II. Background

*A. Legislative History and Statutory Authority*

Section 1903(a)(3)(A)(i) of the Act provides for federal financial participation (FFP) at the rate of 90 percent for state expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems as the Secretary of the Department of Health and Human Services (the Secretary) determines are likely to provide more efficient, economical and effective administration of the state plan. In addition, section 1903(a)(3)(B) provides for federal financial participation (FFP) at the rate of 75 percent for state expenditures for maintenance and operation of such systems.

In a final rule published October 13, 1989, at 54 FR 41966, CMS revised the definition of a mechanized claims processing and information retrieval system at 42 CFR 433.111(b) to provide that eligibility determination systems would not be considered part of mechanized claims processing and information retrieval systems or enhancements to those systems. As a result, CMS also indicated at 42 CFR 433.112(c) that the enhanced FFP for mechanized claims processing and information retrieval systems in accordance with section 1903(a)(3) of the Act would not be available for eligibility determination systems.

We published a final rule entitled the ''Federal Funding for Medicaid Eligibility Determination and Enrollment Activities'' on April 19, 2011 (76 FR 21949–21975) that temporarily reversed the 1989 rule. We explained that this reversal was in response to changes made by the Affordable Care Act that required sweeping changes in Medicaid eligibility and enrollment systems and removed certain linkages between Medicaid eligibility determinations and eligibility determinations made by other federal-state programs, as well as changes in Medicaid eligibility and business processes that have occurred since our 1989 final rule to integrate eligibility and claims processing systems. The reversal was temporary to address the immediate need for eligibility system redesign to coordinate with the overall claims processing and reporting systems. Specifically, in the April 19, 2011 final rule (75 FR 21950), we included eligibility determination systems in the definition of mechanized claims processing and information retrieval systems in § 433.111(b)(3)(B). We also provided that the enhanced FFP would be available at the 90 percent rate for design, development, installation or enhancement of eligibility and enrollment systems and at the 75 percent rate for maintenance and operations of such systems, to the extent that the eligibility and enrollment systems were developed on or after April 19, 2011, operational by December 31, 2015, and met all standards for such

systems. Under that rule, the 90 percent enhanced matching rate for system development is available through calendar year (CY) 2015 for state expenditures on eligibility and enrollment systems that meet specific standards and conditions, and the 75 percent match for maintenance and operations is available for systems that meet specific standards and conditions before the end of calendar year 2015, as long as those systems are in operation.

In the April 19, 2011 (75 FR 21950) regulation, under the authority of sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Act, we codified the conditions at 42 CFR 433.112(b) that must be met by the states for Medicaid technology investments including traditional claims processing systems, as well as eligibility systems, to be eligible for the enhanced funding match. We also issued sub-regulatory guidance: ''Medicaid IT Supplement Version 1.0'' in April 2011 that outlined in greater detail the seven standards and conditions for enhanced funding.

As explained in more detail below, we are proposing to make permanent the inclusion of eligibility and enrollment systems in the definition of mechanized claims processing and information retrieval systems, and to consequently extend the availability of enhanced FFP. We propose to define a state Medicaid eligibility and enrollment system as the system of software and hardware used to process applications, renewals and updates from Medicaid applicants and beneficiaries. In part, this proposed change reflects a new understanding of the complexity of the required eligibility and enrollment system redesign, and a new appreciation of the need for eligibility and enrollment systems to operate as an integral part of the mechanized claims processing and information retrieval systems using a standard Medicaid information technology architecture.

We previously expected that fundamental changes to state systems would be completed well before December 31, 2015. It is now clear that additional improvements would benefit states and the federal government. It is also clear that such systems are integral to the operation of the state's overall mechanized claims processing and information retrieval systems and must be designed and operated as a coordinated part of such systems. Without recognition as an integral part of such systems, and without ongoing enhanced federal funding, state Medicaid eligibility and enrollment systems are likely to become out of date and would not be able to coordinate with, and further the purposes of, the overall mechanized claims processing and information retrieval systems.

*B. Program Affected*

Since 2011, CMS has worked with the states on the design, development and implementation of modernized Medicaid and CHIP eligibility and enrollment systems, supported by the enhanced FFP, to achieve the technical functionality necessary for the implementation of the new eligibility and renewal policies on January 1, 2014. In December 2012, we identified critical success factors in order for the states to demonstrate operational readiness, including: Ability to accept a single, streamlined application; ability to convert existing state income standards to modified adjusted gross income (MAGI); ability to convey state-specific eligibility rules to the Federally-Facilitated Marketplace (FFM), as applicable; ability to process applications based on modified adjusted gross income (MAGI) rules; ability to accept and send application files (accounts) to and from the Marketplace; ability to respond to inquiries from the Marketplace on current Medicaid or CHIP coverage; and, ability to verify eligibility based upon electronic data sources (the Federal Data Services Hub or an approved alternative).

The states are in varying stages of completion of their E&E system functionality, with work still ahead to maximize automation, streamline processes, and to migrate non-MAGI Medicaid programs into the new system. In addition, the majority of the states are engaged in system integration with human services programs, further increasing efficiencies and improving the consumer experience for those seeking benefits or services from programs in addition to Medicaid.

## III. Provisions of the Proposed Regulations

The proposed regulatory changes in this proposed rule would permanently recognize Medicaid and CHIP eligibility and enrollment systems as an integral part of Medicaid mechanized claims processing and information retrieval systems, and would remove the time limits on the availability of enhanced rates of FFP for qualifying systems.

In addition, we are proposing to strengthen the standards and conditions for qualifying systems. Our purpose in the April 19, 2011 final rule (75 FR 21950) for moving to the standards and conditions-based approach to approving federal funding was intended to foster strong collaboration with the states, streamline the business process between the states and CMS by reducing unnecessary paperwork, and focus attention on the key elements of success for modern systems development and deployment. With the proposed on-going access to enhanced funding for eligibility systems, and in recognition of refinements needed to the standards and conditions that pertain to MMIS and eligibility and enrollment systems, we are proposing new criteria and modifying the existing standards and conditions required for the states to access the enhanced funding and provide greater accountability for the system investment.

These changes will permit states additional time to complete their full system modernization and retire their outdated ''legacy'' systems. In addition, these changes will promote an integrated, enterprise approach to Medicaid information technology. An enterprise approach involves the identification of functionality that can be shared across multiple programs, systems and subsystems. For example, a master person index or provider directory can be built once for multiple uses within the larger Medicaid enterprise. We anticipate that this approach will help drive down potentially redundant IT costs.

Criteria will be set forth stating requirements for APDs and review of the same such as; for both MMIS and E&E systems, the state must identify in an APD its own key personnel (by type and time commitment) assigned to the project to ensure that sufficient state capacity is there to support a successful project outcome. We are proposing that for both MMIS and E&E systems, the state must meet the industry standards and conditions already in place.

We are proposing that states will need to, for both MMIS and E&E systems, develop mitigation plans for all major milestones and functionality that will contain strategies to mitigate the failure to achieve compliance with applicable requirements. For eligibility systems, the state must have delivered acceptable MAGI-based system functionality as demonstrated by performance testing and results based on critical success factors, with limited mitigations and workarounds.

Where applicable, we have proposed additional conditions that align to the best practices outlined in the new U.S. Digital Service Playbook (*https://playbook.cio.gov/*), such as the role of open source development. Other Playbook ideas will be included in sub-regulatory guidance regarding how CMS expects states to implement their Medicaid IT projects.

*A. Proposed Amendments to 42 CFR Part 433*

We propose to amend § 433.110 by removing paragraphs (a)(2)(ii) and (iii) and paragraph (b). Previously, regulations at § 433.119 indicated that we would review at least once every 3 years each system operation initially approved under § 433.114 and, based on the results of the review, reapprove it for FFP at 75 percent of expenditures if certain standards and conditions were met. The final rule published April 19, 2011 (75 FR 21905) eliminated the requirement for the scheduled triennial review. Through a drafting error in the final rule published on April 19, 2011 (75 FR 21950), the reference to the scheduled triennial performance reviews at 42 CFR 433.110(a)(2)(ii) and (iii) was not deleted as intended, and we are proposing to delete the references here. The Secretary retains authority to perform periodic reviews of systems receiving enhanced FFP to ensure that these systems continue to meet the requirements of section 1903(a)(3) of the Act and that they continue to provide efficient, economical, and effective administration of the plan.

We are also proposing a technical correction to amend § 433.110 by removing the reference to 45 CFR part 74, and replacing the reference with 45 CFR part 92. This proposed change is necessary because 45 CFR part 74 was supplanted by 45 CFR part 92 in September of 2003. Therefore, reference made to 45 CFR part 74 should have been removed at that time.

We are proposing to amend 42 CFR 433.111 to revise the definition of ''mechanized claims processing and information retrieval system'', and provide new definitions for ''Commercial Off the Shelf (COTS) software'', ''open source'', ''proprietary'', ''shared services,'' and ''MMIS Module''. We are proposing to amend 42 CFR 433.112(c) to provide for the 90 percent enhanced FFP for design, development and implementation activities to continue on an on-going basis. Making enhanced E&E system funding available on an on-going basis, as is the case with the 90 percent match for the MMIS systems, would allow the states to complete fully modernized systems and avoid the situation where its ability to serve consumers well is limited by outdated systems. Enhanced funding will also support the dynamic and on-going nature of national Medicaid eligibility, enrollment, delivery system, and program integrity needs. Continued enhanced funding will support the retirement of remaining legacy systems, eliminating ongoing expense for maintaining these outdated systems. It will also achieve additional staffing and technology efficiencies over time by allowing for a more phased and iterative approach to systems development and improvement.

Our 2011 final rule limited the availability of 75 percent enhanced funding for maintenance and operations to those eligibility and enrollment systems that have complied with the standards and conditions in that rule by December 31, 2015. Given our proposed modifications to 42 CFR part 433, subpart C, on-going successful performance, based upon CMS regulatory and sub-regulatory guidance, is a requisite for on-going receipt of the 75 percent FFP for operations and maintenance, including for any eligibility workers (*http://www.medicaid.gov/State-Resource-Center/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-Implementation/Downloads/FAQs-by-Topic-75-25-Eligibility-Systems.pdf*). We intend to work with the states to do regular automated validation of accurate processing and system operations and performance.

*B. Technical Changes to 42 CFR Part 433, Subpart C—Mechanized Claims Processing and Information Retrieval Systems*

We are authorized under the Act to approve enhanced federal funding for the design, development, and installation and operation and maintenance of such mechanized claims processing and information retrieval systems that are likely to provide more efficient, economical, and effective administration of the Medicaid program and to be compatible with the claims processing and information retrieval systems utilized in the administration of the Medicare program.

We implement this authority in part under regulations at 42 CFR part 433, subpart C. This regulation provides the primary technical and funding requirements and parameters for developing and operating the state MMIS and the state Medicaid eligibility and enrollment systems.

We intend to amend § 433.116, which details how MMIS are initially approved and certified in order to be eligible for the 75 percent FFP for operations. Specifically, we propose that given the modular design approach required by our 2011 regulation, certification should also be available for MMIS modules, rather than only when the entire MMIS system is completed and operational. We have promulgated regulatory guidance at § 433.112(b) that MMIS development be modular. The states are accordingly taking a phased approach, with the procurement of a module or modules occurring at different times.

We believe in the reusability of existing or shared components so in the case that technology products exist that can be used for MMIS or E&E, we want to encourage that by allowing FFP for the developmental costs of integrating existing or shared components as part of the MMIS or E&E systems. We clarify that, while E&E system investments must be approved beforehand in order to be eligible for the enhanced FFP, the MMIS system certification requirements are not applicable at this time.

We will provide a series of artifacts, supporting tools, documentation and diagrams to the states as part of our technical assistance, monitoring and governance of MMIS systems design and development. It is also our intent to work with the states as systems are designed and developed on a continuous basis so that issues and solutions are identified and addressed prior to the certification stage.

We invite comment on our intention to move to a modular certification process for MMIS, based upon the Medicaid Information Technology Architecture (MITA) business processes *http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/Medicaid-Information-Technology-Architecture-MITA.html* in order to seek an optimal balance in the use of open source and proprietary commercial off-the-shelf (COTS) software solutions, to further promote reuse, to expand the availability of open source solutions, and to encourage the use of shared services. Modular MMIS certification would allow the states to access the 75 percent FFP for maintenance and operations of the certified module(s) prior to having completed their total MMIS system replacement.

We are also seeking comment on the advantages and disadvantages of certifying MMIS modules, versus whole systems. We believe that certifying MMIS modules will remove the barrier to entry for many small IT solution vendors, increase the availability of certified modules in the market for the states to choose from, and create an incentive for the states to take a modular approach both in IT architecture and in procurement strategy. We are soliciting comments on the opportunities that a modular MMIS certification process may create as well as the challenges that might arise, including defining a finite list of MMIS modules to ensure the appropriate combinations of certification criteria are established.

We also are seeking comments on a model where vendors propose modules

for CMS certification prior to the state installation, unrelated to the question of the state's enhanced match rate for maintenance and operations. We would issue sub-regulatory guidance on how MMIS modules would be defined and how a modular certification process would be implemented.

With regard to all Medicaid IT, we are also seeking comments on how to achieve an effective and efficient balance when approving enhanced FFP for the acquisition of open source and proprietary COTS software and information technology solutions provided in the Medicaid information technology marketplace. 42 U.S.C. 1396b(a)(3)(A), which provides 90 percent FFP for the ''design, development, or installation of such mechanized claims processing and information retrieval systems'' could be interpreted to include use of COTS where that solution would be the more economical and efficient approach. CMS is proposing this approach, acknowledging that it would necessitate an exemption of COTS software (see proposed definition) from 45 CFR 95.617(b) to protect intellectual property. We are seeking comment on the inclusion of COTS software in DDI to further encourage the states to opt for COTS and Software-as-a-Service option, currently matched at 75 percent, rather than ground-up development approaches, which are duplicative and have a potentially much larger total cost over the span of the project. Commenters should take into consideration the costs and benefits to the Medicaid program of any proposed open source or proprietary COTS software solutions, as well as the technological benefits, including requirements for meeting the standards and conditions. Commenters are encouraged to recommend innovative ways to maximize CMS' and the states' ability to share and reuse IT solutions while at the same time ensuring that there are appropriate incentives in the marketplace to provide the best quality and value in IT solutions and services to enhance operation of Medicaid programs nationwide.

Although we would like to encourage the use of COTS software solutions, we are proposing to clarify that states should only claim for the minimum necessary development costs to install and implement COTS. We are seeking to discourage the extra costs of unnecessary customization of COTS software solutions. Thus, we propose to explicitly provide in § 433.112(c)(2) that development costs at the enhanced match rate would only include the minimum necessary to install the COTS software and ensure that other state systems coordinate with the COTS software solution.

Currently, regulations at 45 CFR 95.617(b) provide that the federal government shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for federal government purposes, software, modifications and documentation that are developed with federal support. We are also seeking comment on requiring that states affirmatively document and make available such software to ensure that others may use it. Commenters should note the infrastructure and resources that would be needed at the state and federal levels to support such a requirement in an effective manner. Commenters should also consider whether public disclosure of some types of Medicaid software systems might compromise enforcement of Medicaid requirements by announcing review strategies.

Consistent with these requirements, and to encourage broader use and reuse of federally funded software, we are also proposing at § 433.112(b)(20) and (21) that software developed with the 90 percent federal match be adequately documented so that it can be operated by contractors and other users, and that states consider strategies to minimize the costs and difficulty of operating the software using alternate hardware or operating systems.

We conduct periodic reviews of the states' MMIS and E&E system functionality and operations. Current regulations at § 433.120 allow for reduction of FFP for system operations from 75 percent to 50 percent if the system fails to meet any or all of the standards and conditions. We are proposing to allow for the FFP reduction to be tailored where appropriate to specific operational expenditures related to the subpar system component rather than only being able to apply it across all operational expenditures. For example, we might reduce the FFP for operational expenditures for a particular sub-system, but not for the whole system. It is conceivable that the FFP reduction could be applied to an increasing percentage of operational expenditures over time as the impact of the system non-compliance grows. We have an established escalation process that includes notice and state appeal rights. We are also proposing to revise current regulations that require the disallowance to be for a minimum of four quarters so that there is no defined timeframe. Furthermore, we propose to remove the restriction on the FFP reduction occurring at least four quarters after the system was initially approved. When providing comments, the states should refer to the definitions found in § 433.111 as they are provided to assist in formulating ideas and suggestions.

*C. Proposed Changes to 45 CFR Part 95—General Administration—Grant Programs, Subpart F*

In the final rule titled ''State Systems Advance Planning Document (APD) Process'', (75 FR 66319, October 28, 2010), § 95.611 was modified to include an acquisition threshold for prior approval of the state costs at the regular matching rate but noted that equipment or services at the enhanced matching rate necessitated prior approval regardless of the cost. We propose to amend § 95.611 to align all Medicaid IT requirements with existing policy for MMIS regarding prior approvals, such that what is currently acceptable for regular match would be acceptable for enhanced match as well. We propose that if there is already an approved APD, prior approval will be required in order for the state to release acquisition solicitation documents or execute contracts when the contract is anticipated to or will exceed $500,000. For all Medicaid IT acquisition documents, an exemption from prior federal approval shall be assumed in the approval of an APD provided that: The acquisition summary provides sufficient detail to base an exemption request; the acquisition does not deviate from the terms of the exemption; and, the acquisition is not the initial acquisition for a high risk activity, such as software application development. All acquisitions, must comply with the federal provisions contained in § 95.610(c)(1)(viii) and, (c)(2)(vi) or, submit an Acquisition Checklist for prior approval.

For noncompetitive acquisitions, including contract amendments, when the resulting contract is anticipated to exceed $1,000,000, the state will be required to submit a sole source justification in addition to the acquisition document. The sole source justification can be provided as part of the APD.

If the state does not opt for an exemption or submittal of an Acquisition Checklist for the contract, prior to the execution, the state will be required to submit the contract when it is anticipated to exceed the following thresholds, unless specifically exempted by CMS: Software application development—$6,000,000 or more (competitive) and $1,000,000 or more (noncompetitive); Hardware and

Commercial Off-the-Shelf (COTS) software—$20,000,000 or more (competitive) and $1,000,000 or more (noncompetitive); Operations and Software Maintenance acquisitions combined with hardware, COTS or software application development—the thresholds stated in § 95.611(b)(1)(v)(A) and (B) apply.

For contract amendments within the scope of the base contract, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases which cumulatively exceed 20 percent of the base contract cost.

In addition, we propose to amend § 95.611(a)(2) by removing the reference to 45 CFR 1355.52. This paragraph provides prior approval requirements when states plan to acquire ADP equipment or services with FFP at an enhanced matching rate for the title IV–D, IV–E, and XIX programs, regardless of acquisition costs. We propose to delete the reference to the title IV–E regulation, § 1355.52 because enhanced funding for information systems supporting the title IV–E program expired in 1997.

## IV. Collection of Information Requirements

This proposed rule does not contain any new or revised reporting, recordkeeping, or third-party disclosure requirements. Consequently, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and its implementing regulations (5 CFR part 1320) do not apply.

## V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VI. Regulatory Impact Analysis

### *A. Statement of Need*

Experience with the Affordable Care Act implementation has shown that Medicaid eligibility policies and business processes benefit from continued updating and strengthening. System transformations are needed to apply new rules to adjudicate eligibility for the program; enroll millions of newly eligible individuals through multiple channels; renew eligibility for existing enrollees; operate seamlessly with the Health Insurance Marketplaces (''Marketplaces''); participate in a system to verify information from applicants electronically; incorporate a streamlined application used to apply for multiple sources of coverage and financial assistance; and produce notices and communications to applicants and beneficiaries concerning the process, outcomes, and their rights to dispute or appeal.

We wish to ensure that our technology investments result in a high degree of interaction and interoperability in order to maximize value and minimize burden and costs on providers and beneficiaries. Thus, we are committed to providing ongoing 90 percent FFP for design, development, and installation or 75 percent FFP for maintenance and operations of such systems. We have provided that states must commit to a set of standards and conditions in order to receive the enhanced FFP. This enhanced FFP reduces the financial burden on states to 10 percent of the costs compared to the 50 percent financial burden currently in place and ensures that states continue to utilize current technology development and deployment practices and produce reliable business outputs and outcomes.

### *B. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) (Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

### *C. Anticipated Effects*

1. While it is difficult to predict state behavior, we believe all states will comply with the standards and conditions proposed in this regulation to receive the 90 percent FFP, and have assumed that for the purpose of these estimates.

In order to meet the requirements of the Affordable Care Act, states, the District of Columbia and the U.S. Territories must build new eligibility and enrollment (E&E) systems or modernize existing E&E systems. Most states have added new functionalities to interface with the Marketplaces and implemented new adaptability standards and conditions (such as incorporation of mandated eligibility categories).

There are currently 9 states that have relatively new E&E systems and do not need replacement of whole systems, but are instead making modular improvements and upgrades. We believe that most states have not had sufficient time to complete the total system replacement for both MAGI and non-MAGI eligibility functionality. We assume that an additional 28 states will quickly move forward to retire their legacy E&E systems with ongoing 90 percent FFP for design and development. Based on previous spending trends, we assume that those 9 states with new systems account for 15 percent of E&E spending and the 28 states that we anticipate retiring their legacy E&E systems account for 55 percent of E&E spending. We believe that by eliminating 28 legacy systems,

we reduce M&O costs by maintaining only one E&E system per state. Eventually, we assume that all states will replace their current E&E legacy system(s) using ongoing 90 percent FFP. To calculate the impact of the regulation, we assumed that new E&E systems on average would cost $50 million over 3 years for each state ($15 million federal costs at 90 percent FFP per year).

States will see a decrease in their net state share due to the enhanced federal match for eligibility systems and states will also realize benefits by putting in place the set of standards and conditions articulated in this proposed regulation.

The state net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately − $1.1 billion. This includes approximately $572 million in state costs for system design and development, offset by lower anticipated maintenance and operations costs. These costs represent only the state share.

Similar to the federal budget impact, we expect to see higher savings achieved by states over the 10-year budget window due to the increased savings by moving away from operating two or more systems, and replacing legacy systems.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities.

Since this rule would primarily affect states, which are not considered small entities, the Secretary has determined that this proposed rule would not be likely to have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will not have a significant impact on hospitals. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that is approximately $144 million. This rule does not mandate expenditures by the state governments, local governments, tribal governments, or the private sector. This rule provides that states can receive enhanced FFP if states ensure that the mechanized claims processing and information retrieval systems, including those that perform eligibility determination and enrollment activities, as well as the Medicaid portion of integrated eligibility determination systems, meet with certain conditions including migrating to the MITA framework and meeting certain performance requirements. This is a voluntary activity and the rule imposes no substantial mandates on states.

2. The federal net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately $3 billion. This includes approximately $5.1 billion in increased federal costs for system design and development, offset by lower anticipated maintenance and operations costs. These costs represent only the federal share.

We see lower costs over the 10-year budget window due to the increased savings to operating one E&E system and eliminating legacy systems. The costs shift from mostly 90 percent FFP for design, development, and installation to 75 percent FFP for maintenance and operations over time.

Uncertainty exists because we are unsure of the rate of adoption for states to make the changes in this proposed rule.

We considered a number of ways in which application of the standards and conditions, including increased use of MITA, could result in savings; however, as no states have yet reached MITA maturity, it is difficult to predict the savings that may accrue over any certain timeframe. These areas include the following:

(a) Modular technology solutions: As states, or groups of states, would begin to develop ''modular'' technology solutions, these solutions could be used by others through a ''plug and play'' approach, in which pieces of a new MMIS would not need to be reinvented from scratch every time, but rather, could be incorporated into the MMIS framework.

We assume that savings associated with reusable technology could be achieved in both the development and operation of new systems.

(b) Increased use of industry standards and open source technologies: While HIPAA administrative transaction standards have existed for 8 to 10 years, use of more specific industry standards to build new systems would allow such systems to exchange information seamlessly. We also believe that more open source technology would encourage the development of software solutions that address the needs of a variety of diverse activities—such as eligibility, member enrollment, and pharmacy analysis of drug claims. Software that is sufficiently flexible to meet different needs and perform different functions could result in cost savings, as states are able to use the systems without making major adaptations to them.

(c) Maintenance and operations: As states continue to implement changes, the maintenance and operation costs of new systems should decrease. Less maintenance should be required than that necessary to reengineer special, highly customized systems every time there is a new regulatory or legal requirement.

(d) Reengineering business processes, more web based solutions, service-oriented architecture (SOA): Savings are likely to result from the modular design and operation of systems, combined with use of standardized business processes, as states are being compelled to rethink and streamline processes as a result of greater reliance on technology.

There are uncertainties regarding our assumptions, including state behavior, and the associated cost estimates with respect to states implementing new systems. However, we have based our assumptions on data on states' previous behavior, spending and advance planning documents over the last 4 years. It is important to point out that we believe that systems transformation is necessary to meet the vision of the Affordable Care Act and consequently, these costs provide for efficient systems that in the end would provide for more efficient and effective administration of the state plan.

*D. Alternatives Considered*

We considered as an alternative to our proposed rule to not continue to provide enhanced match for state eligibility systems builds after December 2015, and to not update federal standards and conditions for Medicaid IT development. We also considered an extension for a 2 or 3 year timeline but deduced that it was both insufficient for states to effectively transition out of their legacy systems and to complete human services integration in the new shared eligibility system. Furthermore,

this assumes that all significant policy changes that trigger the need for IT updates were limited to those in the Affordable Care Act, however systems reforms are an on-going facet of eligibility policy with an accompanying ongoing financial burden. A limited extension would also ignore that states that already modernized and did not replace their systems starting in 2011 will eventually need to do so in order to maintain system integrity and modernity sometime after a two or three year extension. Absent an ongoing extension, states would receive the traditional 50 percent FFP for reasonable administrative expenditures for designing, developing, installing, or enhancing Medicaid eligibility determination systems. Similarly, states would receive 50 percent FFP for expenditures associated with the maintenance and operation of such systems. However, states would have to continue to meet the requirements of federal legislation. Since the Affordable Care Act significantly alters Medicaid eligibility, we believe that treating eligibility and enrollment systems as an integral part of mechanized claims processing system and information retrieval systems is consistent with the federal statute. This would have the effect of continuing the higher federal matching rate, which would provide states additional resources to meet this challenge. In addition, the federal guidance in the form of clearer federal standards and conditions would facilitate the design, development, implementation, and operation of IT and systems projects that fully support the Medicaid program, including the new responsibilities under the Affordable Care Act. Supporting the transformation of Medicaid eligibility and enrollment systems through these enhanced funding and clearer federal guidelines will also reduce duplication of systems and overall system costs.

*E. Accounting Statement and Table*

Whenever a rule is considered a significant rule under Executive Order 12866, we are required to develop an Accounting Statement. We have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this rule. Tables 1 through 5 provides our best estimate of the net costs as a result of the changes presented in this rule.

TABLE 1—FEDERAL NET COSTS

| Category | Estimates | Units | | |
|---|---|---|---|---|
| | | Year dollar | Discount rate (%) | Period covered |
| Annualized Monetized ($million/year) | 444.3 | 2016 | 7 | 2016–2025 |
| | 363.6 | 2016 | 3 | 2016–2025 |

TABLE 2—FEDERAL NET COSTS BY FISCAL YEAR

[In millions]

| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2016–2025 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| E&E Systems—DDI | 1,788 | 2,192 | 333 | 277 | 184 | 143 | 89 | 47 | 44 | 44 | 5,141 |
| E&E Systems—M&O | (19) | (19) | (95) | (120) | (165) | (298) | (325) | (344) | (360) | (367) | (2112) |
| Total | 1,769 | 2,173 | 238 | 157 | 19 | (155) | (236) | (298) | (315) | (323) | 3029 |

*Numbers in parentheses represent savings to the federal government.

TABLE 3—STATE NET COSTS

| Category | Estimates | Units | | |
|---|---|---|---|---|
| | | Year dollar | Discount rate (%) | Period covered |
| Annualized Monetized ($million/year) | −81.2 | 2016 | 7 | 2016–2025 |
| | −99.1 | 2016 | 3 | 2016–2025 |

TABLE 4—STATE NET COSTS BY FISCAL YEAR

[In millions]

| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2016–2025 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| E&E Systems—DDI | 199 | 244 | 37 | 31 | 20 | 16 | 10 | 5 | 5 | 5 | 572 |
| E&E Systems—M&O | (19) | (19) | (95) | (120) | (165) | (213) | (240) | (263) | (280) | (286) | (1700) |
| Total | 180 | 225 | (58) | (89) | (145) | (197) | (230) | (258) | (275) | (281) | (1128) |

*Numbers in parentheses represent savings to State Governments.

TABLE 5—ESTIMATED NET PRESENT VALUE OF FEDERAL COSTS, FY 2016–2025

[In millions of dollars]

| | Discount rate | |
|---|---|---|
| | 7% | 3% |
| Federal Costs NPV | $3,120.6 | $3,101.8 |
| State Costs NPV | −$570.7 | −$845.5 |

*F. Conclusion*

We considered a number of ways in which application of the standards and conditions, including increased use of MITA, could result in savings. We see increased investments in DDI somewhat offset by lower costs over the 10-year budget window due to the increased savings to operating one E&E system and eliminating legacy systems. The costs shift from mostly 90 percent FFP for design, development, and installation to 75 percent FFP for maintenance and operations over time.

The federal net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately $3 billion. This includes approximately $5.1 billion in increased federal costs for system design and development, offset by lower anticipated maintenance and operations costs. The state net costs from FY 2016 through 2025 of implementing the proposed regulation on eligibility systems is approximately − $1.1 billion. This includes approximately $572 million in state costs for system design and development, offset by lower anticipated maintenance and operations costs.

There are uncertainties regarding our assumptions, including state behavior, and the associated cost estimates with respect to states implementing new systems. However, we have based our assumptions on data on states' previous behavior, spending and advance planning documents over the last 4 years. It is important to point out that we believe that systems transformation is necessary to meet the vision of the Affordable Care Act and consequently, these costs are necessary and would provide for efficient systems that in the end would provide for more efficient and effective administration of the state plan.

The analysis above, together with the remainder of this preamble, provides a Regulatory Impact Analysis. The reason to refer to other portions of the preamble is that they include sections, such as the statutory authority and purpose that are required but are not normally included in the impact analysis section.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects**

*42 CFR Part 433*

Administrative practice and procedure, Child support claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*45 CFR Part 95*

Claims, Computer technology, Grant programs-health, Grant programs-social programs, Reporting and recordkeeping requirements, Social security.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

## PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

### § 433.110 [Amended]

■ 2. In § 433.110—

■ a. Amend paragraph (a)(1) by removing the reference ''45 CFR part 74'' and adding in its place ''45 CFR part 92.''

■ b. Remove paragraphs (a)(2)(ii) and (iii).

■ c. Remove and reserve paragraph (b).

■ 3. Section 433.111 is amended by revising paragraph (b) and adding paragraphs (d) through (h) to read as follows:

### § 433.111 Definitions.

* * * * *

(b) ''Mechanized claims processing and information retrieval system'', or ''system'' means the system of software and hardware used to process claims for medical assistance and to retrieve and produce service utilization and management information required by the Medicaid single state agency and Federal government for program administration and audit purposes.

(1) The system consists of—

(i) Required subsystems specified by the Secretary.

(ii) Required changes to the system or required subsystem that are specified by the Secretary.

(iii) Approved enhancements to the system or subsystem.

(2) A ''Mechanized claims processing and information retrieval system'' may include

(i) An eligibility and enrollment system, or ''E&E system'', used to process initial claims (applications) from Medicaid or CHIP applicants and beneficiaries for eligibility for enrollment in the Medicaid or CHIP programs, as well as change in circumstance updates and renewals; and/or

(ii) A claims system, or MMIS, used to process claims for Medicaid payment from providers of medical care and services furnished to beneficiaries under the medical assistance program.

* * * * *

(d) ''Open source'' means software that can be used freely, changed, and shared (in modified or unmodified form) by anyone. Open source software is distributed under Open Source Initiative-approved licenses that comply with an open source framework that allows for free redistribution, provision of the source code, allowance for modifications and derived works, free and open distribution of licenses without restrictions and licenses that are technology-neutral.

(e) ''Proprietary'' means closed source software licensed under exclusive legal right of the copyright holder with the intent that the licensee is given the right to use the software only under certain conditions, and restricted from other uses, such as modification, sharing, studying, redistribution, or reverse engineering.

(f) ''Shared Services'' means the provision of a service by one part of an organization or group where that service had previously been found in more than one part of the organization or group. Thus the funding and resourcing of the service is shared and the providing department effectively becomes an internal service provider.

(g) ''MMIS Module'' refers to a group of MMIS business processes that can be implemented through a collection of IT functionality.

(h) ''Commercial Off the Shelf (COTS) software'' refers to specialized software designed for specific applications that is available for sale or lease to other users in the commercial marketplace, and that can be used with little or no modification. COTS software does not include software developed specifically for public assistance programs.

■ 4. Section 433.112 is amended by revising paragraphs (b) introductory text, (b)(12), (b)(16), and (c); and, adding paragraphs (b)(17) through (b)(22) to read as follows:

**§ 433.112 FFP for design, development, installation or enhancement of mechanized processing and information retrieval systems.**

* * * * *

(b) CMS will approve the E&E or claims system described in an APD if certain conditions are met. The conditions that a system, whether a claims or E&E system, must meet are:

* * * * *

(12) The agency ensures alignment with, and incorporation of, industry standards adopted by the Office of the National Coordinator for Health IT in accordance with 45 CFR part 170, subpart B: The HIPAA privacy, security and transaction standards; accessibility standards established under section 508 of the Rehabilitation Act, or standards that provide greater accessibility for individuals with disabilities, and compliance with Federal civil rights laws; standards adopted by the Secretary under section 1104 of the Affordable Care Act; and standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act.

* * * * *

(16) The system supports seamless coordination and integration with the Marketplace, the Federal Data Services Hub, and allows interoperability with health information exchanges, public health agencies, human services programs, and community organizations providing outreach and enrollment assistance services as applicable.

(17) For eligibility and enrollment systems, the State must have delivered acceptable MAGI-based system functionality, demonstrated by performance testing and results based on critical success factors, with limited mitigations and workarounds.

(18) The State must submit plans that contain strategies for reducing the operational consequences of failure to meet applicable requirements for all major milestones and functionality.

(19) The agency, in writing through the APD, must identify key personnel by type and time commitment assigned to each project.

(20) Systems and MMIS modules developed, installed or improved with 90 percent match must include documentation of components and procedures such that the systems could be operated by a variety of contractors or other users.

(21) For software systems and MMIS modules developed, installed or improved with 90 percent match, the State must consider strategies to minimize the costs and difficulty of operating the software on alternate hardware or operating systems.

(22) Other conditions as required by the Secretary.

(c) (1) FFP is available at 90 percent of a state's expenditures for the design, development, installation or enhancement of an eligibility and enrollment system that meets the requirements of this subpart and only for costs incurred for goods and services provided on or after April 19, 2011.

(2) Design, development, installation or enhancement costs include costs to procure commercial off-the-shelf (COTS) software, but should only include the minimum necessary costs to analyze the suitability of COTS software, install and integrate the COTS software, and modify non-COTS software to ensure coordination of operations. The nature and extent of such costs must be expressly described in the approved APD.

■ 5. Section 433.116 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 433.116 FFP for operation of mechanized claims processing and information retrieval systems.**

* * * * *

(b) CMS will approve enhanced FFP for system operations if the conditions specified in paragraphs (c) through (i) of this section are met.

(c) The conditions of § 433.112(b)(1) through (22) must be met at the time of approval.

* * * * *

■ 6. Section 433.119 is amended by revising paragraph (a)(1) to read as follows:

**§ 433.119 Conditions for reapproval; notice of decision.**

(a) * * *

(1) The system meets the requirements of § 433.112(b)(1), (3), (4), and (7) through (22).

* * * * *

■ 7. Section 433.120 is revised to read as follows:

**§ 433.120 Procedures for reduction of FFP after reapproval review.**

(a) If CMS determines after the reapproval review that the system no longer meets the conditions for reapproval in § 433.119, CMS will reduce FFP for certain expenditures for system operations.

(b) CMS will reduce FFP from 75 percent to 50 percent for expenditures related to the operations of non-compliant functionality or system components.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 95 as set forth below:

## PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)

■ 8. The authority citation for part 95 continues to read as follows:

**Authority:** 5 U.S.C. 301, 42 U.S.C. 622(b), 629b(a), 652(a), 652(d), 654A, 671(a), 1302, and 1396a(a).

■ 9. Section 95.611 is amended by revising paragraph (a)(2) to read as follows:

**§ 95.611 Prior approval conditions.**

(a) * * *

(2) A State shall obtain prior approval from the Department which is reflected in a record, as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate subject to one of the following:

(i) If authorized by 45 CFR 205.35 and 45 CFR part 307, regardless of the acquisition cost.

(ii) If authorized by 42 CFR part 433, subpart C, if the contract is anticipated to or will exceed $500,000.

* * * * *

Dated: March 11, 2015.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: March 27, 2015.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2015–08754 Filed 4–14–15; 4:15 pm]

BILLING CODE 4120–01–P

# Notices

Federal Register

Vol. 80, No. 73

Thursday, April 16, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tongass Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tongass Advisory Committee (Committee) will meet in Ketchikan, Alaska. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2). Committee recommendations and advice may directly inform the development of a proposed action for modification of the 2008 Tongass Land Management Plan. The meeting is open to the public. Additional information concerning the Committee, including the meeting summary/minutes, can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/R10/Tongass/TAC.*

**DATES:** The meeting will be held on:

- Wednesday, May 6, 2015 from 8:30 a.m. to 5:00 p.m. (AKDT).
- Thursday, May 7, 2015 from 8:30 a.m. to 5:00 p.m. (AKDT).
- Friday, May 8, 2015 from 8:30 a.m. to 4:00 p.m. (AKDT).

All meetings are subject to change and cancellation. For updated status of the meetings prior to attendance, please visit the Web site listed in the **SUMMARY** section, or contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meetings will be held in the Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, AK 99901. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Tongass National Forest Office. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Marina Whitacre, Committee Coordinator, by phone at 907–772–5934, or by email at *mwhitacre@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Finish work on the draft package of recommendations;

2. Formally adopt the recommendations to be transmitted to the Secretary of Agriculture;

3. Finalize communications strategy to publicize the recommendations; and

4. Identify near-term implementation next steps and clarify the role of the TAC going forward.

There will be time allotted on the agenda for oral public comment. Those interested can register at the meeting. In addition, written statements may be filed with the Committee's staff before or after the meeting. Written comments may also be submitted by mail to Jason Anderson, Designated Federal Officer, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833; or email to *jasonanderson@fs.fed.us,* or facsimile to 907–772–5895. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: April 8, 2015.

**Jason Anderson,**

*Deputy Forest Supervisor, Tongass National Forest.*

[FR Doc. 2015–08776 Filed 4–15–15; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Resource Coordinating Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Forest Resource Coordinating Committee (Committee) will meet via teleconference. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App. II), and the Food, Conservation, and Energy Act of 2008 (the Act) (Pub. L. 110–246). Additional information concerning the Committee, including the meeting agenda, supporting documents and minutes, can be found by visiting the Committee's Web site at *http://www.fs.fed.us/spf/coop/frcc/.*

**DATES:** The teleconference will be held on May 20, 2015 from 12:00 p.m. to 1:00 p.m., Eastern Daylight Time (EDT). The meeting is subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section.

**ADDRESSES:** The meeting will be held via teleconference. For anyone who would like to attend the teleconference, please visit the Web site listed in the **SUMMARY** section or contact Andrea Bedell-Loucks at *abloucks@fs.fed.us* for further details. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION** section. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments placed on the Committee's Web site listed above.

**FOR FURTHER INFORMATION CONTACT:** Andrea Bedell-Loucks, Designated Federal Officer, Cooperative Forestry staff, 202–205–1190. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Finalize recommendations and cover letter, and

2. Report out from team developing outreach packet.

The teleconference is open to the public. However, the public is strongly encouraged to RSVP prior to the teleconference to ensure all related documents are shared with public meeting participants. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing 10 days before the planned meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Laurie Schoonhoven, 1400 Independence Avenue SW., Mailstop 1123, Washington, DC 20250 or by email to *lschoonhoven@fs.fed.us.* A summary of the meeting will be posted on the Web site listed above within 21 days after the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 9, 2015.

**Patricia Hirami,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2015–08683 Filed 4–15–15; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Discontinue the Annual Publication of the Prices Paid Data

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice of intent to discontinue the annual publication of prices paid data in the April *Prices* report. NASS will continue to publish monthly Prices Paid Indexes.

**SUMMARY:** This notice announces the intention of the National Agricultural Statistics Service (NASS) to discontinue the publication of annual prices paid data. These data include prices paid for fuels, feed, seeds, fertilizer, machinery, and chemicals. These prices were published each year in the April Agricultural *Prices* report. NASS will continue to collect data on prices paid by farmers and use those data to generate the monthly indexes published in the monthly *Prices* report. The Prices Paid surveys and publications are approved under OMB #0535–0003.

**FOR FURTHER INFORMATION CONTACT:** R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, or through the NASS OMB Clearance Officer at *omboffi cer@nass.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Discontinuation of the Prices Paid Data found in the April 2015 Agricultural *Prices* publication.

*OMB Control Numbers:* 0535–0003.

*Expiration Dates of Approval:* May 31, 2016.

*Type of Request:* To discontinue the publication of data from the Prices Paid Surveys.

*Abstract:* The primary functions of the National Agricultural Statistics Service include the collection of data and the preparation and issuance of state and national estimates of crop and livestock production, disposition, prices, and environmental and economic factors. On March 11, 2015, NASS announced via agricultural news media, Prices report subscribers and its Web site that it would be modifying the Agricultural Prices program. *www.nass.usda.gov/Newsroom/Notices/03_11_2015a.asp.*

For more information about the NASS Prices program, visit: *www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Prices/index.asp*

Agricultural farm input price data for 2014 and prior years are available at *www.nass.usda.gov.*

*Timeline:* NASS will discontinue this information publication as of April 16, 2015.

*Authority:* These data were collected under authority of 7 U.S.C. 2204(a) (General Duties of the Secretary of Agriculture). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* There will be no change in public reporting burden for this collection of information.

Signed at Washington, DC, April 1, 2015.

**Joseph T. Reilly,**

*Administrator.*

[FR Doc. 2015–08785 Filed 4–15–15; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection for Field Crops Production. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, the combining of several smaller surveys, and/or changes in questionnaire length.

**DATES:** Comments on this notice must be received by June 15, 2015 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0002, by any of the following methods:

- Email: *omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- Efax: (855) 838–6382.
- Mail: Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Field Crops Production.

*OMB Control Number:* 0535–0002.

*Expiration Date of Approval:* August 31, 2015.

*Type of Request:* Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

*Abstract:* The primary objective of the National Agricultural Statistics Service

is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Field Crops Production Program consists of probability field crops surveys and supplemental panel surveys. The panel surveys capture unique crop characteristics such as the concentration of crops in localized geographical areas. These surveys are extremely valuable for commodities where acreage and yield are published at the county level.

Several of the smaller surveys will be discontinued with this approval. The Alaska Acreage and Production Survey and the Alaska Spring Acreage Survey have been incorporated into the County Estimates Survey and the Quarterly Crops/Stocks surveys. The Sweet Potato Buyers Survey, the Tobacco Forecast Survey, and the Tobacco Buyer Survey have been discontinued, and the data will be collected through the Sweet Potato Price Survey, the Quarterly Crops/Stocks surveys, and the Tobacco Price Inquiry respectively. The total burden has been increased to account for the cover letter and the internet access instruction sheet that will be mailed out to the target samples.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

*Estimate of Burden:* Public reporting burden for this information collection is based on a group of similar surveys with expected response times of 5–20 minutes and a frequency of 1–40 times per year. Estimated number of responses per respondent is 1.27.

*Respondents:* Farmers and Ranchers.

*Estimated Total Number of Respondents:* 626,000.

*Estimated Total Annual Burden on Respondents:* 194,000 hours.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 1, 2015.

**Joseph T. Reilly,**

*Administrator.*

[FR Doc. 2015–08788 Filed 4–15–15; 8:45 am]

**BILLING CODE 3410–20–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Oklahoma Advisory Committee for a Meeting To Discuss and Vote Upon a Project Proposal Regarding the School to Prison Pipeline in Oklahoma

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Oklahoma Advisory Committee (Committee) will hold a meeting on Friday, May 1, 2015, at 1:30 p.m. CST for the purpose of discussing the potential speakers and logistics for a July meeting on the school to prison pipeline.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–811–5436, conference ID: 3877995. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office by April 27, 2015. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Oklahoma Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

### Agenda

Welcome and Introductions—3:00 p.m. to 3:05 p.m.; Vicki Limas, Chair

Discussion of Proposal on School to Prison Pipeline in Oklahoma—3:05 p.m. to 3:35 p.m.; Oklahoma Advisory Committee

Planning Next Steps—3:35 p.m. to 4:00 p.m.

Adjournment—4:00 p.m.

**DATES:** The meeting will be held on Friday, May 1, 2015, at 3:00 p.m.

### Public Call Information

Dial: 888–466–4462

Conference ID: 7610695

Dated March 3, 2015.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2015–08731 Filed 4–15–15; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Nebraska Advisory Committee for a Meeting To Discuss Potential Project Topics

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a meeting on Tuesday, May 5, 2015, at 3:00 p.m. for the purpose of discussing and voting on a project proposal regarding the civil rights impact of LB 403.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–539–3678, conference ID: 9136560. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office by June 5, 2015. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

#### Agenda

Welcome and Introductions—Jonathan Benjamin-Alvarado, Chair
Discussion of project proposal on LB 403—Nebraska Advisory Committee Members
Future plans and actions
Adjournment—4:00 p.m.

**DATES:** The meeting will be held on Tuesday, May 5, 2015, at 3:00 p.m.

#### Public Call Information

Dial: 888–539–3678
Conference ID: 9136560

Dated April 13, 2015.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2015–08730 Filed 4–15–15; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1976]**

### Reorganization of Foreign-Trade Zone 80 Under Alternative Site Framework San Antonio, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas,* the City of San Antonio, grantee of Foreign-Trade Zone 80, submitted an application to the Board (FTZ Docket B–77–2014, docketed October 22, 2014) for authority to reorganize under the ASF with a service area of Bexar County in its entirety and portions of Comal and Guadalupe Counties, Texas, in and adjacent to the San Antonio Customs and Border Protection port of entry, to renumber existing Site 7A as Site 7, to renumber existing Site 7B as Site 11, and FTZ 80's Sites 1 through 11 (as renumbered) would be categorized as magnet sites;

*Whereas,* notice inviting public comment was given in the **Federal Register** (79 FR 64169, October 28, 2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, Therefore,* the Board hereby orders:

The application to reorganize FTZ 80 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including § 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Sites 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 if not activated within five years from the month of approval.

Signed at Washington, DC, this 9th day of April, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015–08782 Filed 4–15–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1972]**

### Reorganization of Foreign-Trade Zone 71 Under Alternative Site Framework Windsor Locks, Connecticut

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas,* the Economic and Industrial Development Commission of Windsor Locks, grantee of FTZ 71, submitted an application to the Board (FTZ Docket B–73–2014, docketed 10–15–2014) for authority to reorganize under the ASF with a service area of the Counties of Hartford, Middlesex, Windham, Tolland and Litchfield, Connecticut, adjacent to the Hartford Customs and Border Protection port of entry, and FTZ 71's existing Sites 1 and 2 would be categorized as magnet sites;

*Whereas,* notice inviting public comment was given in the **Federal**

**Register** (79 FR 62940, 10–21–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore,* the Board hereby orders:

The application to reorganize FTZ 71 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated within five years from the month of approval.

Signed at Washington, DC, this 9th day of April 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce, for Enforcement and Compliance Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015–08763 Filed 4–15–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1973]**

### Reorganization of Foreign-Trade Zone 263 Under Alternative Site Framework Lewiston-Auburn, Maine

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas,* the Lewiston-Auburn Economic Growth Council, grantee of FTZ 263, submitted an application to the Board (FTZ Docket B–64–2014, docketed 09–11–2014) for authority to reorganize under the ASF with a service area of the Counties of Androscoggin, Cumberland, and Sagadahoc, Maine, within and adjacent to the Portland Customs and Border Protection port of entry, and FTZ 263's existing Sites 1 and 2 would be categorized as magnet sites;

*Whereas,* notice inviting public comment was given in the **Federal Register** (79 FR 56057, 09–18–2014) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore,* the Board hereby orders:

The application to reorganize FTZ 263 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated within five years from the month of approval.

Signed at Washington, DC, this 9th day of April 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2015–08764 Filed 4–15–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–21–2015]**

### Proposed Foreign-Trade Zone—Western Kentucky Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Paducah McCracken County Riverport Authority to establish a foreign-trade zone adjacent to the Evansville, Indiana CBP port of entry, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 10, 2015. The applicant is authorized to make the proposal under the Kentucky Revised Statutes, Section 65.530.

The proposed zone would be the third zone for the Evansville CBP port of entry. The existing zones are as follows: FTZ 146, Lawrence County, Illinois (Grantee: Bi-State Authority, Board Order 371, 2/11/1988); and, FTZ 177, Evansville, Indiana (Grantee: Ports of Indiana, Board Order 513, 3/12/1991).

The applicant's proposed service area under the ASF would be portions of McCracken and Livingston Counties. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The applicant has stated that the proposed service area is adjacent to the Evansville Customs and Border Protection port of entry.

The proposed zone would include one ''magnet'' site: Proposed Site 1 (30 acres)—Paducah/McCracken Riverport, 2000 Wayne Sullivan Drive, Paducah, McCracken County.

The application indicates a need for zone services in the Western Kentucky area. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 15, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 30, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 10, 2015.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015–08762 Filed 4–15–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–887]**

### Tetrahydrofurfuryl Alcohol From the People's Republic of China: Continuation of Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations made by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') order on tetrahydrofurfuryl alcohol (''THFA'') from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

**DATES:** *Effective Date:* April 16, 2015.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 18, 2004, the Department published the final determination of sales at less than fair value on THFA from the PRC in the United States.[1] On August 6, 2004, the Department published the AD *Order* with respect to imports of THFA from the PRC.[2]

There have been no administrative reviews since issuance of the AD *Order.* There have been no related findings or rulings (*e.g.,* changed circumstances review, scope ruling, duty absorption review, *etc.*) since issuance of the *Order.* The *Order* remains in effect for all producers and exporters of subject merchandise.

On November 5, 2009, the final results of the first expedited sunset review of THFA published in the **Federal Register.**[3] In the *First Sunset,* the Department found that revocation of the AD *Order* would be likely to lead to continuation or recurrence of dumping.[4] In addition, the ITC determined, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''), that revocation of the AD *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5] Thus, the Department published the notice of continuation of the AD *Order* on December 16, 2009.[6]

On November 3, 2014, the Department initiated the second sunset review of the AD *Order* on THFA from the PRC pursuant to section 751(c) of the Act.[7] As a result of its review, the Department determined that revocation of the antidumping duty order on THFA from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[8] On April 9, 2015, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on THFA from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[9]

### Scope of the Order

The product covered by this order is THFA (C5H10O2). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States (''HTSUS'') under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

### Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD *Order* on THFA from the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (''sunset'') review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: April 10, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2015–08766 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China,* 69 FR 34130 (June 18, 2004) (''*Final Determination*'').

[2] *See Notice of Antidumping Duty Order: Tetrahydrofurfuryl Alcohol from the People's Republic of China,* 69 FR 47911 (August 6, 2004) (''*Order*'').

[3] *See Tetrahydrofurfuryl Alcohol From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 74 FR 57290 (November 5, 2009) (''*First Sunset*'').

[4] *Id.*

[5] *See Tetrahydrofurfuryl Alcohol from China,* Investigation No. 731–TA–1046 (Review), USITC Publication 4118, (November 2009); *see also Tetrahydrofurfuryl Alcohol from China,* 74 FR 63788 (December 4, 2009).

[6] *See Tetrahydrofurfuryl Alcohol from the People's Republic of China: Continuation of the Antidumping Duty Order,* 74 FR 66616 (December 16, 2009) (''*Continuation Notice*'').

[7] *See Initiation of Five-year (''Sunset'') Review,* 79 FR 65186 (November 3, 2014) (''*Sunset Initiation*'').

[8] *See Tetrahydrofurfuryl Alcohol from the People's Republic of China: Final Results of the Second Expedited Sunset Review of the Antidumping Duty Order,* 80 FR 12981 (March 12, 2015) and accompanying Issues and Decision Memorandum.

[9] *See* Tetrahydrofurfuryl Alcohol from China: Determination, 80 FR 19092 (April 9, 2015); *see also* Tetrahydrofurfuryl Alcohol from China, Investigation No. 731–TA–1046 (Second Review), USITC Publication 4524 (April 2015).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Evaluation of State Coastal Management Programs

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, National Ocean Service, Commerce.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office for Coastal Management announces its intent to evaluate the performance of the Puerto Rico Coastal Zone Management Program.

Coastal Zone Management Program evaluations are conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires

continuing review of the performance of states and territories with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state or territory has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. When the evaluation is completed, the Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date, local time, and location of the public meeting.

*Date and Time:* The Puerto Rico Coastal Zone Management Program public meeting will be held on Wednesday, May 13, 2015 at 5:00 p.m. local time at the Environmental Agencies Building, PR–8838 Km. 6.3, El Cinco, Rio Piedras, San Juan, Puerto Rico.

**ADDRESSES:** Copies of the most recent performance report, as well as the Office for Coastal Management evaluation notification letter to the territory, are available upon request. Written comments from interested parties are encouraged and will be accepted until May 22, 2015. Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

Dated: April 8, 2015.

**Christopher C. Cartwright,**

*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 2015–08719 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Evaluation of State Coastal Management Programs

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, National Ocean Service, Commerce.

**ACTION:** Notice of intent to evaluate and notice of availability of final findings.

**SUMMARY:** The NOAA Office for Coastal Management announces its intent to evaluate the performance of the American Samoa, Ohio, and Virginia Coastal Management Programs.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. When the evaluation is completed, the Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date, local time, and location of the public meeting.

**DATES:** *Date and Time:* The American Samoa Coastal Management Program public meeting will be held on Wednesday, May 27, 2015 at 5:00 p.m. local time at the North Wing of the Lee Auditorium.

The Ohio Coastal Management Program public meeting will be held on Wednesday, May 20, 2015, at 5:30 p.m. at the Ritter Public Library—Community Meeting Room, 5680 Liberty Avenue, Vermilion, OH 44089.

The Virginia Coastal Management Program public meeting will be held on Tuesday, May 12, 2015 at 5:00 p.m. at the Virginia Department of Environmental Quality, 2nd Floor Training Room, 629 E. Main St., Richmond, VA 23219.

**ADDRESSES:** Copies of each state's most recent performance report, as well as the Office for Coastal Management evaluation notification letter to the state, are available upon request. Written comments from interested parties regarding these programs are encouraged and will be accepted until June 5, 2015 for the American Samoa Coastal Management Program, May 29, 2015 for the Ohio Coastal Management Program, and May 15, 2015 for the Virginia Coastal Management Program. Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the availability of the final evaluation findings for the Connecticut, Massachusetts, and Michigan Coastal Management Programs (CMPs) and Waquoit Bay National Estuarine Research Reserve (NERR). Sections 312 and 315 of the CZMA, as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs. The states of Connecticut, Massachusetts, and Michigan were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Waquoit Bay NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be downloaded at *http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html* or obtained upon written request from: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

Federal Domestic Assistance Catalog 11.419

Dated: April 9, 2015.

Coastal Zone Management Program Administration.

**Christopher C. Cartwright,**

*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management National, Oceanic and Atmospheric Administration.*

[FR Doc. 2015–08721 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Evaluation of National Estuarine Research Reserve

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, National Ocean Service, Commerce.

**ACTION:** Notice of intent to evaluate and notice of availability of final findings.

**SUMMARY:** The NOAA Office for Coastal Management (OCM) announces its intent to evaluate the performance of the San Francisco Bay National Estuarine Research Reserve.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. When the evaluation is completed, OCM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date, local time, and location of the public meeting.

**DATE AND TIME:** The San Francisco Bay National Estuarine Research Reserve public meeting will be held June 8, 2015, at 4:00 p.m. at the Bay Conference Center, Romberg Tiburon Center, 3152 Paradise Drive, Tiburon, CA 94920.

**ADDRESSES:** Copies of the reserve's most recent performance report, as well as OCM's evaluation notification letter to the state, are available upon request from OCM. Written comments from interested parties regarding these programs are encouraged and will be accepted until June 19, 2015. Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the availability of the final evaluation findings for the Texas Coastal Management Program. Sections 312 and 315 of the CZMA, as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs. The state of Texas was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of financial assistance awards.

Copies of the final evaluation findings may be downloaded at *http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html* or obtained upon written request from: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

Federal Domestic Assistance Catalog 11.419

Dated: April 8, 2015.

Coastal Zone Management Program Administration.

**Christopher C. Cartwright,**

*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 2015–08722 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD867**

### General Advisory Committee and Scientific Advisory Subcommittee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS announces a public meeting of the Scientific Advisory Subcommittee (SAS) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on June 2, 2015, and a meeting of the General Advisory Committee (GAC) to the U.S. Section to the IATTC on June 3, 2015. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The meeting of the SAS will be held on June 2, 2015, from 11 a.m. to 5 p.m. PDT (or until business is concluded). The meeting of the GAC will be held on June 3, 2015, from 8:30 a.m. to 5 p.m. PDT (or until business is concluded).

**ADDRESSES:** Both meetings will be held in the Pacific Conference Room (Room 300) at NMFS, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, California 92037–1508. Please notify Taylor Debevec if you plan to attend either meeting. The meetings will be accessible by webinar—instructions will be emailed to meeting participants.

**FOR FURTHER INFORMATION CONTACT:** Taylor Debevec, West Coast Region, NMFS, at *Taylor.Debevec@noaa.gov,* or at (562) 980–4066.

**SUPPLEMENTARY INFORMATION:**

In accordance with the Tuna Conventions Act, 16 U.S.C. 953, the U.S. Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The GAC and SAS support the U.S. Section to the IATTC in an advisory capacity; in particular, they provide advice on the development of U.S. policies and positions. NMFS West Coast Region provides administrative support for the GAC and SAS in

cooperation with the U.S. Department of State. The meetings of the GAC and SAS are open to the public. The time and manner of public comment will be at the discretion of the chairs for the GAC and SAS.

The 89th meeting of the IATTC, the 31st Meeting of the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP), as well as working group meetings for both the AIDCP and IATTC will be held in Guayaquil, Ecuador, from June 22 to July 3, 2015. For more information on these meeting, please visit the IATTC's Web site: *https://www.iattc.org/MeetingsENG.htm.*

**SAS and GAC Meeting Topics**

The SAS meeting topics will include, but are not limited to, the following:

(1) Outcomes of the 2015 Scientific Advisory Committee (SAC) to the IATTC (*e.g.,* stock status updates for tuna, tuna-like species, and other species caught in association with those fisheries in the eastern Pacific Ocean);

(2) Issues related to the impact of fishing on non-target species, such as shark, seabirds, sea turtles;

(3) Evaluation of the IATTC staff's recommended conservation measures for 2015;

(4) U.S. proposals for the 89th meeting of the IATTC, and proposals from other IATTC members; and

(5) Other issues as they arise.

The GAC meeting topics will include, but are not limited to, the following:

(1) Outcomes of the 2015 SAC to the IATTC (*e.g.,* stock status updates for tuna, tuna-like species, and other species caught in association with those fisheries in the eastern Pacific Ocean);

(2) Recent U.S. regulations that could affect tuna and tuna-like fisheries in the eastern Pacific Ocean;

(3) The status of U.S legislation to implement the Antigua Convention;

(4) Input from the SAS;

(5) Formulation of advice on issues that may arise at the upcoming 89th meeting of the IATTC, including: IATTC staff's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; and

(6) Other issues as they arise.

**Special Accommodations**

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Taylor Debevec (see **FOR FURTHER INFORMATION CONTACT**) by May 18, 2015.

**Authority:** 16 U.S.C. 951 *et seq.*

Dated: April 13, 2015.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–08734 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD899**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (NPFMC) Bering Sea Aleutian Islands (BSAI) Crab Plan Team (CPT) will meet in Anchorage, AK.

**DATES:** The meeting will be held May 4–7, 2015, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, King Salmon/Illiamna Room, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Sarah Marrinan; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Plan Team will review final assessments for Aleutian Island Golden King Crab, Pribilof Island Golden King Crab, and Western Aleutian Red King Crab and recommend Overfishing Levels (OFLs) and Acceptable Biological Catch (ABCs) for these stocks. Model scenarios will be presented for Snow crab, Bristol Bay Red King Crab, Tanner Crab, Saint Matthew Blue King Crab and Pribilof Red King Crab. Additional topics include an update on progress on generic modeling framework for Alaskan crab stocks (GMACs) applications to Bristol Bay Red King Crab, the forthcoming Center for Independent Experts (CIE) review as well as recommendations on the Eastern Bering Sea survey time series, and update on Golden King crab research in the Aleutian Islands and recommendations on 2015 Research Priorities. The Plan Team will also receive a presentation of biological considerations relative to the 10 year crab rationalization program review.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 13, 2015.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–08717 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD864**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council's) Law Enforcement Committee will hold a public meeting.

**DATES:** The meeting will be held on Tuesday, May 5, 2015, from 2 p.m. to 5 p.m., via internet webinar.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site,

*www.mafmc.org* will have details on the proposed agenda, webinar access, and briefing materials.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is for the Law Enforcement Committee to discuss enforcement issues related to the Council's Deep Sea Corals Amendment, including the enforceability of current amendment alternatives. Comments and recommendations from the Law Enforcement Committee will be forwarded to the full Council prior to the Council taking final action on the Deep Sea Corals Amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Webinar and phone connection information, a detailed agenda, and any briefing materials will be posted at *www.mafmc.org* prior to the meeting. Background information and documents for the Deep Sea Corals Amendment can be found at: *http://www.mafmc.org/actions/msb/am16.*

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 13, 2015.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–08716 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD862**

### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR 43 assessment webinar for Gulf of Mexico Gray Triggerfish.

**SUMMARY:** The SEDAR assessment of the Gulf of Mexico Gray Triggerfish will consist of one in-person workshop and a series of webinars. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR Assessment webinar I will be held May 4, 2015 from 9 a.m. to 11 a.m. Eastern Time. The established time may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

**ADDRESSES:** The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:**

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from the In-person Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Panelists will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 13, 2015.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–08715 Filed 4–15–15; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0013, Exemptions From Speculative Limits

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from speculative limits.

**DATES:** Comments must be submitted on or before June 15, 2015.

**ADDRESSES:** You may submit comments, identified by ''Exemptions from Speculative Limits,'' OMB Control No. 3038–0013, by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

**FOR FURTHER INFORMATION CONTACT:** Hannah Ropp, Surveillance Analyst, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; phone: (202) 418–5228; fax: (202) 418–5507; email: *hropp@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.[1]

*Title:* Exemptions from Speculative Limits (OMB Control No. 3038–0013). This is a request for extension of a currently approved information collection.

*Abstract:* Section 4a(a) of the Commodity Exchange Act (''Act'') allows the Commission to set speculative limits in any commodity for future delivery in order to prevent excessive speculation. Certain sections of the Act and/or the Commission's regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

*Burden Statement:* The respondent burden for this collection is estimated to be 3 hours per response. These estimates include the time to locate the information related to the exemptions and to file necessary exemption paperwork.

*Respondents/Affected Entities:* Swap Dealers, Large Traders, and other entities affected by Rules 1.47 and 1.48 and part 150 of the Commission's regulations.

*Estimated number of respondents:* 9.

*Estimated total annual burden on respondents:* 48 hours.

*Frequency of collection:* 1–2 reports annually.

There are no capital costs or operating and maintenance costs associated with this collection.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: April 10, 2015.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2015–08706 Filed 4–15–15; 8:45 am]

**BILLING CODE 6351–01–P**

[1] This notice does not solicit comment on the proposed amendments to this collection that may result from the proposal titled Position Limits for Derivatives (78 FR 75680, Dec. 12, 2013). Comments on the Paperwork Reduction Act implications of the Position Limits for Derivatives proposal were solicited through the proposal itself, the comment period for which (as extended and reopened) closed on March 30, 2015.

[2] 17 CFR 145.9.

## DEPARTMENT OF EDUCATION

### Applications for New Awards; State Tribal Education Partnership Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education

**ACTION:** Notice.

### Overview Information

State Tribal Education Partnership Program (STEP) Notice inviting applications for new awards for fiscal year (FY) 2015.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.415A.

**DATES:**

*Applications Available:* April 16, 2015.

*Date of Pre-Application Webinar:* April 30, 2015.

*Deadline for Notice of Intent to Apply:* May 21, 2015.

*Deadline for Transmittal of Applications:* June 15, 2015.

*Deadline for Intergovernmental Review:* August 14, 2015.

*Deadline for Submission of Final Agreement:* March 31, 2016.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purposes of Program:* The purposes of this program are to: (1) Promote increased collaboration between tribal education agencies (TEAs) and the State educational agencies (SEAs) and local educational agencies (LEAs) that serve students from the affected tribes; and (2) build the capacity of TEAs to conduct certain administrative functions under certain Elementary and Secondary Education Act of 1965 (ESEA) formula grant programs for eligible schools, as determined by the TEA, SEA, and LEA.

*Priorities:* These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program (NFP), published in the **Federal Register** on March 4, 2015 (80 FR 11550).

*Absolute Priorities:* For FY 2015 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*Priority 1—Established TEAs.*

To meet this priority, a TEA must be an established TEA.

*Priority 2—TEAs with Limited Prior Experience.*

To meet this priority, a TEA with limited prior experience is, for any STEP competition, a TEA that does not meet the definition of an ''established TEA.''

*Requirements:* Applicants must meet the following requirements from the NFP:

*Schools and ESEA Formula Grant Programs Included in Project:*

(a) *Schools.* (1) Projects must include at least two eligible schools, at least one of which must be a public school.

(2) All schools included in the project must receive services or funds for the specific ESEA formula grant program(s) selected by the applicant.

(3) For projects that include one or more tribally controlled schools—

(i) The applicant TEA must include in its application evidence that it submitted a copy of the application to BIE; and

(ii) If the proposed project includes SEA-type functions with regard to the tribally controlled school, the TEA may be required by BIE to enter into an agreement with BIE, to be submitted to the Department at the same time as the final agreement.

(b) *ESEA Formula Grant Programs.* Projects must include at least one ESEA formula grant program that is State-administered.

*Preliminary Agreement:* An applicant must submit with its application for funding a signed preliminary agreement among the TEA, SEA, and LEA. Letters of support from an SEA or LEA will not meet this requirement and will not be accepted as a substitute.

The preliminary agreement must include:

(a) An explanation of how the parties will work collaboratively to:

(1) Administer selected ESEA formula grant programs in eligible schools; and

(2) Cooperate on administering other educational programs or services as agreed to by the parties.

(b) The primary ESEA formula grant program(s) for which the TEA will assume SEA-type or LEA-type administrative functions;

(c) A description of the primary SEA-type or LEA-type administrative functions that the TEA will assume;

(d) The training and other activities that the SEA or LEA, as appropriate, will provide for the TEA to gain the knowledge and skills needed to administer ESEA formula programs;

(e) The assistance that the TEA will provide to the SEA or LEA, as appropriate, to facilitate the project, such as cultural competence training;

(f) A statement concerning student data that—

(1) Acknowledges that access by the TEA to data on students who are tribal members is important to building the capacity of the TEA, and, depending on the project design, may be one of the factors the Secretary considers in determining whether a grantee has made substantial progress in achieving the goals and objectives of the project for the purpose of making continuation awards; and

(2) Commits the parties to making their best efforts to:

(i) Participate in training and technical assistance, provided by or through the Department, on the requirements of section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act, or FERPA) and on the possible ways in which the TEA could be provided access to tribal student data consistent with FERPA; and

(ii) Reach agreement on and include as part of the Final Agreement to be submitted during year 1 of the grant, a provision on data sharing that is consistent with FERPA, if data sharing is required by the project design;

(g) The names of at least one LEA and two or more eligible schools, at least one of which must be a public school, that are expected to participate in the project;

(h) An explanation of how the STEP funds will be used to build on existing activities or add new activities rather than replace tribal or other funds; and

(i) Signatures of the authorized representatives of the TEA, SEA, participating LEA(s), and any BIE-funded tribally controlled school that is included in the project.

*Final Agreement:* Each grantee must submit to the Department a final agreement by March 31, 2016. The final agreement must contain:

(a) All of the elements from the preliminary agreement, in final form;

(b) A timetable for accomplishing each of the objectives and activities that the parties will undertake;

(c) Goals of the project and measureable objectives towards reaching the goals; and

(d) The actions that the parties will take to sustain the relationships and activities established in the agreement after the project ends.

*ISDEAA Hiring Preference*:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

*Definitions:* The following definitions are from the NFP and apply to this competition:

*Cultural competency* means the use of culturally responsive education that takes into account a student's own cultural experiences, creates connections between home and school experiences, and uses the cultural

knowledge, prior experiences, and learning styles of diverse students to make learning more appropriate and effective.

*Eligible Indian tribe* means a federally recognized or a State-recognized tribe.

*Eligible school* means a school that is included in the applicant's preliminary and final agreements, and that is:

(a) A public school, including a public charter school, or

(b) A BIE-funded tribally controlled school.

*Established TEA* means, for purposes of this competition, a TEA that:

(a) Previously received a STEP grant, or

(b) Has an existing prior relationship with an SEA or LEA as evidenced by a prior written agreement between the TEA and SEA or LEA, and meets two or more of the following criteria:

(i) Has an existing tribal education code;

(ii) Has administered at least one education program (for example, a tribally operated preschool or afterschool program) within the past five years; or

(iii) Has administered at least one Federal, State, local, or private grant within the past five years.

*ESEA formula grant program* means one of the following programs authorized under the ESEA, for which SEAs or LEAs receive formula funding:

(a) Improving Academic Achievement of the Disadvantaged (title I, part A);

(b) School Improvement Grants (section 1003(g));

(c) Migrant Education (title I, part C);

(d) Neglected and Delinquent State Grants (title I, part D);

(e) Improving Teacher Quality State Grants (title II, part A);

(f) English Learner Education State Grants (title III, part A);

(g) 21st Century Community Learning Centers (title IV, part B); and

(h) Indian Education Formula Grants (title VII, part A).

**Note:** State-administered ESEA formula grant programs are the programs identified in paragraphs (a)–(g) of the definition of *ESEA formula grant program.* If an applicant chooses the Indian Education Formula Grants program (title VII, part A), which makes direct grants to LEAs, it must also choose at least one State-administered program listed in (a)–(g), as required by paragraph (b) of *Schools and ESEA Formula Grant Programs Included in Project,* in the *Requirements* section of this notice. Applicants can still choose SEA- or LEA-type functions for the State-administered ESEA formula grant.

*LEA-type function* means the type of activity that LEAs typically conduct, such as direct provision of educational services to students, grant implementation, school district curriculum development, staff professional development pursuant to State guidelines, and data submissions.

*SEA-type function* means the type of activity that SEAs typically conduct, such as overall education policy development, supervision and monitoring of school districts, provision of technical assistance to districts, statewide curriculum development, collecting and analyzing performance data, and evaluating programs.

*Tribal educational agency (TEA)* means the agency, department, or instrumentality of an eligible Indian tribe that is primarily responsible for supporting tribal students' elementary and secondary education, which may include early learning.

**Program Authority:** 20 U.S.C. 7451(a)(4).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The NFP published in the **Federal Register** on March 4, 2015 (80 FR 11550).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $1,950,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* Awards for a single TEA range from $150,000 to $330,000; awards for a consortium of TEAs range from $300,000 to $500,000.

*Estimated Average Size of Awards:* $390,000.

*Maximum Award:* We will reject any application from a single TEA that proposes a budget exceeding $330,000 for a single budget period of 12 months, or from a consortium of TEAs that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 4–6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* (a) A TEA that is from an eligible Indian tribe and authorized by its tribe to administer this program; or (b) a consortium of such TEAs.

To be eligible for an award, an applicant must include, as a part of its application, certification by the eligible Indian tribe that the applicant is the agency, department, or instrumentality of the eligible Indian tribe that is primarily responsible for supporting the elementary and secondary education of the tribe's students.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* (a) To be eligible for an award, a TEA must submit a preliminary agreement, signed by an SEA and at least one LEA, with its application.

(b) Projects funded under this competition must budget funds for a representative from the TEA, a representative from the SEA, and a representative from at least one LEA to attend a two-day Project Director's meeting in the Washington, DC area during each year of the project period.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Shahla Ortega, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue SW., Room 3W223, Washington, DC 20202. Telephone: (202) 453–5602 or by email: *shahla.ortega@ed.gov.*

To obtain a copy of the application package via the Internet, use the following address: *http://www2.ed.gov/programs/step/index.html.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, the Assistant Secretary strongly encourages each potential applicant to notify us of their intent to submit an application for funding no later than May 21, 2015. To do so, please email *shahla.ortega@ed.gov* with the subject line ''Intent to Apply,'' and include the following information:

1. Applicant's name, mailing address, and phone number;
2. Contact person's name and email address;
3. Name of SEA; and
4. Whether the applicant intends to apply as a single TEA or a consortium of TEAs.

Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

Pre-Application Webinar: The Department intends to hold a pre-application webinar designed to provide technical assistance to interested applicants. Information about webinar times and instructions for registering are on the Department Web site at *http://www2.ed.gov/programs/STEP/index.html.*

Page Limit: The project narrative (Part IV) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the project narrative to no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

*Applications Available:* April 16, 2015.

*Date of Pre-Application Webinar:* April 30, 2015.

*Deadline for Notice of Intent to Apply:* May 21, 2015.

*Deadline for Transmittal of Applications:* June 15, 2015.

*Deadline for Submission of Final Agreement:* March 31, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* August 14, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under STEP, CFDA number 84.415A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for STEP at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.415, not 84.415A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W223, Washington, DC 20202. FAX: (202) 401–0606.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.415A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.415A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the NFP and from 34 CFR 75.210. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for Project* (Maximum 5 points). In determining the need for the proposed project, the Secretary considers the extent to which the goals and objectives in the preliminary agreement, including the TEA capacity-building activities, address identified educational needs of the Indian students to be served.

b. *Quality of the Project Design* (Maximum 35 points). In determining the quality of project design, the Secretary considers the following factors:

(i) The extent to which the proposed project would recognize and support tribal sovereignty. (5 points)

(ii) The extent to which the preliminary agreement defines goals, objectives, and outcomes of the proposed project that are likely to be achieved by the end of the project period. (10 points)

(iii) The extent to which the proposed project would build relationships and better communication among the TEA, SEA, and LEA, as well as families and communities, to the benefit of Indian students in the selected schools, including by enhancing the cultural competency of SEA and LEA staff. (10 points)

(iv) The extent to which the proposed project would enhance the capacity of the TEA to administer ESEA formula grants during the grant period and beyond. (10 points)

c. *Adequacy of Resources* (Maximum 5 points). In determining the adequacy of resources, the Secretary considers the extent to which the TEA has established, prior to developing the preliminary agreement, a relationship with either the SEA or an LEA that will enhance the likelihood of the project's success.

d. *Quality of the Management Plan* (Maximum 25 points). In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of the services, or others, as appropriate. (10 points)

**Note:** In addressing the third subpart of the Quality of the Management Plan selection criteria, applicants may want to consider describing the involvement of the SEA and LEA in the project, in addition to the input of other affected groups, as appropriate.

e. *Quality of Project Personnel* (Maximum 15 points). In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

(i) The extent to which the proposed project director has experience in education and in administering Federal grants. (5 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (5 points)

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in

practice among the recipients of those services. (5 points)

**Note:** Please note that section 7(b) of the Indian Self-Determination and Education Assistance Act requires that to the greatest extent feasible, a grantee must give to Indians preference and opportunities in connection with the administration of the grant, and give Indian organizations and Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

In addressing the third subpart of the Quality of Project Personnel selection criterion, applicants may want to consider including the context of training or professional development among all three entities—TEA, SEA, and LEA. For example, the SEA or LEA could provide training to TEA staff with regard to Federal grant administration, and the TEA could provide training to SEA and LEA staff with regard to cultural competence.

f. *Quality of Project Evaluation* (Maximum 15 points). In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies. (5 points)

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures:

(1) Number of TEA grantees that report increased collaboration among TEAs, SEAs, and LEAs.

(2) The number of SEA-type and LEA-type administrative functions for which the TEA grantees have assumed responsibility.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in developing the proposed project and identifying the method of evaluation. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W223, Washington, DC 20202–6450. Telephone: (202) 453–5602 or by email: *shahla.ortega@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System

at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2015.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2015–08681 Filed 4–15–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Methane Hydrate Advisory Committee

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, May 7, 2015, 12:45 p.m. to 1:00 p.m. (EDT)—Registration, 1:00 p.m. to 3:00 p.m. (EDT)—Meeting.

**ADDRESSES:** U.S. Department of Energy, Forrestal Building, Room 3G–043, 1000 Independence Ave. SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Lou Capitanio, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW., Washington, DC 20585. *Phone:* (202) 586–5098.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

*Tentative Agenda:* The agenda will include: Welcome and Introduction by the Designated Federal Officer; Committee Business; Report by the Chair regarding recommendations to the Secretary; Update on gas hydrate research activity including FY 2015 research initiatives and plans; Alaska update; Advisory Committee Discussion; and Public Comments, if any.

*Public Participation:* The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Lou Capitanio at the phone number listed above and provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Space is limited. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://energy.gov/fe/services/advisory-committees/methane-hydrate-advisory-committee*.

Issued at Washington, DC, on April 10, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015–08798 Filed 4–15–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 15–33–LNG]**

### Bear Head LNG Corporation and Bear Head LNG (USA), LLC; Application for Long-Term, Multi-Contract Authorization To Export Domestically Produced Natural Gas Through Canada to Non-Free Trade Agreement Countries After Liquefaction for a 25-Year Term

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on February 25, 2015, by Bear Head LNG Corporation and Bear Head LNG (USA), LLC (collectively, Bear Head),[1] requesting long-term, multi-contract authorization to export domestically produced natural gas as follows: (i) To export the natural gas by pipeline to Canada at the United States-Canada border (at a point near Calais, Maine, and St. Stephen, New Brunswick, respectively) on the Maritimes & Northeast (M&N) Pipeline in a volume of 440 billion cubic feet per year (Bcf/yr), or approximately 1.2 Bcf per day (Bcf/d);[2] (ii) to use approximately 42.4 Bcf/yr of the U.S.-sourced natural gas as feedstock in a Canadian natural gas liquefaction and export facility currently being developed by Bear Head within the Point Tupper/Bear Head Industrial Park near the town of Port Hawksbury, on the Straight of Canso, in Richmond County, Cape Breton, Nova Scotia, Canada (Project);[3] and (iii) to export a portion of the U.S.-sourced natural gas in the form of LNG in a volume equivalent to approximately 397.6 Bcf/yr of natural gas (1.1 Bcf/d) by vessel from Nova Scotia, Canada, to one or more countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries).[4] Only Bear Head's proposed export of LNG produced from U.S-sourced natural gas to non-FTA countries is subject to this Notice. Bear Head states that its proposed Project and LNG exports will not involve the construction of any facilities in the

[1] Bear Head states that Bear Head Corp. is a Canadian company incorporated pursuant to the laws of Nova Scotia, and that Bear Head (USA) is a Delaware limited liability company. Both have their principal place of business in Houston, Texas, and both are wholly-owned indirect subsidiaries of Liquefied Natural Gas Limited, a publicly listed Australian company based in Perth, Australia.

[2] Bear Head refers to this requested authorization as the ''NG Authorization.'' Bear Head states that the M&N Pipeline is operated by Maritimes & Northeast Pipeline, L.L.C. in the United States and by its Canadian pipeline affiliate, Maritimes & Northeast Pipeline Limited Partnership, in Canada.

[3] *See* Application at 1 n.3 (''approximately 42.4 Bcf/y of the natural gas volume proposed to be exported will be consumed in Canada and not exported as LNG [liquefied natural gas]''); *id.* at 12 (description of project).

[4] In the Application, Bear Head also requests authorization to export U.S.-sourced LNG to any nation that currently has, or in the future may enter into, a FTA requiring national treatment for trade in natural gas (FTA countries). DOE/FE will review Bear Head's request for a FTA export authorization separately pursuant to NGA § 3(c), 15 U.S.C. 717b(c). Additionally, on January 23, 2015, Bear Head filed a separate application with DOE/FE requesting authorization to access certain Canadian natural gas supplies, in a volume up to 250 Bcf/yr, that it states must flow through the United States due to the configuration of existing North American pipeline infrastructure. Application at 2–3 n.7. Bear Head refers to this requested authorization as the ''Canadian NG authorization.'' *Id.* That application is pending before DOE/FE in FE Docket No. 15–14–NG, and is the subject of a notice being published in the **Federal Register** concurrently with this Notice.

United States giving rise to cognizable effects under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.,* but may require modification and expansion of the M&N Pipeline system, which Bear Head expects will interconnect with the Project's proposed pipeline header near Goldboro, Nova Scotia, for the delivery of natural gas feedstock to the Project.[5] Bear Head requests the authorization for a 25-year term to commence on the earlier of the date of first export or 10 years from the date the authorization is granted. Bear Head seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Bear Head's Application, posted on the DOE/FE Web site at: *https://cms.doe.gov/sites/prod/files/2015/04/f21/15_33_lng_fta_nfta.pdf.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, June 15, 2015.

**ADDRESSES:**

*Electronic Filing of Comments Using Online Form: http://www.energy.gov/node/1044731/.*

*Electronic Filing of Protests, Motions To Intervene, and Notices of Intervention: fergas@hq.doe.gov.*

*Regular Mail:* U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

*Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.):* U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine Moore or Benjamin Nussdorf, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers or Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397; (202) 586–9793.

**SUPPLEMENTARY INFORMATION:**

## DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[6] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014).[7]

Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

## Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Due to the complexity of the issues raised by the Applicant, interested parties will be provided 60 days from the date of publication of this Notice in which to submit their comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, as supplemented below.

Comments may be submitted using one of the following supplemental methods: (1) Submitting the comments using the online form at *http://www.energy.gov/node/1044731/*; (2) mailing an original and three paper copies of the comments to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the comments to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**. For administrative efficiency, DOE/FE prefers comments to be filed electronically using the online form (method 1). However, for those commenters lacking access to the Internet, comments may be filed in hard copy using one of the other two methods identified above. All filings must include a reference to FE Docket No. 15–33–LNG.

Protests, motions to intervene, and notices of intervention (including those consolidated with comments) may be submitted using one of the following supplemental methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–33–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–33–LNG. **Please note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please

[5] *See* Application at 4–5 & n.18.

[6] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[7] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater than 50 pages in length must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on April 10, 2015.

**John A. Anderson,**

*Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.*

[FR Doc. 2015–08760 Filed 4–15–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, May 13, 2015, 6:00 p.m.

**ADDRESSES:** Shoney's Restaurant Meeting Room, 204 S. Illinois Ave., Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

- Welcome and Announcements
- City of Oak Ridge Perspectives on the Oak Ridge Environmental Management Program
- Public Comment Period
- Call for Additions to the Agenda
- Other Business
- Adjourn

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

Issued at Washington, DC, on April 10, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015–08805 Filed 4–15–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 15–14–NG]**

### Bear Head LNG Corporation and Bear Head LNG (USA), LLC; Application for Long-Term, Multi-Contract Authorization To Import Natural Gas From, for Subsequent Export to, Canada for a 25-Year Term

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on January 23, 2015, by Bear Head LNG Corporation and Bear Head LNG (USA), LLC (collectively, Bear Head),[1] requesting long-term, multi-contract authorization to import up to 250 billion cubic feet per year (Bcf/yr) of natural gas (approximately 0.7 Bcf per day (Bcf/d)) by pipeline from Canada, for subsequent export by pipeline to Canada, for a 25-year term to commence on the earlier of the date of first export or 10 years from the date the authorization is granted. Bear Head states that this requested authorization is necessary to access Canadian gas supplies that must be imported by pipeline from Canada to the United States to reach demand markets in Nova Scotia through the Maritimes & Northeast (M&N) Pipeline. Bear Head further states that this Application is being filed with DOE/FE in connection with the development of a proposed Canadian natural gas liquefaction and export facility currently being developed by Bear Head within the Point Tupper/Bear Head Industrial Park near the town of Port Hawksbury, on the Straight of Canso, in Richmond County, Cape Breton, Nova Scotia, Canada (Project). Bear Head states that the Canadian natural gas subject to the requested authorization will be used as feedstock for the production of liquefied natural gas (LNG) at the Project.[2] Bear

[1] Bear Head states that Bear Head Corp. is a Canadian company incorporated pursuant to the laws of Nova Scotia, and that Bear Head (USA) is a Delaware limited liability company. Both have their principal place of business in Houston, Texas, and both are wholly-owned indirect subsidiaries of Liquefied Natural Gas Limited, a publicly listed Australian company based in Perth, Australia.

[2] *See* Application at 6. On February 25, 2015, Bear Head filed a separate application with DOE/FE requesting long-term, multi-contract

Head seeks to import and export this Canadian natural gas on its own behalf and as agent for other entities who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Bear Head's Application, posted on the DOE/FE Web site at: *http://energy.gov/sites/prod/files/2015/01/f19/15_14_ng_Bear_Head.pdf*.

Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, June 15, 2015.

**ADDRESSES:**

*Electronic Filing of Comments Using Online Form: http://www.energy.gov/node/1045041/.*

*Electronic Filing of Protests, Motions to Intervene, and Notices of Intervention: fergas@hq.doe.gov.*

*Regular Mail:* U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

*Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.):* U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine Moore or Benjamin Nussdorf, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers or Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397; (202) 586–9793.

**SUPPLEMENTARY INFORMATION:**

## DOE/FE Evaluation

Bear Head asserts that DOE/FE should grant the requested authorization under section 3(c) of the NGA, 15 U.S.C. 717b(c), because Canada is a nation with which the United States has a FTA requiring national treatment for trade in natural gas.[3] According to Bear Head, however, ''[t]he Project is proposed for the purpose of exporting North American LNG to foreign markets.''[4] Therefore, DOE/FE requests comment on whether section 3(c) of the NGA or section 3(a) of the NGA, 15 U.S.C. 717b(a), provides the appropriate standard for review of the Application. Parties that may oppose this Application may address this issue in their comments and/or protests, as well as any other issues deemed relevant to the Application.

## Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Due to the complexity of the issues raised by the Applicant, interested parties will be provided 60 days from the date of publication of this Notice in which to submit their comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, as supplemented below.

Comments may be submitted using one of the following supplemental methods: (1) Submitting the comments using the online form at *http://www.energy.gov/node/1045041/*; (2) mailing an original and three paper copies of the comments to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the comments to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**. For administrative efficiency, DOE/FE prefers comments to be filed electronically using the online form (method 1). However, for those commenters lacking access to the Internet, comments may be filed in hard copy using one of the other two methods identified above. All filings must include a reference to FE Docket No. 15–14–NG.

Protests, motions to intervene, and notices of intervention (including those consolidated with comments) may be submitted using one of the following supplemental methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–14–NG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–14–NG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater than 50 pages in length must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

authorization to export domestically produced natural gas as follows: (i) To export the natural gas by pipeline to Canada at the United States-Canada border (at a point near Calais, Maine, and St. Stephen, New Brunswick, respectively) on the M&N Pipeline in a volume of 440 Bcf/yr of natural gas (1.2 Bcf/d); (ii) to use approximately 42.4 Bcf/yr of the U.S.-sourced natural gas as feedstock in the Project; and (iii) to export a portion of the U.S.-sourced natural gas in the form of LNG in a volume equivalent to approximately 397.6 Bcf/yr of natural gas (1.1 Bcf/d) by vessel from Nova Scotia, Canada, to one or more countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries). That application is pending before DOE/FE in FE Docket No. 15–33–LNG, and is the subject of a notice being published in the **Federal Register** concurrently with this Notice. *See also infra* at 3 (DOE/FE Evaluation).

[3] *See* Application at 2–3.

[4] *Id.* at 4–5; *see also id.* at 2 n.6 (''Once constructed, the Project will be capable of receiving, processing and liquefying natural gas . . . and loading LNG onto ocean-going vessels for delivery to export markets.''). *See also supra* at 2 n.2.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on April 10, 2015.

**John A. Anderson,**

*Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.*

[FR Doc. 2015–08752 Filed 4–15–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, May 13, 2015, 2:00 p.m.–4:00 p.m.

**ADDRESSES:** NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

*Purpose of the Waste Management (WM) Committee:* The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

*Tentative Agenda:*

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from April 8, 2015
- Old Business
  - Consideration and Action on Draft Recommendation 2015–04 ''Fiscal Year 2017 Project Prioritization''
- New Business
- Update from Executive Committee
- Update from DOE
- Presentation by DOE
  - ''Groundwater Periodic Monitoring Reports''
- Public Comment Period
- Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on April 10, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015–08811 Filed 4–15–15; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5066–001]**

### Charles L. Woodman; Kinky Creek Operating Company; Notice of Transfer of Exemption

1. By letter filed March 30, 2015, Charles L. Woodman informed the Commission that the exemption from licensing for the Darwin Ranch Project, FERC No. 5066, originally issued December 1, 1981,[1] has been transferred to the Kinky Creek Operating Company. The project is located on Kinky Creek, a tributary to the Gros Ventre River in Teton County, Wyoming. The transfer of an exemption does not require Commission approval.

2. Kinky Creek Operating Company is now the exemptee of the Darwin Ranch Project, FERC No. 5066. All correspondence should be forwarded to: Ms. Kathy Bole, Kinky Creek Operating Company, 19 7th Avenue, San Francisco, CA 94118.

Dated: April 6, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–08688 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 17 FERC ¶ 62,322, Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less (1981).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL15–56–000]**

### City of Burbank, California; City of Glendale, California v. Los Angeles Department of Water and Power; Notice of Complaint

Take notice that on April 3, 2015, pursuant to sections 211A, 212, 307, 308, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824i, 824j–k, 825f, 825g, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, the City of Burbank California and the City of Glendale, California (Complainants) filed a formal complaint against the City of Los Angeles, California's Department of Water and Power (Respondent), alleging, that the Respondent's modified transmission tariff fails to meet the comparability and non-discrimination requirements of the FPA section 211A, as more fully explained in the complaint.

The Complainants certifies that a copy of the complaint was served on the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 23, 2015.

Dated: April 6, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–08689 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP15–859–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) rate filing per 154.204: 04/08/15 Capacity Release Index Pricing Supporting Publication/ Tariff Clean Up to be effective 5/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5069.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–860–000.
*Applicants:* Questar Pipeline Company.
*Description:* § 4(d) rate filing per 154.204: Statement of Negotiated Rates, Version 10.0.0 to be effective 4/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5080.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–861–000.
*Applicants:* Questar Pipeline Company.
*Description:* § 4(d) rate filing per 154.204: QPC Cleanup 2015 to be effective 5/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5092.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–862–000.
*Applicants:* White River Hub, LLC.
*Description:* § 4(d) rate filing per 154.204: Cleanup to be effective 5/8/ 2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5101.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–863–000.
*Applicants:* Questar Overthrust Pipeline Company.
*Description:* § 4(d) rate filing per 154.204: QOPC Cleanup Filing to be effective 5/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5121.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–864–000.
*Applicants:* Paiute Pipeline Company.
*Description:* § 4(d) rate filing per 154.204: Non-conforming TSAs—Rate Case to be effective 4/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5132.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–865–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Annual Report of Operational Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5143.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–866–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Annual Report of Interruptible Transportation Revenue Sharing of Cameron Interstate Pipeline, LLC.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5144.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–867–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Annual Report of Penalty Revenues of Cameron Interstate Pipeline, LLC.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5147.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–868–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Annual Report of Transportation Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5150.
*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15–869–000.
*Applicants:* Questar Southern Trails Pipeline Company.
*Description:* § 4(d) rate filing per 154.204: QSTP Cleanup Filing to be effective 5/8/2015.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5174.
*Comments Due:* 5 p.m. ET 4/20/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 9, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08747 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ15–12–000]**

### Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on April 6, 2015, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Oncor Tex-La Tariff Rate Changes, Effective March 20, 2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 27, 2015.

Dated: April 9, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08710 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC15–118–000.
*Applicants:* Rising Tree Wind Farm LLC, Rising Tree Wind Farm II LLC.
*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Rising Tree Wind Farm LLC, et. al.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5153.
*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* EC15–119–000.
*Applicants:* American Transmission Company LLC.
*Description:* Application for Authority to Acquire Transmission Facilities of American Transmission Company LLC.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5208.
*Comments Due:* 5 p.m. ET 5/1/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2570–017.
*Applicants:* Shady Hills Power Company, L.L.C.
*Description:* Amendment to December 16, 2014 Triennial Market Power Analysis of Shady Hills Power Company, L.L.C.
*Filed Date:* 4/3/15.
*Accession Number:* 20150403–5071.
*Comments Due:* 5 p.m. ET 4/24/15.

*Docket Numbers:* ER14–2956–006.
*Applicants:* Hoopeston Wind, LLC.
*Description:* Notice of Non-Material Change in Status of Hoopeston Wind, LLC.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5121.
*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–527–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Compliance filing per 35: Errata to Compliance Filing in Docket No. ER15–527–000 to be effective 2/2/2015.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5150.
*Comments Due:* 5 p.m. ET 5/1/15

*Docket Numbers:* ER15–1487–000.
*Applicants:* PJM Interconnection, L.L.C., Virginia Electric and Power Company.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): Dominion submits revisions to OATT Att H–16A re: prepayments to be effective 1/1/2014.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5180.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1488–000.
*Applicants:* PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): PPL submits revisions to OATT Attachment H–8G re PBOP expense to be effective 6/1/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5196.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1489–000.
*Applicants:* PacifiCorp.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): BPA Construction Agreement (Summer Lake CB & SCADA) to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5206.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1490–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–10_ Attachment O Reconciliation Filing to be effective 6/1/2015.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5078.
*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–1491–000.
*Applicants:* El Paso Electric Company.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): Concurrence of EPE to APS Service Agreement No. 193, Amendment 3 to be effective 2/11/2015.
*Filed Date:* 4/10/15.
*Accession Number:* 20150410–5137.
*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–1492–000.
*Applicants:* El Paso Electric Company.
*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): Concurrence of EPE to APS Service Agreement Nos. 190,

192, 194, and 195 to be effective 3/11/2015.

*Filed Date:* 4/10/15.

*Accession Number:* 20150410–5146.

*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–1493–000.

*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.

*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): FAP to be effective 6/12/2015.

*Filed Date:* 4/10/15.

*Accession Number:* 20150410–5182.

*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–1494–000.

*Applicants:* Convergent Energy and Power LLC.

*Description:* Initial rate filing per 35.12 Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority to be effective 6/15/2015.

*Filed Date:* 4/10/15.

*Accession Number:* 20150410–5197.

*Comments Due:* 5 p.m. ET 5/1/15.

*Docket Numbers:* ER15–1495–000.

*Applicants:* Alabama Power Company.

*Description:* Section 205(d) rate filing per 35.13(a)(2)(iii): Clay Solar LGIA Filing to be effective 3/27/2015.

*Filed Date:* 4/10/15.

*Accession Number:* 20150410–5253.

*Comments Due:* 5 p.m. ET 5/1/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 10, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08748 Filed 4–15–15; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Availability of the Draft Environmental Impact Statement for the Proposed Lake Charles Liquefaction Project

| | |
|---|---|
| Trunkline Gas Company, LLC | Docket Nos. CP14–119–000. |
| Lake Charles LNG Company, LLC | CP14–120–000. |
| Lake Charles LNG Export Company, LLC | CP14–122–000. |

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Lake Charles Liquefaction Project, proposed by Trunkline Gas Company, LLC (Trunkline), Lake Charles LNG Company, LLC, and Lake Charles LNG Export Company, LLC in the above-referenced dockets. Trunkline requests authorization to construct, install, and operate new natural gas pipeline and compression facilities and meter stations; modify certain existing pipeline facilities; modify certain compressor and meter stations; and abandon one compressor unit in the states of Arkansas, Mississippi, and Louisiana (collectively referred to as the Non-Liquefaction Facilities). Lake Charles LNG Company, LLC and Lake Charles LNG Export Company, LLC (collectively referred to as Lake Charles LNG) jointly request authorization to site, construct, and operate new liquefaction facilities adjacent to an existing liquefied natural gas (LNG) terminal located in Calcasieu Parish, Louisiana, and to construct and operate certain facility modifications at the existing LNG terminal. The new liquefaction facilities would have a design production capacity of 16.45 million metric tons of LNG per annum.

Lake Charles LNG Company, LLC also requests authorization to abandon certain terminal facilities previously certificated under the Natural Gas Act (NGA) section 7; abandon services provided under its existing FERC Gas Tariff and Certificates of Public Convenience and Necessity; cancel its FERC Gas Tariff, including all rate schedules therein; and convert such certificated facilities and operation under NGA section 3, so that the entirety of the company's facilities and operations are authorized solely under NGA section 3.

The draft EIS assesses the potential environmental effects of construction and operation of the Lake Charles Liquefaction Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project would have some adverse environmental impacts; however, most of these impacts would be reduced to less-than-significant levels with the implementation of Lake Charles LNG's and Trunkline's proposed mitigation and the additional measures recommended in the draft EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Fish and Wildlife Service, and U.S. Department of Transportation participated as cooperating agencies in the preparation of the draft EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by a proposal and participate in the National Environmental Policy Act analysis. Although the cooperating agencies provided input on the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective records of decision or determinations for the project.

The draft EIS addresses the potential environmental effects of the construction, modification, and operation of the following project facilities:

- Three liquefaction trains, each with a production capacity sufficient to produce 5.48 million metric tons per annum of LNG for export (each train would contain metering and gas treatment facilities, liquefaction and refrigerant units, safety and control systems, and associated infrastructure);
- modifications and upgrades at the existing LNG terminal;
- about 0.5 mile of 48-inch-diameter feed gas line to supply natural gas to the liquefaction facility from existing gas transmission pipelines;
- approximately 17.9 miles of 24- and 42-inch-diameter natural gas pipeline;
- a new 98,685 horsepower (hp) compressor station;
- abandonment of a 3,000-hp compressor unit, installation of a 15,002-hp unit, and piping modifications at one existing compressor station;
- modification of station piping at three other existing compressor stations;
- five new meter stations and modifications and upgrades of five existing meter stations;
- modification of certain existing pipeline facilities; and

• construction of miscellaneous auxiliary and appurtenant facilities.

The FERC staff mailed copies of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; other interested individuals and non-governmental organizations; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a compact disk version. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of hardcopies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before June 1, 2015.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number(s) (CP14–119–000, CP14–120–000, and CP14–122–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project.

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type.

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend a public comment meeting its staff will conduct in the project area to receive comments on the draft EIS. We encourage interested groups and individuals to attend and present oral comments on the draft EIS. A transcript of the meeting will be available for review in eLibrary under the project docket numbers. The meeting will begin at 7:00 p.m. and is scheduled as follows:

| Date | Location |
|---|---|
| May 7, 2015 ... | Holiday Inn Lake Charles—W. Sulphur, 330 Arena Road, Sulphur, Louisiana 70665, (337) 527–0858. |

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (Title 18 Code of Federal Regulations Part 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

**Questions?**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number(s) excluding the last three digits in the Docket Number field (*i.e.,* CP14–119, CP14–120, and CP14–122). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 10, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–08740 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

[1] See the previous discussion on the methods for filing comments.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL15–59–000]**

### Navopache Electric Cooperative, Inc.; Notice of Petition for Declaratory Order

Take notice that on April 8, 2015, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Navopache Electric Cooperative, Inc. (Navopache), filed a petition for declaratory order requesting that the Commission confirm Navopache's rights to purchase power and energy to serve its customer from suppliers other than the Public Service Company of New Mexico without anticompetitive limitations on the amount of such purchases, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on May 8, 2015.

Dated: April 10, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–08741 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

*Take notice that the Commission received the following electric corporate filings:*

*Docket Numbers:* EC15–116–000.
*Applicants:* Lone Valley Solar Park I, LLC, Lone Valley Solar Park II, LLC.
*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for expedited action of Lone Valley Solar Park I, LLC, et. al.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5202.
*Comments Due:* 5 p.m. ET 4/29/15.

*Docket Numbers:* EC15–117–000.
*Applicants:* BHE Geothermal, LLC, Saranac Power Partners, LP,TIFD III–A, Inc.
*Description:* Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Confidential Treatment of BHE Geothermal, LLC, et al.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5206.
*Comments Due:* 5 p.m. ET 4/29/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2719–021; ER10–2718–021; ER10–2633–019; ER10–2570–019; ER10–2717–019; ER10–3140–018; ER13–55–009.
*Applicants:* East Coast Power Linden Holding, LLC, Cogen Technologies Linden Venture, LP, Birchwood Power Partners, LP, Shady Hills Power Company, LLC, EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, LP.
*Description:* Notice of Non-Material Change in Status of the GE Companies.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5149.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER12–1308–006.
*Applicants:* Palouse Wind, LLC.
*Description:* Notice of Non-Material Change in Status of Palouse Wind, LLC.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5096.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1146–001.
*Applicants:* Bucksport Mill, LLC.
*Description:* Compliance filing per 35: Bucksport Mill, LLC supplement 2015–04–09 to be effective 4/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5098.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1147–001.
*Applicants:* Bucksport Generation, LLC.
*Description:* Compliance filing per 35: Bucksport Generation, LLC supplement 2015–04–09 to be effective 4/7/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5099.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1476–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Blaine TX SA 785, 786, & 787 to be effective 3/1/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5001.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1477–000.
*Applicants:* Illinois Municipal Electric Agency.
*Description:* Waiver Request of the Illinois Municipal Electric Agency.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5216.
*Comments Due:* 5 p.m. ET 4/29/15.

*Docket Numbers:* ER15–1478–000.
*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
*Description:* Tariff Withdrawal per 35.15: Cancellation of Agreement No. 1823 between NiMo and Athens to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5063.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1479–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09_SA 2773 ATC-Adams-Columbia Common Facilities Agreement to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5102.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1480–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09_SA 2774 ATC-City of Cedarburg Common Facilities Agreement to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5105.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1481–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09_SA 2776 ATC-Village of Prairie du Sac CFA to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5106.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1482–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09_SA 2777 ATC-City of Wisconsin Rapids CFA to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5107.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1483–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09_SA 2775 ATC-Marshfield Common Facilities Agreement to be effective 6/9/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5116.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1484–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015–04–09 Q1 Tariff Clean up Filing to be effective 4/10/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5139.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1485–000.
*Applicants:* PJM Interconnection, LLC, Monongahela Power Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): PJM and Monongahela Power submit Revised Service Agreement No. 3513 (HREA) to be effective 5/1/2015.
*Filed Date:* 4/9/15.
*Accession Number:* 20150409–5155.
*Comments Due:* 5 p.m. ET 4/30/15.

*Docket Numbers:* ER15–1486–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4113, Queue No. T182 to be effective 3/10/2015.
*Filed Date:* 4/9/15.

*Accession Number:* 20150409–5179.
*Comments Due:* 5 p.m. ET 4/30/15.

*Take notice that the Commission received the following public utility holding company filings:*

*Docket Numbers:* PH15–14–000.
*Applicants:* Consolidated Edison, Inc.
*Description:* Consolidated Edison, Inc. submits FERC 65–B Material Change in Facts of Waiver Notification.
*Filed Date:* 4/8/15.
*Accession Number:* 20150408–5215.
*Comments Due:* 5 p.m. ET 4/29/15.

*Take notice that the Commission received the following qualifying facility filings:*

*Docket Numbers:* QF15–616–000.
*Applicants:* CCI U.S. Asset Holdings, LLC.
*Description:* Form 556 of CCI U.S. Asset Holdings, LLC [CCI San Juan,LLC] under QF15–616.
*Filed Date:* 4/6/15.
*Accession Number:* 20150406–5199.
*Comments Due:* Non Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 9, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–08709 Filed 4–15–15; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9926–37–OEI; EPA–HQ–OEI–2014–0758]**

## Establishment of a New System of Records Notice for the Emergency Management Portal—Field Readiness Application (EMP–FR)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER), Office of Emergency Management (OEM) is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The EPA is implementing the Emergency Management Portal—Field Readiness Application (EMP–FR) which will contain information used by the Agency to (1) track and manage training and certifications for Agency emergency management and response personnel and those subject to Agency safety, health, and environmental management training and medical monitoring requirements; (2) contact EPA staff who are members of the Response Support Corps (RSC) in off-hours when they are needed to be sent to an emergency response incident or to contact an emergency point of contact in case of injury to the RSC member while working at an incident; and (3) respond to requests for statistical compilations of such information made by the Office of Management and Budget, the Department of Labor and the Department of Homeland Security.

**DATES:** Persons wishing to comment on this system of records notice must do so by May 26, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2014–0758, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* 202–566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OEI–2014–0758. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** Joan Karrie, Office of Solid Waste, Office of Emergency Management, Resource Management Division, USEPA Headquarters, MC 5104A, WJC North Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, telephone number (202) 564–9469.

**SUPPLEMENTARY INFORMATION:**

### General Information

EPA plans to create a Privacy Act system of records for the Emergency Management Portal—Field Readiness Application (EMP–FR). EMP–FR will be

used to track various items of concern to OEM, the Agency's Emergency Management and Response community; and the Agency's Safety, Health and Environmental Management community.

EMP–FR contains training and certification records for EPA employees (training taken, training required, certifications received and certifications required.) Additional fields for Response Support Corps (RSC) members include emergency response experience and workgroup membership. RSC members may also have entered personal and emergency contact name and address information (home address; personal email; home and cell phone numbers; emergency contact name, relationship and phone numbers). As this information is retrievable using search criteria that identifies an individual, including the person's name, email address and EPA LAN user ID, it is considered non-sensitive personally identifiable information (PII).

As specified by law and an EPA Order, the Agency's Occupational Medical Surveillance Program (OMSP) provides for baseline, exit and periodic health evaluations to ensure, to the extent feasible, that EPA employees subject to extraordinary physical demands or hazardous exposures have not suffered adverse health effects. The employee data about this program that are managed in EMP–FR include only the date that an occupational medical review was conducted and the date by which the next review is required. No specifics of employee health, exposures, or other medical confidential information are included in EMP–FR.

The EMP–FR application is owned and managed by the EPA's Office of Solid Waste and Emergency Response (OSWER), Office of Emergency Management (OEM). It is hosted by the Office of Environmental Information (OEI), Office of Technology Operations and Planning (OTOP), National Computer Center (NCC) located at Research Triangle Park, NC. EMP–FR is accessible through the Internet, with identity and access management handled by OEI's Web Application Management software.

EMP–FR is available to all EPA employees by default, although targeted to the Emergency Management and Health and Safety personnel in particular. Internal and external trusted partners can be given access with the consent of an EPA point of contact. Each employee can see and edit his/her own record. Supervisors can view records of their employees. Emergency Management and Safety and Health program managers and, according to stated protocols, other EPA employees and their delegates may be given rights to manage/edit other employee records as required. Access to the parallel reporting software, the Emergency Management Business Intelligence (EMBI)—FR tool, is managed separately but with similar protocols.

Dated: April 8, 2015.

**Ann Dunkin,**

*Chief Information Officer.*

## EPA–70

### SYSTEM NAME:

Emergency Management Portal—Field Readiness Application (EMP—FR)

### SYSTEM LOCATION:

The system is located at the EPA's Office of Environmental Information, Office of Technology Operations and Planning, National Computing Center, Research Triangle Park, NC 27711.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers current and former EPA employees, grantees, interns and staff of other federal agencies posted at the EPA who are members of the emergency management and response community and/or who are subject to the EPA's health and safety training requirements. The emergency management and response community includes on scene coordinators, removal managers, RSC members and coordinators and other field personnel. Other EPA employees that are subject to health and safety training requirements include inspectors, special agents and enforcement officers.

### CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

- Personal and emergency contact information for the EPA RSC volunteers:
  - Home address, personal email, home and cell phone numbers as well as emergency contact name, relationship and phone numbers.
- Certification and training information for emergency response personnel and members of the EPA's health and safety community; Incident Command System training and certifications for the response personnel; health and safety training and certifications required for other EPA personnel:
  - Training taken, training required, certifications received and certifications required.
  - For RSC members, additional fields include emergency response experience and workgroup membership.
- As specified by law and EPA Order, the Agency's Occupational Medical Surveillance Program (OMSP) provides for baseline, exit and periodic health evaluations to ensure, to the extent feasible, that EPA employees subject to extraordinary physical demands or hazardous exposures have not suffered adverse health effects. The employee data about this program that are managed in EMP–FR include only the date that an occupational medical review was conducted and the date by which the next review is required. No specifics of employee health, exposures, or other medical confidential information are included in EMP–FR.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

CERCLA section 105 (National contingency plan; preparation, contents, etc.); EPCRA section 305 (Emergency training and review of emergency systems); EPA Order 1440.2 (partial list: Occupational Safety and Health Act of 1970 and E.O. 12196, Occupational Health and Safety Programs for Federal Employees); EPA Order 1460.1 (partial list: *29 U.S.C. 655, section 6,* and *29 U.S.C. 668, section 19,* Occupational Safety and Health Act of 1970 and *section 501* of the Rehabilitation Act of 1973, as amended). Purposes(s): Personal and Emergency Contact Information is used by line supervisors and managers of the RSC Program (1) to contact the RSC member in off-hours when he/she is needed to deploy to an incident and (2) in case of injury to the RSC member while deployed at an incident. Emergency planning, management and response-related training and certification information is used by individuals and managers of the various emergency management and response programs across the Agency to track required emergency response training.

Safety and health-related training and certification information is used by individuals and managers of the safety, health and environmental management program across the Agency to track required safety, health and environmental management training and medical monitoring data.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

General routine uses A, D, E, F, G, H, K and L apply to this system. Records may also be disclosed to home-agency supervisors of non-EPA federal employees.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

- Storage: Data are stored on in a computer database on a database server.
- Retrievability: Personally identifiable information (PII) can be

retrieved by name and EPA personnel identification number. Searches by training or certification name can also be used to access user records.

• Safeguards: Access to EMP by external trusted partners, such as state employees, other federal employees and contractors as well as internal contractors, grantees, interns and non-EPA federal employees must be requested through OEI's Web Access Management process and must be approved by the requestor's EPA point of contact. In addition, requestor's EPA point of contact must explain and approve all read/edit access to the EMP–FR application. Access is then granted via the EMP Help Desk data managers. Those with edit rights to profiles other than their own, have rights granted individually through the EMP Help Desk in accordance with procedures determined by the various field readiness user community program managers such as the RSC project manager; the National Incident Management System project manager and the Safety, Health and Environmental Management Division of the Office of Administration and Resources Management. Access to the personal and emergency contact information is limited to the person himself/herself; the person's supervisor, as listed in EMP–FR; and the person's organizational RSC Coordinators and their specific designees. This access is managed through the standard EMP database security and policies.

• Retention and Disposal: An EMP–FR records schedule is currently under development.

System Manager(s) and Address: Christopher Burgess, Office of Solid Waste and Emergency Response, Office of Emergency Management, Resource Management Division, USEPA, MC 5104A, WJC North, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Notification Procedure: Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the EPA Freedom of Information Act Office, Attn: Privacy Act Officer, MC 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Record Access Procedure: Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.* driver's license, military identification card, employee badge or identification card and, if necessary, proof of authority). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

Contesting Record Procedure: Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

Record Source Categories: Information will come from the individual, from program managers such as OARM/SHEMD and OSWER/OEM/PROD, and from training rosters.

System Exempted from Certain Provisions of the Act: None.

[FR Doc. 2015–08804 Filed 4–15–15; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0014; FRL–9925–44]**

## Product Cancellation Order for Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit III., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations are effective April 16, 2015.

**FOR FURTHER INFORMATION CONTACT:** Janeese Hackley, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–1523; email address: *hackley.janeese@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request.

### III. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

| EPA registration No. | Product name | Chemical name |
|---|---|---|
| 060061–00139 | Kop-Coat Cooper Treat 80 | Copper carbonate, basic. |
| CA–050009 | Deadline Bullets | Metaldehyde. |
| CA–890001 | Durham Metaldehyde Granules 7.5 | Metaldehyde. |
| KY–100002 | Dual Magnum Herbicide | S-Metolachlor. |
| KY–110032 | Ridomil Gold SL | Metalaxyl-M. |
| MI–100003 | Scholar SC | Fludioxonil. |
| OR–030002 | Warrior Insecticide with Zeon Technology | Lambda-cyhalothrin. |
| OR–060010 | Mocap EC Nematicide-Insecticide | Ethoprop. |
| OR–060024 | Mocap EC Nematicide-Insecticide | Ethoprop. |
| OR–080027 | Axiom DF Herbicide | Metribuzin and Flufenacet. |
| OR–090003 | Mocap EC Nematicide-Insecticide | Ethoprop. |
| WA–000037 | Wakil XL | Fludioxonil, Metalaxyl-M and Cymoxanil. |
| WA–100007 | Graduate SC | Fludioxonil. |

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

| EPA company No. | Company name and address |
|---|---|
| 60061 | Kop-Coat, Inc., 3020 William Pitt Way, Pittsburg, PA 15238. |
| CA–050009 and CA–890001 | Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706. |
| KY–100002, KY–110032, MI–100003, OR–030002, WA–000037, WA–100007. | Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. |
| OR–060010, OR–060024, OR–080027, OR–090003 | Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. |

This cancellation order follows a notice of receipt of voluntary cancellation requests received from the registrants that issued in the **Federal Register** of June 11, 2014 (79 FR 33550) (FRL–9911–36)), and a correction notice issued in the **Federal Register** of July 16, 2014 (79 FR 41551) (FRL–9913–20) that removed two products that were inadvertently listed in the June 11, 2014 document. In the June 2014 document, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests.

## IV. Summary of Public Comments Received and Agency Response to Comments

The comment period closed on December 8, 2014. EPA received one comment. The comment did not contain information about any specific product cancellation request. For this reason, the Agency does not believe that the comment submitted during the comment period merits further review or a denial of the request for voluntary cancellation.

Further, the registrants did not withdraw their requests.

## V. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit III. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit III. are canceled. The effective date of the cancellations that are the subject of this order is April 16, 2015. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit III. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit III. until April 18, 2016, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit III. except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit III. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: April 3, 2015.

**Michael Goodis,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2015–08787 Filed 4–15–15; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[3060–1004]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before June 15, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Benish Shah, FCC, via email *PRA@fcc.gov* and to *Benish.Shah@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact *Benish.Shah@fcc.gov,* (202) 418–7866.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1004.

*Title:* Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 235 respondents; 565 responses.

*Estimated Time per Response:* 3.8 hours.

*Frequency of Response:* One time and then quarterly.

*Obligation to Respond:* Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 2,145 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The existing information collection is based on the Commission's regulatory authority pursuant to its regulatory responsibilities under the Omnibus Budget Reconciliation Act of 1993 (''OBRA–1993''), which added Section 309(j) to the Communications Act of 1934. Given that delays in compliance could impact the delivery of safety-of-life services to the public, it is imperative that the CMRS carriers be brought into compliance, required in the various orders, and that the reports and compliance plans be timely submitted by the carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2015–08674 Filed 4–15–15; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10014, Ameribank, Inc., Northfork, West Virginia

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Ameribank, Inc., Northfork, West Virginia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Ameribank, Inc. on September 19, 2008. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

On April 10, 2015, the FDIC published its Notice to All Interested Parties of the Termination of the Receivership of Ameribank, Inc., in the **Federal Register** (80 FR 19319). In that Notice, the location of Ameribank, Inc., was incorrectly identified as Northfolk, West Virginia. This Notice is to correct that error.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: April 13, 2015.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2015–08742 Filed 4–15–15; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** *Tuesday, April 21, 2015 at 10:00 a.m. and its Continuation on Thursday, April 23, 2015 at the Conclusion of the Open Meeting.*

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 52 U.S.C. 30109 (formerly 2 U.S.C. 437g). Matters concerning participation in civil actions or proceedings or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2015–08906 Filed 4–14–15; 4:15 pm]

BILLING CODE 6715–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 2015–08045) published on pages 18442 and 18443 of the issue for Wednesday, April 8, 2015.

Under the Federal Reserve Bank of San Francisco heading, the entry for Cathay Financial Holding Co., Ltd., Taipei, Taiwan, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Cathay Financial Holding Co., Ltd., Cathay Life Insurance Co., Ltd., Liang Ting Industrial Co., Ltd., Lin Yuan Investment Co., Ltd., Pai Hsing Investment Co., Ltd., Tung Chi Capital Co., Ltd., and Wan Ta Investment Co., Ltd., all in Taipei, Taiwan, and Wan Bao Development Co., Ltd.,* New Taipei, Taiwan; to acquire Conning Holdings Corp., Hartford, Connecticut, and thereby engage in financial and investment advisory activities, and agency transactional services for customer investments, pursuant to sections 225.28(b)(6) and (b)(7).

Comments on this application must be received by April 23, 2015.

Board of Governors of the Federal Reserve System, April 13, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–08713 Filed 4–15–15; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[CDC–2014–0013; Docket Number NIOSH–274]**

### Issuance of Final Guidance Publication

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of issuance of final guidance publication.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces the availability of the following publication: *''NIOSH Current Intelligence Bulletin 67: Promoting Health and Preventing Disease and Injury through Workplace Tobacco Policies''* [2015–113].

**ADDRESSES:** This document may be obtained at the following link: *http://www.cdc.gov/niosh/docs/2015-113/*.

**FOR FURTHER INFORMATION CONTACT:** Michelle Martin, NIOSH Division of Respiratory Disease Studies, 1095 Willowdale Road, Mailstop H–2900, Morgantown, WV 26505–2888. (304) 285–5734 (not a toll free number).

Dated: April 9, 2015.

**John Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2015–08737 Filed 4–15–15; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:* Immediate Disaster Case Management Intake Assessment (hardcopy and electronic versions).

*Title:* Immediate Disaster Case Management Intake Assessment.

*OMB No.:* 0970–NEW.

*Description:* Section 426 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5189d authorizes the Federal Emergency Management Agency (FEMA) and the U.S. Department of Health Services' Administration for Children and Families (ACF) to provide Immediate Disaster Case Management (IDCM) services under the federal Disaster Case Management Program (DCMP).

The use of the Electronic Case Management Record System (ECMRS) is aligned with Executive Order of the President 13589 and the memorandum to the Heads of Executive Departments and Agencies M–12–12 from the Office of Management and Budget to ''Promote Efficient Spending to Support Agency Operations.''

The primary purpose of the information collection pertains to ACF/OHSEPR's initiative to improve the intake process and delivery of case management services to individuals and households impacted by a disaster. Further, the information collection will be used to support ACF/OHSEPR's goal to quickly identify critical gaps, resources, needs, and services to support State, local and non-profit capacity for disaster case management and to augment and build capacity where none exists. All information gathered will be exclusively used to inform the delivery of disaster case management services and programmatic strategies and improvements.

*Respondents:* Individuals impacted by a disaster.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Burden hours per response | Total burden hours |
|---|---|---|---|---|
| IDCM Intake Assessment | 3,500 | 1 | 40 | 2,333 |

*Estimated Total Annual Burden Hours:* 2,333 hours or 140,000 minutes

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2015–08684 Filed 4–15–15; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0672]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by May 18, 2015.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0577. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Prominent and Conspicuous Mark of Manufacturers On Single-Use Devices (OMB Control Number 0910–0577)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Section 301 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250) amended section 502 of the FD&C Act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer.

Section 2(c) of the Medical Device User Fee Stabilization Act of 2005 (Pub. L. 109–43) amends section 502(u) of the FD&C Act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record.

The requirements of section 502(u) of the FD&C Act impose a minimal burden on industry. This section of the FD&C Act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 67 establishments that distribute approximately 427 reprocessed SUDs. Each response is anticipated to take 0.1 hours (6 minutes) resulting in a total burden to industry of 43 hours.

In the **Federal Register** of December 30, 2014 (79 FR 78445), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1] [2]

| Type of respondent | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Establishments listing fewer than 10 SUDs | 58 | 2 | 116 | 0.1 (6 minutes) | 12 |
| Establishments listing 10 or more SUDs | 9 | 34 | 306 | 0.1 (6 minutes) | 31 |
| Total | | | | | 43 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Numbers have been rounded.

Dated: April 13, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08749 Filed 4–15–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0449]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Sun Protection Factor Labeling and Testing Requirements and Drug Facts Labeling for Over-the-Counter Sunscreen Drug Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Sun Protection Factor (SPF) labeling and testing requirements for over-the-counter (OTC) sunscreen products containing specified ingredients and marketed without approved applications, and on compliance with Drug Facts labeling requirements for all OTC sunscreen products.

**DATES:** Submit either electronic or written comments on the collection of information by June 15, 2015.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### SPF Labeling and Testing Requirements for OTC Sunscreen Products Containing Specified Active Ingredients and Marketed Without Approved Applications, and Drug Facts Labeling for All OTC Sunscreen Products—21 CFR 201.327(a)(1) and (i), 21 CFR 201.66(c) and (d) (OMB Control Number 0910–0717)—Extension

In the **Federal Register** of June 17, 2011 (76 FR 35620) we published a final rule establishing labeling and effectiveness testing requirements for certain OTC sunscreen products containing specified active ingredients without approved applications (2011 sunscreen final rule; § 201.327 (21 CFR 201.327)). In addition to establishing testing requirements, this sunscreen final rule lifts the delay of implementation of the prior 1999 sunscreen final rule (published May 21, 1999, at 64 FR 27666 and stayed December 31, 2001, 66 FR 67485) from complying with the 1999 labeling final rule (published March 17, 1999, 64 FR 13254) in which we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products in part 201 (21 CFR part 201). Specifically, the 1999 labeling final rule added new § 201.66 to part 201. Section 201.66 sets content and format requirements for the Drug Facts portion of labels on OTC drug products. We specifically exempted OTC sunscreen products from complying with the 1999 labeling final rule until we lifted the stay of the 1999 sunscreen final rule. The 2011 sunscreen final rule became effective December 17, 2012, for sunscreen products with annual sales of $25,000 or more and December 17, 2013, for sunscreen products with annual sales of less than $25,000 when we published an extension date notice on May 11, 2012 (77 FR 27591).

#### SPF Labeling and Testing for OTC Sunscreens Containing Specified Active Ingredients and Marketed Without Approved Applications

In the **Federal Register** of June 17, 2011 (76 FR 35678), we published a 60-day notice requesting public comment on the proposed collection of information in regard to SPF labeling and testing requirements for OTC sunscreen products containing specified ingredients and marketed without approved applications. In that notice, we stated that § 201.327 (a)(1) requires the principal display panel (PDP) labeling of a sunscreen covered by the 2011 final rule to include the SPF value determined by conducting the SPF test outlined in § 201.327(i). Therefore, this provision results in information collection with a third-party disclosure burden for manufacturers of OTC sunscreens covered by the rule. We determined that products need only complete the testing and labeling required by the rule one time, and then continue to utilize the resultant labeling (third-party disclosure) going forward without additional burden. This one-time testing would need to be conducted within the first 3 years after publication of the 2011 final rule for all OTC sunscreens covered by that rule. We determined that the third-party disclosure burden by manufacturers of OTC sunscreens covered by the rule was based on an estimate: (1) Of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information; (2) on the

conduct of SPF testing based on the estimated number of existing formulations; (3) of the time to relabel currently marketed OTC sunscreens containing specified ingredients and marketed without approved applications; and (4) on testing and labeling of new products introduced each year. The estimate for this burden in the 2011 60-day PRA notice was a total of 30,066 hours in years one and two and a total burden of 966 in each subsequent year.

All currently marketed OTC sunscreen drug products are required at this time to be in compliance with the SPF labeling requirements specified by the 2011 final rule. However, our original estimate included the burden of new products introduced each year. We estimated that as many as 60 new OTC sunscreen products stock keeping units (SKUs) may be introduced each year which will have to be tested and labeled with the SPF value determined in the test. We estimated that the 60 new sunscreen SKUs represent 39 new formulations. The burden for testing and labeling these formulations was estimated at 30 hours per year.

We have received no further comments on our estimate of burden for the collection of this information other than two comments (FDA–2011–N–0449–0002 and FDA–2011–N–0449–0003). These comments were already addressed in FDA's notice of ''Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Sun Protection Factor Labeling and Testing Requirements and Drug Facts Labeling for Over-the Counter Sunscreen Drug Products'' published on May 9, 2012 (77 FR 27230).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| Activity | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Conduct SPF testing in accordance with § 201.327(i) for new sunscreens. | 20 | 1.95 | 39 | 24 | 936 |
| Create PDP labeling in accordance with § 201.327(a)(1) for new sunscreen SKUs. | 20 | 3 | 60 | 0.5 (30 min.) | 30 |
| Total | | | | | 966 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

*Drug Facts Labeling for OTC Sunscreens*

Because the 2011 final rule also lifts the delay of implementation of the Drug Facts regulations (§ 201.66) for OTC sunscreens, the rule also modifies the information collection associated with § 201.66 (currently approved under OMB control number 0910–0340) and adds an additional third-party disclosure burden resulting from requiring OTC sunscreen products to comply with Drug Facts regulations. In the **Federal Register** of March 17, 1999 (64 FR 13254), we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products, codified in § 201.66 (the 1999 Drug Facts labeling final rule). Section 201.66 sets requirements for the Drug Facts portion of labels on OTC drug products, requiring such labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. Therefore, currently marketed OTC sunscreen products will incur a one-time burden to comply with the requirements in § 201.66(c) and (d). The burden was estimated in the 60-day PRA notice published in the **Federal Register** of June 17, 2011 (76 FR 35678) as 43,200 hours for existing sunscreen SKUs and 720 hours for new sunscreen SKUs.

The compliance dates for the 2011 final rule lifting the delay of the § 201.66 labeling implementation data for OTC sunscreen products were December 17, 2012, for sunscreen products with annual sales of $25,000 or more and December 17, 2013, for sunscreen products with annual sales of less than $25,000, respectively, when we published an extension date notice on May 11, 2012 (77 FR 27591). All currently marketed sunscreen products are, therefore, already required to be in compliance with the Drug Facts labeling requirements in § 201.66 and will incur no further burden in the 1999 labeling final rule. However, new OTC sunscreen drug products will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. In the 2011 60-day PRA, we estimated that as many as 60 new product SKUs marketed each year will have to comply with Drug Facts regulations. We estimated that these 60 SKUs would be marketed by 30 manufacturers. We estimated that approximately 12 hours would be spent on each label, based on the most recent estimate used for other OTC drug products to comply with the Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens. This is equal to 720 hours annually (60 SKUs × 12 hours/SKU). We stated that we do not expect any OTC sunscreens to apply for exemptions or deferrals of the Drug Facts regulations in § 201.66(e). However, we took this into consideration in 2013 and estimated the burden for an exemption or deferral by considering the number of exemptions or deferrals we have received since publication of the 1999 final rule (one response) and estimating that a request for deferral or exemption would require 24 hours to complete. Multiplying the annual frequency of response (0.125) by the number of hours per response (24) gives a total response time for requesting an exemption or deferral equal to 3 hours.

We estimate the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| Activity | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Format labeling in accordance with § 201.66(c) and (d) for new sunscreen SKUs | 20 | 3 | 60 | 12 | 720 |
| Request for Drug Facts exemption or deferral § 201.66(e) | 1 | 0.125 | 0.125 | 24 | 3 |
| Total | | | | | 723 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 13, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–08750 Filed 4–15–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than June 15, 2015.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10C–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Maternal, Infant, and Childhood Home Visiting (Home Visiting) Program fiscal year (FY) 2015, FY2016, FY2017 Non-Competing Continuation Progress Report for Formula Grant.

OMB No. 0915–0355—Extension.

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (Home Visiting) Program, administered by the Health Resources and Services Administration (HRSA), in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. The purpose of this formula grant program is to support the delivery of coordinated and comprehensive voluntary early childhood home visiting program services and effective implementation of high-quality evidence-based practices. Fifty states, the District of Columbia, 5 territories, and eligible nonprofit organizations are eligible for formula grants and submit non-competing continuation progress reports annually. There are 56 jurisdictions/entities eligible for formula awards, and 56 formula awards are issued annually.

*Need and Proposed Use of the Information:* This information collection is needed for grantees to report progress under the Home Visiting Program annually. On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). Section 2951 of the ACA amended title V of the Social Security Act by adding a new section, 511, which authorized the Home Visiting Program (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf*, pages 216–225). Congress extended funding for the Home Visiting Program by the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93). A portion of funding provided under this program is awarded to participating states, jurisdictions, and entities by formula.

The information collected will be used to review grantee progress on proposed project plans to assess whether the project is performing adequately to achieve the goals and objectives that were previously approved. This report will also provide implementation plans for the upcoming year, to permit assessment of whether the plan is consistent with the grant as approved, and is expected to, will result in, implementation of a high-quality project that will complement the Home Visiting Program as a whole. Progress Reports are submitted through the Electronic Handbooks. Failure to collect this information would impair federal monitoring and oversight of the use of grant funds in keeping with legislative and policy requirements. Grantees are required to provide a performance narrative with the following sections: Project identifier information; accomplishments and barriers; Home Visiting Program goals and objectives; update on the Home Visiting Program promising approach; implementation of the Home Visiting Program in targeted at-risk communities; progress toward meeting legislatively-mandated reporting on benchmark areas; home visiting quality improvement efforts; and updates on the administration of the Home Visiting Program.

*Likely Respondents:* Grantees with Home Visiting Formula Awards Awarded in Federal FY 2013–FY 2017.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the

information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

The burden estimates presented in the table below are based on consultations with a few states on the guidance. Grantees receive a new formula grant annually and are expected to report on progress annually, so the expectation is that grantees would submit non-competing continuation progress reports four times between federal FY 2015 and FY 2018. Only seven grantees are currently implementing a promising approach and require an annual update on the promising approach.

| Information collection | Number of respondents | Number of responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Formula Grant Award | 56 | 1 | 56 | 42 | 2,352 |
| Total | 56 | 1 | 56 | 42 | 2,352 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015–08707 Filed 4–15–15; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than June 15, 2015.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10C–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Maternal, Infant, and Childhood Home Visiting (Home Visiting) Program fiscal year (FY) 2012–FY 2017 Non-Competing Continuation Progress Report for Competitive Grants.

OMB No. 0915–0356—Extension.

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (Home Visiting) Program, administered by HRSA in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. Competitive grants support the efforts of states and entities that have previously received formula-based Home Visiting awards and that have made significant progress towards a high-quality home visiting program or embedding their home visiting program into a comprehensive, high-quality early childhood system. Fifty states, the District of Columbia (DC), 5 territories, and eligible nonprofit organizations are eligible for competitive grants and must submit non-competing continuation progress reports annually.[1] There are currently 41 entities that have been awarded competitive grants. Some entities have been awarded more than one competitive grant.

*Need and Proposed Use of the Information:* This information collection is needed for grant recipients to report progress under the Home Visiting Program annually. On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). Section 2951 of the ACA amended title V of the Social Security Act by adding a new section 511, which authorized the Home Visiting Program (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf,* pages 216–225). Funding for the Home Visiting program was extended by the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93). A portion of funding made available under this program is awarded to participating states and eligible entities competitively.

The information collected will be used to review grantee progress on proposed project plans so as to assess whether the grantee is performing adequately to achieve the goals and objectives that were previously approved. This report will also provide implementation plans for the upcoming year, which will be assessed for consistency with the approved grant and assist the grantee in achieving implementation of a high-quality project that will complement the Home Visiting Program as a whole. Failure to collect this information could impair federal monitoring and oversight of the use of grant funds by grantees in keeping with legal and policy requirements. Grantees are required to provide a performance narrative with the following sections: Project identifier information, accomplishments and barriers; state home visiting program goals and objectives; update on the state home visiting program promising approach and evaluations conducted under the competitive grant; implementation of

[1] In the event of a new, 1-year Funding Opportunity Announcement for the competitive grant program, the application for new grant funds may be permitted by HRSA to replace a non-competing continuation progress report.

the state home visiting program in targeted at-risk communities; progress toward meeting legislatively-mandated reporting on benchmark areas; state home visiting quality improvement efforts; and updates on the administration of state home visiting program.

Since federal fiscal year 2011, 48 eligible entities have received competitive grant awards. Some grantees have been awarded up to three competitive grants to date. Grantees of the competitive grant program need to complete annual reports in order to comply with legal and policy reporting requirements.

*Likely Respondents:* Grantees with Home Visiting Competitive Awards Awarded in Federal FY 2013–FY 2017.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Summary progress on the following activities | Number of respondents | Number of responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Home Visiting Competitive Grant Progress Report—FY 2012, FY 2013, FY 2014 | 37 | 1 | 37 | 25 | 925 |
| Home Visiting Competitive Grant Progress Report—FY 2015 | 32 | 1 | 35 | 25 | 875 |
| Home Visiting Competitive Grant Progress Report—FY 2016 FY 2017 | 47 | 2 | 94 | 25 | 2350 |
| Total | 116 | 4 | 166 | 75 | 4150 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015–08708 Filed 4–15–15; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0111]**

### Agency Information Collection Activities: Arrival and Departure Record (Forms I–94 and I–94W) and Electronic System for Travel Authorization

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Extension and revision of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: CBP Form I–94 (Arrival/Departure Record), CBP Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours and a revision to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before May 18, 2015 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (79 FR 73096) on December 9, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and

included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

*Title:* Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, and Electronic System for Travel Authorization (ESTA).

*OMB Number:* 1651–0111.

*Form Numbers:* I–94 and I–94W.

*Abstract:*

**Background**

CBP Forms I–94 (Arrival/Departure Record) and I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the DHS to perform its mission related to the screening of alien visitors for potential risks to national security, and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. Travelers who are entering under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I–94W.

Pursuant to an interim final rule published on March 27, 2013 in the **Federal Register** (78 FR 18457) related to Form I–94, CBP has partially automated the Form I–94 process. CBP now gathers data previously collected on the paper Form I–94 from existing automated sources in lieu of requiring passengers arriving by air or sea to submit a paper I–94 upon arrival. Passengers can access and print their electronic I–94 via the Web site at *www.cbp.gov/I94.*

ESTA can be accessed at: *https://esta.cbp.dhs.gov.* Samples of CBP Forms I–94 and I–94W can be viewed at: *http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record* and *http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record.*

**Recent and Proposed Changes**

In response to the increasing concerns regarding national security, DHS used the emergency Paperwork Reduction Act process to strengthen the security of the VWP by adding data elements to ESTA and to Form I–94W. DHS determined that the addition of these new data elements improves the Department's ability to screen prospective VWP travelers while more accurately and effectively identifying those who pose a security risk to the United States and facilitates adjudication of ESTA applications.

The following data elements are either new elements that were approved in the emergency PRA submission or data elements that were collected previously that were changed from ''optional'' to ''mandatory'' on the ESTA application:

| | |
|---|---|
| 1. Other Names or Aliases | Mandatory. |
| 2. Other Country of Citizenship | Mandatory. |
| 3. If yes, passport number on additional citizenship passport | Optional. |
| 4. Home Address | Mandatory. |
| 5. Parents' Names | Mandatory. |
| 6. Current or Previous Job Title | Optional. |
| 7. Current or Previous Employer Name | Mandatory. |
| 8. Current or Previous Employer Address | Mandatory. |
| 9. Current or Previous Employer Telephone number | Optional. |
| 10. Primary Email | Mandatory—was optional. |
| 11. Primary Telephone Number | Mandatory—was optional. |
| 12. U.S. Point of Contact Name | Mandatory. |
| 13. U.S. Point of Contact Address | Mandatory. |
| 14. U.S. Point of Contact Email | Mandatory. |
| 15. U.S. Point of Contact Phone | Mandatory. |
| 16. City of Birth | Mandatory. |
| 17. National Identification Number | Mandatory. |
| 18. Emergency Point of Contact Information Name | Mandatory. |
| 19. Emergency Point of Contact Information Email | Mandatory. |
| 20. Emergency Point of Contact Information Phone | Mandatory. |
| 22. Do you have a current or previous employer? | Mandatory. |
| 21. Is your travel to the U.S. occurring in transit to another country? | Mandatory. |

For the following ''mandatory'' fields ESTA applicants are permitted to enter ''unknown,'' if they do not have or know the information, without impeding the submission of their ESTA application: City of Birth, Parents' Names, National Identification Number, Emergency Contact Information, U.S. Point of Contact information, and Employer Address.

In accordance with guidance from the Centers for Disease Control and Prevention, CBP also proposes to revise the current question about diseases on ESTA and on Form I–94W as follows:

*Currently approved question:*

Do you have a physical or mental disorder; or are you a drug abuser or addict; or currently have any of the following diseases:

- Chancroid
- Gonorrhea
- Granuloma inguinale
- Leprosy, infectious
- Lymphogranuloma venereum
- Syphilis, infectious
- Active Tuberculosis

*Proposed new question:*

Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases (communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act):

- Cholera
- Diphtheria
- Tuberculosis, infectious
- Plague
- Smallpox
- Yellow Fever
- Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo
- Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality.

*Current Actions:* This submission is being made to extend the expiration date with a change to the burden hours

based on updated estimates of the numbers of respondents. Specifically, the number of respondents for the I–94 Web site was decreased by 1,188,899 from 5,047,681 to 3,858,782; the number of respondents for the ESTA burden was increased by 920,000 from 22,090,000 to 23,010,000; and the number of respondents paying the ESTA fee was increased by 747,000 from 18,183,000 to 18,930,000.

There is also a proposed change to the question about diseases on ESTA and on Form I–94W as described in the Abstract section of this document. There are no changes to the information collected on Form I–94, or the I–94 Web site.

*Type of Review:* Extension (with change).

*Affected Public:* Individuals, Carriers, and the Travel and Tourism Industry.

**Form I–94 (Arrival and Departure Record)**

*Estimated Number of Respondents:* 4,387,550.

*Estimated Time per Response:* 8 minutes.

*Estimated Burden Hours:* 583,544.

*Estimated Annual Cost to Public:* $26,325,300.

**I–94 Web Site**

*Estimated Number of Respondents:* 3,858,782.

*Estimated Time per Response:* 4 minutes.

*Estimated Annual Burden Hours:* 254,679.

**Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure)**

*Estimated Number of Respondents:* 941,291.

*Estimated Time per Response:* 13 minutes.

*Estimated Annual Burden Hours:* 204,260.

*Estimated Annual Cost to the Public:* $5,647,746.

**Electronic System for Travel Authorization (ESTA)**

*Estimated Number of Respondents:* 23,010,000.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 7,662,330.

*Estimated Annual Cost to the Public:* $265,020,000.

Dated: April 13, 2015,

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2015–08768 Filed 4–15–15; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM006200 L99110000.EK0000 XXX L4053RV]**

### Revision of Approved Information Collection; OMB Control No. 1004–0179

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comment, and announces that it intends to request that the Office of Management and Budget (OMB) renew and revise control number 1004–0179, ''Helium Contracts.'' This request is prompted by the need to update the control number in response to legislation.

**DATES:** Please submit comments on the proposed information collection by June 15, 2015.

**ADDRESSES:** Comments may be submitted by mail, fax, or electronic mail.

*Mail:* U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

*Fax:* to Jean Sonneman at 202–245–0050.

*Electronic mail: jesonnem@blm.gov.*

Please indicate ''Attn: 1004–0179'' regardless of the form of your comments.

**FOR FURTHER INFORMATION CONTACT:** Robert Jolley, at 806–356–1002. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Jolley. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

*Title:* Helium Contracts (43 CFR part 3195).

*OMB Control Number:* 1004–0179.

*Summary:* At present, control number 1004–0179 (expiration date: April 30, 2017) enables the BLM to monitor purchases and sales of helium from the Federal Helium Reserve. This information collection activity is in accordance with the BLM's authority to implement in-kind sales of helium in accordance with 43 CFR part 3195. The BLM intends to seek OMB clearance to revise and extend this ongoing collection of information for another 3 years. The requested revision will be the addition of a new form (''Refined Helium Deliveries Detail'') that will replace the existing non-form activity titled ''Sales Reports.''

In addition, the BLM intends to seek OMB clearance to add information collection activities that are necessary for the implementation of the Helium Stewardship Act of 2013 (Act or 2013 Act), Public Law 113–40 (127 Stat. 534, codified at 50 U.S.C. 167–167q). Section 5(b)(8) of the 2013 Act amends 50 U.S.C. 167d, and establishes the following additional terms and conditions of Federal helium sales that necessitate new information collection activities:

• Parties to a helium storage contract with the BLM must disclose:

(1) The volumes and associated prices in dollars per thousand cubic feet (Mcf) in purchase and sales transactions in the

United States involving at least 15 million standard cubic feet of crude or pure helium;

(2) The volumes and associated costs in dollars per Mcf of converting crude helium into pure helium; and

(3) Refinery operational capacity, future operational capacity, and excess refining capacity in Mcf; and

• Refiners of crude helium that enter into ''tolling agreements'' must submit a Tolling Occurrence Report to the BLM whenever they enter into such tolling agreements. (''Tolling agreements'' refers to the helium industry's practice of processing or refining another party's helium at an agreed upon price. While refiners can purchase, access, and refine their own helium, non-refiners rely upon the refiners to process and refine the helium that they have purchased—this process is called tolling.)

*Frequency of Collection:* Quarterly for the Refined Helium Deliveries Detail; annually for the Calculation of Excess Refining Capacity and Refiners' Annual Tolling Report; and ''on occasion'' for the Refiners' Tolling Occurrence Report.

*Forms:*

Refined Helium Deliveries Detail;

Calculation of Excess Refining Capacity;

Refiners' Annual Tolling Report; and

Refiners' Tolling Occurrence Report.

*Description of Respondents:* Suppliers, purchasers, and refiners of Federal helium.

*Estimated Annual Responses:* 60.

*Estimated Annual Burden Hours:* 110.

*Estimated Annual Non-Hour Costs:* None.

The estimated annual burdens of these revised and new collection activities are itemized in the following table:

| A. Type of response | B. Frequency | C. Number of respondents | D. Number of responses | E. Hours per response | F. Total hours (column D x column E) |
|---|---|---|---|---|---|
| Refined Helium Deliveries Detail | Quarterly | 10 | 40 | 1 | 40 |
| Calculation of Excess Refining Capacity | Annually | 4 | 4 | 8 | 32 |
| Refiners' Annual Tolling Report | Annually | 4 | 4 | 8 | 32 |
| Refiners' Tolling Occurrence Report | On occasion | 4 | 12 | 0.5 | 6 |
| Totals | | 22 | 60 | | 110 |

**Jean Sonneman,**

*Bureau of Land Management, Information Collection Clearance Officer, Bureau of Land Management.*

[FR Doc. 2015–08686 Filed 4–15–15; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLCACO9000 1430000000 ET0000 14XL 1109AF; CACA 052573)**

## Public Land Order No. 7834; Withdrawal of Public Lands, North and Middle Fork of the American River, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 6,737.42 acres of public lands from location and entry under the United States mining laws for 20 years on behalf of the Bureau of Land Management to protect and preserve the riparian areas, wildlife habitat, scenic quality, and high recreational values of lands within the North and Middle Fork of the American River and to provide protection of lands associated with the congressionally designated Auburn Dam Reclamation Project Area pending a decision on future development of the site. The lands, which are located in El Dorado and Placer Counties, California, will remain open to leasing under the mineral and geothermal leasing laws.

**DATES:** *Effective Date:* April 16, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jodi Lawson, Bureau of Land Management Mother Lode Field Office, 916–941–3139, or write: Field Manager, BLM Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, California 95762. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management will manage the lands to protect the unique natural, scenic, cultural, and recreational values along the North and Middle Fork of the American River.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws, but not the mineral or geothermal leasing laws, to protect the unique natural, scenic, cultural, and recreational values along the North and Middle Fork of the American River and to provide protection of lands associated with the congressionally designated Auburn Dam Reclamation Project pending a decision on future development of the site:

**Mount Diablo Meridian**

T. 12 N., R. 8 E.,
Sec. 12, S½SW¼;
Sec. 25, North Extension of the Wilhelm Lode Mineral Survey No. 6091.
T. 12 N., R. 9 E.,
Sec. 1, lots 10 and 11;
Sec. 4, lots 12, 13, and 14, and S½NE¼;
Sec. 5, lots 19, 20, and 21;
Sec. 18, lot 1.
T. 13 N., R. 9 E.,
Sec. 1, that portion of unpatented Mineral Survey No. 2653 lying in the NE¼;
Sec. 2, lots 1, 2, and 7, N½SW¼, SW¼SW¼, and N½SE¼SW¼;
Sec. 11, lot 2 and S½SW¼;
Sec. 13, SE¼SE¼;
Sec. 22, N½SW¼ and SW¼SW¼;
Sec. 23, Mineral Survey U–3;
Sec. 25, SE¼NE¼, W½NW¼SE¼, W½W½W½SW¼SE¼, and Summit Hill Consolidated Quartz Mine;
Sec. 28, NW¼SW¼, N½SW¼SW¼, E½SW¼SW¼SW¼, and W½SE¼SW¼SW¼;
Sec. 32, lots 4 and 5;
Sec. 34, lot 4.
T. 13 N., R. 10 E.,
Sec. 2, lot 1, and lots 3 to 15, inclusive;
Sec. 9, lots 8, 12, 13, and SW¼NE¼;
Sec. 10, lots 1 to 10, inclusive, E½NE¼, E½NW¼, SW¼NW¼ and SE¼SE¼;
Sec. 11, lot 1 and SW¼NE¼;
Sec. 18, lots 1 to 4, inclusive, S½ of lot 5, S½ of lot 8, and lots 11 and 13;
Sec. 19, lot 24;
Sec. 20, lots 1, 2, 3, and 8, N½NE¼, and SE¼NE¼;
Sec. 30, lots 1, 5, and 6, S½NE¼, and NE¼SE¼.

T. 14 N., R. 9 E.,
Sec. 1, lot 5, S½NW¼, Gitaway Quartz Mine, and Blue Rock Quartz Mine;
Sec. 12, N½ and SE¼;
Sec. 13, NE¼;
Sec. 24, S½;
Sec. 25, lots 9 to 13, inclusive, lots 15 to 22, inclusive, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 35, lots 5, 6 and 7, NE¼, E½NW¼, SW¼SW¼, and E½SE¼;
Sec. 36, lots 2, 3, 7, 8, 9, 14, and 22, and NW¼.
T. 14 N., R. 10 E.,
Sec. 7, lots 6, 15, 27, 28, 42, and 45;
Sec. 18, lots 2 to 7, inclusive, and lots 10 to 15, inclusive;
Sec. 30, lots 4, 8, 9, 10, and lots 15 to 18, inclusive, NE¼, E½NW¼, SE¼SW¼, and SW¼SE¼.
T. 15 N., R. 9 E.,
Sec. 36, E½NW¼SW¼, unsurveyed S½SE¼SW¼, and unsurveyed SW¼SE¼.

The areas described aggregate 6,737.42 acres, more or less, in El Dorado and Placer Counties.

2. The withdrawal made by this order does not alter the applicability of public land laws other than the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 5, 2015.

**Janice M. Schneider,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2015–08687 Filed 4–15–15; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM950000 L13110000.BX0000 15XL1109PF]**

### Notice of Filing of Plats of Survey, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Carlos Martinez at 505–954–2096, or by email at *cjjmarti@blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian, New Mexico (NM)**

The plat, in two sheets, representing the dependent resurvey in Township 22 South, Range 8 East, of the New Mexico Principal Meridian, accepted April 2, 2015 for Group, 1150, NM.

The plat, representing the retracement and dependent resurvey in Township 16 South, Range 21 West, of the New Mexico Principal Meridian, accepted March 11, 2015, for Group 1157, NM.

**The Indian Meridian, Oklahoma (OK)**

The plat representing the dependent resurvey and survey in Township 10 North, Range 25 East, of the Indian Meridian, accepted April 2, 2015, for Group 221 OK. These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

**Robert A. Casias,**

*Acting Branch Chief, Cadastral Survey.*

[FR Doc. 2015–08736 Filed 4–15–15; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD01000 L12100000.MD0000 15XL1109AF]**

### Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, May 9, 2015, from 9 a.m. to 4:30 p.m. at the University of California Riverside Extension Building, Conference Rooms D–E, located at 1200 University Avenue, Riverside, CA. A Friday, May 8, 2015 resource area field trip is not scheduled. Agenda for the Saturday meeting will include updates by council members, the BLM California Desert District Manager, five Field Managers, and council subgroups. The focus topic for the meeting will be the West Mojave (WEMO) Planning Area Route Network Project. Final agenda items for the public meeting will be posted on the DAC Web page at *http://www.blm.gov/ca/st/en/info/rac/dac.html* when finalized.

**FOR FURTHER INFORMATION CONTACT:** Stephen Razo, BLM California Desert District External Affairs, (951) 697–5217. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

**SUPPLEMENTARY INFORMATION:** All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment is made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 9 a.m. to 4:30 p.m., the meeting could conclude prior to 4:30 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the

California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

Dated: April 7, 2015.

**Teresa A. Raml,**

*California Desert District Manager.*

[FR Doc. 2015–08778 Filed 4–15–15; 8:45 am]

**BILLING CODE 4310–40–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–15–013]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** April 23, 2015 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–531–533 and 731–TA–1270–1273 (Preliminary) (Polyethylene Terephthalate Resin (''PET Resin'') from Canada, China, India, and Oman). The Commission is currently scheduled to complete and file its determination on April 24, 2015; views of the Commission are currently scheduled to be completed and filed on May 1, 2015.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: April 14, 2015.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015–08870 Filed 4–14–15; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for 1205–0179: Unemployment Compensation for Federal Employees Handbook No. 391, Extension Without Revision

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about Unemployment Compensation for Federal Employees which expires October 31, 2015.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before June 15, 2015.

**ADDRESSES:** Send written comments to Stephanie Garcia, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3207 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *garcia.stephanie@dol.gov*. To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Chapter 5 U.S.C. 8506 states that ''Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' The information shall include the findings of the employing agency concerning:

(1) Whether or not the Federal employee has performed Federal service;

(2) The periods of Federal service;

(3) The amount of Federal wages; and

(4) The reasons for termination of Federal service.

The law (5 U.S.C. 8501, *et seq.*) requires State Workforce Agencies (SWA's) to administer the Unemployment Compensation for Federal Employees (UCFE) program in accordance with the same terms and provisions of the paying State's unemployment insurance law which apply to unemployed claimants who worked in the private sector. SWA's must be able to obtain certain information (wage, separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The Department of Labor has prescribed forms to enable SWAs to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935.

#### II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension without revision.

*Title:* Unemployment Compensation for Federal Employees Handbook No. 391.

*OMB Number:* 1205–0179.

*Affected Public:* State Workforce Agency.

*Estimated Total Annual Respondents:* 53.

*Estimated Total Annual Responses:* 151,050.

*Estimated Total Annual Burden Hours:* 15,024.

*Total Estimated Annual Other Cost Burden:* 0.

| Form | Annual frequency | Total responses | Average time per response (minutes) | Burden (hours) |
|---|---|---|---|---|
| ETA–931 | 1 | 77,000 | 5 | 6,416 |
| ETA–931A | 1 | 24,000 | 5 | 2,000 |
| ETA–935 | 1 | 38,500 | 9 | 5,775 |
| ETA–933 | 1 | 3,850 | 5 | 320 |
| ETA–934 | 1 | 7,700 | 4 | 513 |
| Totals | 5 | 151,050 | | 15,024 |

We will summarize and/or include in the request for OMB approval of the ICR, comments received in response to this comment request; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2015–08725 Filed 4–15–15; 8:45 am]

**BILLING CODE 4510–FW–P**

## NATIONAL SCIENCE FOUNDATION

### Request of Recommendations for Membership for Directorate and Office Advisory Committees

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) requests recommendations for membership on its scientific and technical Federal advisory committees. Recommendations should consist of the submitting person's or organization's name and affiliation, the name of the recommended individual, the recommended individual's curriculum vita, an expression of the individual's interest in serving, and the following recommended individual's contact information: Employment address, telephone number, FAX number, and email address. Self recommendations are accepted. If you would like to make a membership recommendation for any of the NSF scientific and technical Federal advisory committees, please send your recommendation to the appropriate committee contact person listed in the chart below.

**ADDRESSES:** The mailing address for the National Science Foundation is 4201 Wilson Boulevard, Arlington, VA 22230.

Web links to individual committee information may be found on the NSF Web site: *NSF Advisory Committees*.

**SUPPLEMENTARY INFORMATION:** Each Directorate and Office has an external advisory committee that typically meets twice a year to review and provide advice on program management; discusses current issues; and reviews and provides advice on the impact of policies, programs, and activities in the disciplines and fields encompassed by the Directorate or Office. In addition to Directorate and Office advisory committees, NSF has several committees that provide advice and recommendations on specific topics including: Astronomy and astrophysics; environmental research and education; equal opportunities in science and engineering; advanced cyberinfrastructure; international science and engineering; and business and operations.

A primary consideration when formulating committee membership is recognized knowledge, expertise, or demonstrated ability [1]. Other factors that may be considered are balance among diverse institutions, regions, and groups underrepresented in science, technology, engineering, and mathematics. Committee members serve for varying term lengths, depending on the nature of the individual committee. Although we welcome the recommendations we receive, we regret that NSF will not be able to acknowledge or respond positively to each person who contacts NSF or has been recommended. NSF intends to publish a similar notice to this on an annual basis. NSF will keep recommendations active for 12 months from the date of receipt.

The chart below is a listing of the committees seeking recommendations for membership. Recommendations should be sent to the contact person identified below. The chart contains Web addresses where additional information about individual committees are available.

| Advisory committee | Contact person |
|---|---|
| Advisory Committee for Biological Sciences *http://www.nsf.gov/bio/advisory.jsp*. | Charles Liarakos, Directorate for Biological Sciences; phone: (703) 292–8400; email: *cliarako@nsf.gov;* fax: (703) 292–9154. |
| Advisory Committee for Computer and Information Science and Engineering *http://www.nsf.gov/cise/advisory.jsp*. | Carmen Whitson, Directorate for Computer and Information Science and Engineering; phone: (703) 292–8900; email: *cwhitson@nsf.gov;* fax: (703) 292–9074. |
| Advisory Committee for Cyberinfrastructure *https://www.nsf.gov/cise/aci/advisory.jsp*. | Kristen Oberright, Division of Advanced Cyberinfrastructure, phone: (703) 292–7151; *koberrig@nsf.gov;* fax: (703) 292–9060. |
| Advisory Committee for Education and Human Resources *http://www.nsf.gov/ehr/advisory.jsp*. | Teresa Caravelli, Directorate for Education and Human Resources; phone: (703) 292–8600; email: *tcaravel@nsf.gov;* fax: (703) 292–9179. |
| Advisory Committee for Engineering *http://www.nsf.gov/eng/advisory.jsp*. | Cecile Gonzalez, Directorate for Engineering; phone: (703) 292–8300; email: *cjgonzal@nsf.gov;* fax: (703) 292–9013. |

[1] Federally registered lobbyists are not eligible for appointment to these Federal advisory committees.

| Advisory committee | Contact person |
|---|---|
| Advisory Committee for Geosciences *http://www.nsf.gov/geo/advisory.jsp*. | Melissa Lane, Directorate for Geosciences: phone: (703) 292–8500; email: *mlane@nsf.gov;* fax: (703) 292–9042. |
| Advisory Committee for International Science and Engineering *http://www.nsf.gov/od/oise/advisory.jsp*. | Cassandra Dudka, Office of International and Integrative Activities, phone: (703) 292–7250; email: *cdudka@nsf.gov;* fax: (703) 292–9067. |
| Advisory Committee for Mathematical and Physical Sciences *http://www.nsf.gov/mps/advisory.jsp*. | Eduardo Misawa, Directorate for Mathematical and Physical Sciences; phone: (703) 292–8800; email: *emisawa@nsf.gov;* fax: (703) 292–9151. |
| Advisory Committee for Social, Behavioral & Economic Sciences http://www.nsf.gov/sbe/advisory.jsp. | Deborah Olster, Directorate for Social, Behavioral & Economic Sciences; phone: (703) 292–8700; EMail: *dholster@nsf.gov;* fax: (703) 292–9083. |
| Committee on Equal Opportunities in Science and Engineering *http://www.nsf.gov/od/oia/activities/ceose/*. | Bernice Anderson, Office of International and Integrative Activities; phone: (703) 292–8040; email: *banderso@nsf.gov;* fax: (703) 292–9040. |
| Advisory Committee for Business and Operations *http://www.nsf.gov/oirm/bocomm/*. | Jeffrey Rich, Office of Information and Resource Management; phone: (703) 292–8100; email: *jrich@nsf.gov;* fax:(703) 292–9084. |
| Advisory Committee for Environmental Research and Education *http://www.nsf.gov/geo/ere/ereweb/advisory.cfm*. | Linda Deegan, Directorate for Biological Sciences; phone: (703) 292–7870; email: *ldeegan@nsf.gov;* fax: (703) 292–9042. |
| Astronomy and Astrophysics Advisory Committee *http://www.nsf.gov/mps/ast/aaac.jsp*. | Elizabeth Pentecost, Division of Astronomical Sciences; phone: (703) 292–4907; email: *epenteco@nsf.gov;* fax: (703) 292–9034. |

Dated: April 13, 2015.

**Suzanne Plimpton,**

*Acting Committee Management Officer.*

[FR Doc. 2015–08714 Filed 4–15–15; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0178]**

## Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG; reopening of public comment period.

**SUMMARY:** On December 18, 2014, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on draft NUREG–2126, ''Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities.'' The public comment period closed on March 18, 2015. The NRC has decided to reopen the public comment period on this document until June 18, 2015, to allow more time for members of the public to develop and submit their comments.

**DATES:** The comment period for draft NUREG–2126, ''Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities,'' published on December 18, 2014 (79 FR 75597), has been reopened. Comments should be filed no later than June 18, 2015. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0178. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Douglas T. Mandeville, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0724, email: *Douglas.Mandeville@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2014–0178 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0178.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG–2126, ''Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities,'' is available in ADAMS under Accession No. ML14325A634.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2014–0178 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

**II. Discussion**

On December 18, 2014, the NRC published a request for public comment on draft NUREG–2126, ''Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities.'' Pursuant to the provisions of part 40 of Title 10 of the *Code of Federal Regulations,* (10 CFR), ''Domestic Licensing of Source Material,'' an NRC materials license is required to conduct uranium recovery activities by conventional mill or heap leach techniques. Applicants for a new license and operators seeking an amendment or renewal of an existing license are required to provide detailed information on the facilities, equipment, and procedures to be used in the proposed activities. This information is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment. Each section in draft NUREG–2126 provides guidance on what information is to be reviewed, the basis for the review, how the NRC staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with applicable regulations, and the evaluation criteria for determining compliance with the applicable regulations. Draft NUREG–2126 is intended to improve the understanding of the NRC staff's review process by interested members of the public and the uranium recovery industry. Any interested party may submit comments on draft NUREG–2126 for consideration by the NRC staff. The public comment period closed on March 18, 2015. The National Mining Association (NMA) submitted a letter on February 26, 2015 (ADAMS Accession No. ML15062A629), requesting a 90-day extension of the public comment period on this document. Additionally, the State of Utah submitted a letter on March 16, 2015 requesting a 60-day extension of the public comment period on this document (ADAMS Accession No. ML15082A286). The Commission may grant, in its discretion, the additional reasonable opportunity for the submission of comments. In the present case, as the request for an extension from NMA points out, there are two notable current **Federal Register** notices on this general subject matter that have been noticed for public comment, including the present document, as well as the Environmental Protection Agency's (EPA) proposed 40 CFR part 192 rulemaking. The State of Utah cites its current workload and role in regulating the only operating conventional uranium mill in the United States as reasons for extending the comment period. As such, these factors justify the Commission granting additional reasonable opportunity for the submission of comments. The NRC has decided to reopen the public comment period on this document until June 18, 2015, to allow more time for members of the public to develop and submit their comments.

Dated at Rockville, Maryland, this 8th day of April 2015.

For the Nuclear Regulatory Commission.

**Andrew Persinko,**

*Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2015–08797 Filed 4–15–15; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0091]**

## Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG) DG–1314, ''Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants.'' This guidance has been revised to update references to related NRC guidance, to incorporate lessons learned from recent NRC reviews and regulatory activities, and to align the format and content of the guide with the current program guidance for regulatory guides (RGs) which was developed since Revision 4 of RG 1.26 was issued.

**DATES:** Submit comments by June 15, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specified subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0091. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: O12H08M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Sardar Ahmed, telephone: 301–415–2836, email: *Sardar.Ahmed@nrc.gov* or Stephen Burton, telephone: 301–415–7000, email: *Stephen.Burton@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0091 when contacting the NRC about the availability of information regarding this document. You may obtain pubically-available information related to this document, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0091.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The DG is electronically available in ADAMS under Accession No. ML14356A249.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2015–0091 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants,'' is temporarily identified by its task number, DG–1314. This DG–1314 is proposed revision 5 of RG 1.26. The guide describes a quality classification system related to specified national standards that may be used to determine quality standards acceptable to the staff of the NRC for satisfying General Design Criterion 1, ''Quality Standards and Records,'' as set forth in appendix A, ''General Design Criteria for Nuclear Power Plants,'' to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing of Production and Utilization Facilities,'' for components containing water, steam, or radioactive material in light-water-cooled nuclear power plants.

This guidance has been revised to update references to related guidance, to incorporate lessons learned from recent reviews and regulatory activities, and to align the format and content of the guide with the current program guidance for regulatory guides since Revision 4 of RG 1.26 was issued.

## III. Backfitting and Issue Finality

This draft regulatory guide may be used by applicants for construction permits and operating licenses under 10 CFR part 50, and early site permits, standard design certifications, standard design approvals, and combined licenses under 10 CFR part 52. Holders of construction permits, operating licenses, early site permits, standard design approvals, and combined licenses, and applicants for standard design certifications after the NRC issues a final design certification rule may also use the guidance in this draft regualtory guide, if finalized.

This DG, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this DG, the NRC has no current intention to impose this DG on current holders of operating licenses or combined licenses.

This DG, if finalized, may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as future applications for operating licenses and combined licenses submitted after the issuance of the RG. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) or is otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants, with exceptions not applicable here, are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

The exceptions to the general principle are applicable whenever an applicant references a part 52 license (*e.g.*, an early site permit) and/or NRC's regulatory approval (*e.g.*, a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in this regulatory guide in a manner that is inconsistent with any of the issue finality provisions applicable to early site permits (10 CFR 52.39), design certifications (10 CFR 52.63), or combined license applications referencing an early site permit (10 CFR 52.83). If, in the future, the staff seeks to impose a position in this regulatory guide in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make address the criteria for avoiding issue finality as described applicable issue finality provision.

Dated at Rockville, Maryland, this 10th day of April 2015.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2015–08739 Filed 4–15–15; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–295 and 50–304; NRC–2015–0087]**

## ZionSolutions, LLC, Zion Nuclear Power Station, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from certain emergency planning requirements in response to a June 20, 2012, request from Zion*Solutions,* LLC. The requirements were part of a final rule that the NRC issued on November 23, 2011.

**DATES:** April 16, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0087 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0087. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/*

*adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** John B. Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3017, email: *John.Hickman@nrc.gov.*

## I. Background

Zion Nuclear Power Station (ZNPS) Units 1 and 2 were permanently shut down in February 1998, for economic reasons, and the licensee placed the plant in SAFSTOR. The licensee isolated the spent fuel pool (SFP) within its Fuel Building and established a spent fuel pool nuclear island with SFP-dedicated support systems. In 1999, the NRC issued an exemption from certain requirements in part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), for the ZNPS licensee to discontinue offsite emergency planning activities and to reduce the scope of onsite emergency planning. In September 2010, the licensed ownership, management authorities, and decommissioning trust fund of the permanently shut down facility was transferred to ZionSolutions (ZS), a subsidiary of EnergySolutions, for the purpose of completing all decommissioning activities with the end goal of full site restoration. Active decommissioning is currently underway.

The NRC's emergency planning (EP) regulations provide in part that no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Additionally, the NRC's EP regulations establishe minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness.

On November 23, 2011 (76 FR 72560), the NRC issued a Final Rule amending certain EP requirements for licensees of nuclear power and non-power reactors. The Final EP Rule was effective on December 23, 2011.

The Final EP Rule modified or added several EP requirements in 10 CFR part 50, including changes in 10 CFR 50.47, 10 CFR 50.54, and appendix E. The Final EP Rule codified certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' and made generically applicable requirements similar to those previously imposed by NRC Order EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' dated February 25, 2002.

In addition, the Final EP Rule amended other licensee emergency plan requirements to: (1) Enhance the ability of licensees in preparing and in taking certain protective actions in the event of a radiological emergency; (2) address, in part, security issues identified after the terrorist events of September 11, 2001; (3) clarify regulations to effect consistent emergency plan implementation among licensees; and (4) modify certain EP requirements to be more effective and efficient.

## II. Request/Action

By letter dated June 20, 2012, (ADAMS Accession No. ML12173A316) ZS, submitted a request for exemption, ''Request for Exemption to Revised Emergency Planning Rule,'' from specific emergency planning requirements of 10 CFR part 50 for the ZNPS.

## III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The NRC staff reviewed the licensee's request and determined that exemptions should be granted, or continue to be granted, from the following requirements: the requirement: ''*arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made''* of 10 CFR 50.47(b)(3); the requirement: ''*and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures''* of 10 CFR 50.47(b)(4); the requirements of 10 CFR 50.47(b)(10); the requirement, ''*and onsite protective actions during hostile action''* of 10 CFR part 50, appendix E.IV.1; the requirement of 10 CFR part 50, appendix E, section IV.2; the requirements of 10 CFR part 50, appendix E, section IV.3; the requirements of 10 CFR part 50, appendix E, section IV.4; the requirements of 10 CFR part 50, appendix E, section IV.5; the requirements of 10 CFR part 50, appendix E, section IV.6; the requirement: ''*offsite''* of 10 CFR part 50, appendix E, section IV.A.4; the requirements: ''*By June 23, 2014,''* and ''*a description of the''* and ''*including hostile action at the site. For purposes of this appendix, ''hostile action'' is defined as an act directed toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force''* of 10 CFR part 50, appendix E, section IV.A.7; the requirement of 10 CFR part 50, appendix E, section IV.A.9; the requirements: ''*and outside,''* and ''*and offsite,* and ''*By June 20, 2012, for nuclear power reactor licensees, these action levels must include hostile action that may adversely affect the nuclear power plant''* of 10 CFR part 50, appendix E, section IV.B.1; the requirements, ''*By June 20, 2012,''* and ''*within 15 minutes''* and ''*to protect public health and safety provided that any delay in declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety''* of 10 CFR part 50, appendix E, section IV.C.2; the requirements, ''*within 15 minutes''* and ''*The licensee shall demonstrate that the appropriate governmental authorities have the capability to make a public alerting and notification decision promptly on being informed by the licensee of an emergency condition. Prior to initial operation greater than 5 percent of rated thermal power of the first reactor at the site, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public with the plume exposure pathway EPZ. The design objective of the prompt public alert and notification system shall be to have the capability to essentially complete the initial alerting and notification of the public within the plume exposure pathway EPZ within*

*about 15 minutes. The use of this alerting and notification capability will range from immediate alerting and notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the appropriate governmental authorities to make a judgment whether or not to activate the public alert and notification system. The alerting and notification capability shall additionally include administrative and physical means for a backup method of public alerting and notification capable of being used in the event the primary method of alerting and notification is unavailable during an emergency to alert or notify all or portions of the plume exposure pathway EPZ population. The backup method shall have the capability to alert and notify the public within the plume exposure pathway EPZ, but does not need to meet the 15 minute design objective for the primary prompt public alert and notification system. When there is a decision to activate the alert and notification system, the appropriate governmental authorities will determine whether to activate the entire alert and notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public alert and notification system shall remain with the appropriate governmental authorities''* of 10 CFR part 50, appendix E, section IV.D.3; the requirements of 10 CFR part 50, appendix E, section IV.D.4; the requirement: ''*and an emergency operations facility''* of 10 CFR part 50, appendix E, section IV.E.8.a.(i); the requirement: of 10 CFR part 50, appendix E, section IV.E.8.a.(ii); the requirements of 10 CFR part 50, appendix E, section IV.E.8.b; the requirements of 10 CFR part 50, appendix E, section IV.E.8.c; the requirements of 10 CFR part 50, appendix E, section IV.E.8.d; the requirement of 10 CFR part 50, appendix E, section IV.E.8.e; the requirements of 10 CFR part 50, appendix E, section IV.F.2.a; the requirements: ''*Nuclear power reactor licensees shall submit exercise scenarios under § 50.4 at least 60 days before use in an exercise required by this paragraph 2.b. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section''* and the requirements ''*and offsite''* and *''(Technical Support Center (TSC), Operations Support Center (OSC), and the Emergency Operations Facility (EOF))''* of 10 CFR part 50, appendix E, section IV.F.2.b; the requirements of 10 CFR part 50, appendix E, section IV.F.2.c; the requirements of 10 CFR part 50, appendix E, section IV.F.2.d; the requirement: ''*Such scenarios for nuclear power reactor licensees must include a wide spectrum of radiological releases and events, including hostile action''* of 10 CFR part 50, appendix E, section IV.F.2.i; the requirements of 10 CFR part 50, appendix E, section IV.F.2.j; and the requirement of 10 CFR part 50, appendix E, section IV.I.

The exemption request was reviewed against the acceptance criteria included in 10 CFR 50.47, appendix E to 10 CFR part 50, 10 CFR 72.32 and Interim Staff Guidance—16. The review considered the permanently shut-down and defueled status of the reactor, and the low likelihood of any credible accident resulting in radiological releases requiring offsite protective measures. These evaluations were supported by the previously documented licensee and staff accident analyses. The staff concludes that the Defueled Station Emergency Plan for ZNPS provides: (1) An adequate basis for an acceptable state of emergency preparedness, and (2) in conjunction with arrangements made with offsite response agencies, provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the ZNPS Site.

The Commission has concluded that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR part 50, appendix E, section IV as specified above are acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut-down.

The NRC has determined that other requirements from which ZS requested exemptions were not applicable to the ZNPS or are being met by the ZNPS Defueled Station Emergency Plan or an exemption was not appropriate. Therefore, an exemption was not necessary or was denied for those requirements. Additional information regarding the staff's evaluation is documented in a Safety Evaluation Report (ADAMS Accession No. ML14272A315).

*A. Exemption Is Authorized by Law*

The NRC has found that ZS meets the criteria for an exemption in § 50.12. The NRC has determined that granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

*B. The Exemption Presents No Undue Risk to Public Health and Safety and Is Consistent With the Common Defense and Security*

As noted in Section II, ''*Request/Action,''* above, ZS's compliance with the EP requirements in effect before the effective date of the Final EP Rule demonstrated reasonable assurance of adequate protection of the public health and safety and common defense and security. In the Safety Evaluation Report, the NRC staff explains that ZS's implementation of the ZNPS Defueled Station Emergency Plan, with the exemptions, will continue to provide this reasonable assurance of adequate protection. Thus, granting the exemptions will not present an undue risk to public health or safety and is not inconsistent with the common defense and security.

*C. Special Circumstances Are Present*

For the Commission to grant an exemption, special circumstances must exist. Under § 50.12(a)(2)(ii), special circumstances are present when [a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. These special circumstances exist here. The NRC has determined that ZS's compliance with the regulations listed above is not necessary for the licensee to demonstrate that, under its emergency plan, there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Consequently, special circumstances are present because requiring ZS to comply with the regulations listed above is not necessary to achieve the underlying purpose of the EP regulations.

*D. Environmental Considerations*

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to this exemption was published in the **Federal Register.** Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

**IV. Conclusion**

The NRC staff reviewed the licensee's submittals and concludes that the licensee's request for an exemption from certain requirements in 10 CFR 50.47(b) and appendix E to 10 CFR part 50 as

specified above are acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut down.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and special circumstances are present in that compliance with the specified regulations is not necessary for reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the ZNPS facility based on its permanently shut down condition.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 2015.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2015–08676 Filed 4–15–15; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL SERVICE

### Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

**DATE AND TIME:** April 14, 2015, at 3 p.m.

**PLACE:** San Mateo, CA, via Teleconference.

**STATUS:** *Committee Votes to Change Time and Place of its meeting scheduled for April 13 and 14, 2015:* By telephone vote on April 8, 2015, members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service met and voted unanimously to cancel its closed meeting session scheduled for April 13, 2015 in San Mateo, CA, and to begin its closed meeting session scheduled for April 14, 2015 at 3:00 p.m., rather than the previously announced time of 8:30 a.m. Moreover, it voted unanimously to hold the April 14, 2015, meeting in San Mateo, CA via teleconference. The Committee determined that no earlier public notice was possible.

**Matters To Be Considered**

*Tuesday, April 14, 2015, at 3:00 p.m.*

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Governors' Executive Session—Discussion of prior agenda items and Board governance.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at 202–268–4800.

**Julie S. Moore,**

*Secretary, Board of Governors.*

[FR Doc. 2015–08834 Filed 4–14–15; 11:15 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74704; File No. SR–NYSEMKT–2014–86]**

### Self-Regulatory Organizations; NYSE MKT LLC.; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Remove the Exchange's Quote Mitigation Plan as Provided by Exchange Rule 970.1NY

April 10, 2015.

**I. Introduction**

On October 2, 2014, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove the Exchange's quote mitigation plan as provided by NYSE MKT Rule 970.1NY. The proposed rule change was published for comment in the **Federal Register** on October 21, 2014.[3] On December 2, 2014, the Commission extended the time period in which to either approve the proposal, disapprove the proposal, or to institute proceedings to determine whether to approve or disapprove the proposal, to January 19, 2015.[4] On January 16, 2015, the Commission instituted proceedings to determine whether to approve or disapprove the proposal.[5] The Commission received 2 comment letters in further support of the proposal from NYSE MKT.[6]

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[8] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9] The proposed rule change was published for notice and comment in the **Federal Register** on October 21, 2014. April 19, 2015, is 180 days from that date, and June 18, 2015, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposal, and the issues raised in NYSE MKT's comment letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates June 18, 2015 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEMKT–2014–86).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08698 Filed 4–15–15; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73367 (October 15, 2014), 79 FR 63009 (''Notice'').

[4] *See* Securities Exchange Act Release No. 73718 (December 2, 2014), 79 FR 72748 (December 8, 2014).

[5] *See* Securities Exchange Act Release No. 74087 (January 16, 2015), 80 FR 3697 (January 23, 2015) (''Order Instituting Proceedings'').

[6] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Elizabeth King, Secretary & General Counsel, Exchange, dated January 8, 2015 and February 27, 2015.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[9] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Rules 8b–1 to 8b–33, SEC File No. 270–135, OMB Control No. 3235–0176.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rules 8b–1 to 8b–33 (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') set forth the procedures for preparing and filing a registration statement under the Investment Company Act. These procedures are intended to facilitate the registration process. These rules generally do not require respondents to report information.[1]

The Commission believes that it is appropriate to estimate the total respondent burden associated with preparing each registration statement form rather than attempt to isolate the impact of the procedural instructions under Section 8(b) of the Investment Company Act, which impose burdens only in the context of the preparation of the various registration statement forms. Accordingly, the Commission is not submitting a separate burden estimate for rules 8b–1 through 8b–33, but instead will include the burden for these rules in its estimates of burden for each of the registration forms under the Investment Company Act. The Commission is, however, submitting an hourly burden estimate of one hour for administrative purposes.

The collection of information under rules 8b–1 to 8b–33 is mandatory. The information provided under rules 8b–1 to 8b–33 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08693 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

[1] Although the rules under Section 8(b) of the Investment Company Act are generally procedural in nature, two of the rules require respondents to disclose some limited information. Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control. The information required by both of these rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74707; File No. SR–EDGA–2015–16]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[5] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend the fees charged for and description of the logical ports[6] offered; (ii) amend the criteria for the MidPoint Discretionary Order Add Volume Tier; and (iii) make a series of immaterial, non-substantive changes.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to: (i) Amend the fees charged for and description of the logical ports offered; (ii) amend the criteria for the MidPoint Discretionary Order Add Volume Tier; and (iii) make a series of immaterial, non-substantive changes.

Logical Ports

Currently, the Exchange maintains logical ports for order entry, drop copies, testing, and market data for which it currently charges $500 per month per port, with the first two (2) ports provided free of charge. Ports used to request a re-transmission of market data from the Exchange are also provided free of charge.

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

(''EDGA''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the ''BGM Affiliated Exchanges'').[7] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. This includes migrating the BGM Affiliated Exchanges, which are currently located in different data centers, into a single data center. As part of the data center migration, the operation and categorization of logical ports provided to access the Exchange would be identical to those utilized to access BZX and BYX. Therefore, the Exchange proposes to harmonize its description of logical ports within its Fee Schedule to align with the descriptions included in the BZX and BYX fee schedules.[8] As a result, the Exchange also proposes to no longer provide free of charge: (i) The first two (2) logical ports per month; and (ii) ports used to request a re-transmission of market data from the Exchange. The Exchange communicated to Members and non-Members of [sic] these changes via a trading notice issued on October 7, 2014.[9]

First, the Exchange proposes to harmonize its description of logical ports within its Fee Schedule to align with the descriptions included in the BZX and BYX fee schedules. As part of the data center migration discussed above, the operation and categorization of ports provided to access the Exchange would be identical to those utilized to access BZX and BYX. Currently, the Exchange charges direct session logical ports fees of $500 per month and separately categorizes those ports as FIX, EDGE XPRS (HPI–API), Data, DROP, EdgeRisk. To harmonize the description of the logical ports offered with those of BZX and BYX, the Exchange proposes to no longer individually list the available ports (other than Multicast PITCH Spin Server and GRP ports described below) as all of the above are encompassed under the term logical ports. In addition, EdgeRisk ports will also no longer be separately listed within in [sic] the Fee Schedule. EdgeRisk ports enable Members, and non-Member service bureaus that act as conduits for orders entered by Members that are their customers, access to a System[10] test environment through which they can test their automated systems that integrate with the Exchange.[11] Under BATS technology, Members and non-Members would no longer need a dedicated port to access the Exchange's test environment as they would be able to utilize any of their existing ports to do so. Therefore, the Exchange proposes to not individually list EdgeRisk as a separate logical port.

Second, other than no longer providing certain ports free of charge as described below, the Exchange does not propose to amend the monthly fee [sic] logical port fees. All logical ports will continue to be subject to a fee of $500 per month per port. In addition, logical port fees proposed above would be limited to logical ports in the Exchange's primary data center and no logical port fees would be assessed for redundant secondary data center ports. In addition, the Exchange also proposes to no longer provide the first two (2) logical ports free of charge. The Exchange, like BZX and BYX, will assess the monthly per logical port fees for all of a Member and non-Member's logical ports.

Currently, the Exchange provides ports used to request a retransmission of data free of charge. Going forward, the Exchange would no longer offer such ports free of charge, as proposed below. There are currently two types of logical ports used to request and receive a retransmission of data from the Exchange,[12] Multicast PITCH Spin Server Ports and Multicast PITCH GRP Ports. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant fees, identified as the ''B feed'' and the ''D feed.''

The Exchange proposes to offer Multicast PITCH Spin Server Ports for a fee of $500 per month for a set of primary ports (A or C feed) and Multicast PITCH GRP Ports for a fee of $500 per month for a primary port (A or C feed). The Exchange will continue to offer for free the ports necessary to receive the Exchange's redundant Multicast ''B feed'' and ''D feed'', as well as all ports made available in the Exchange's secondary data center. Accordingly, this proposal only applies to ports used to receive an Exchange primary Multicast PITCH feeds at the Exchange's primary data center. The proposed fees for Multicast PITCH Spin Server Ports and GRP Ports are identical to those charged by BZX and BYX.

Lastly, the Exchange proposes to rename this section of its Fee Schedule entitled ''Port Fees'' as ''Logical Port Fees.''

MidPoint Discretionary Order Add Volume Tier

The Exchange proposes to amend the criteria for the MidPoint Discretionary Order Add Volume Tier. Under the tier, a Member qualifies for a reduced fee of $0.0003 per share where that Member: (i) Adds an ADV of at least 0.25% of the TCV including non-displayed orders that add liquidity; and (ii) adds or removes an ADV of at least 1,500,000 shares yielding fee codes DM or DT. Fee code DM is applied to Non-Displayed orders that add liquidity using MidPoint Discretionary orders[13] and fee code DT is applied to Non-Displayed orders that remove liquidity using MidPoint Discretionary Orders. Orders that yield fee code DM or fee code DT that do not meet to the criteria of the MidPoint Discretionary Order Add Volume Tier are charged a fee of $0.00050 per share. The Exchange now proposes to decrease the ADV requirement to require that a Member add an ADV of at least 0.20%, rather than 0.25%, of the TCV including non-displayed orders that add liquidity. Easing the criteria of the MidPoint Discretionary Order Add Volume Tier is intended to further incentive Members to submit an increased number of MidPoint Discretionary orders to the Exchange, thereby increasing the liquidity on the Exchange at the midpoint of the National Best Bid or Offer (''NBBO'').

Non-Substantive Changes

The Exchange also proposes to make a series of immaterial, non-substantive

[7] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[8] The Exchange notes that EDGA intends to file a proposal very similar to this proposal that will align its logical port fees across each of the BGM Affiliated Exchanges. The Exchange also notes that BZX and BYX also intend to file a proposal to increase its port fees from $400 per month per port to $500 per month per port as well as to change references to ''GRP Ports'' to ''Multicast PITCH GRP Ports''.

[9] *See* BATS Global Markets Access Fee Changes for 2015, *available at http://cdn.batstrading.com/resources/fee_schedule/2015/BATS-Global-Markets-Access-Services-Fee-Changes-for-2015.pdf* (issued October 7, 2014).

[10] The term ''System'' is defined in Rule 1.5(cc).

[11] *See* Securities Exchange Act Release Nos. 69670 (May 30, 2013), 78 FR 33871 (June 5, 2013) (SR–EDGX–2013–18); *and* 69669 (May 30, 2013), 78 FR 33880 (June 5, 2013) (SR–EDGA–2013–14).

[12] FIX and BOE ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including the Multicast PITCH Spin Server Port and GRP Port, permit Members and non-members to receive information from the Exchange.

[13] *See* Exchange Rule 11.8(e) for a description of MidPoint Discretionary orders.

changes to its Fee Schedule. None of the changes proposed are intended to amend any fee or rebate. These changes are:

- Remove the word ''the'' from the description of fee code D;
- Remove the word ''the'' from the description of fee code RN;
- Amend the Market Data Section to add a colon after BATS One Feed[sm]; and
- Add a colon after Licensing and Continuing Education.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on April 1, 2015.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Logical Ports

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that its proposed changes, combined with the planned filings for EDGA, BZX and BYX,[17] would allow the BGM Affiliated Exchanges to provide consistent logical port offerings across each of the BGM Affiliated Exchanges. Consistent offerings, in turn, will simplify the connectivity requirements for Members of the Exchange that are also participants on EDGA, BZX and/or BYX. The proposed rule change would result in greater uniformity and less burdensome and more efficient understanding of Exchange connectivity requirements.

The Exchange also believes that no longer providing the first two (2) logical ports for free as well as ports used to request a retransmission of market data also represents an equitable allocation of reasonable dues, fees and other charges. The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Lastly, the Exchange believe its proposed fees are reasonable because the Nasdaq Stock Market LLC (''Nasdaq'') and the NYSE Arca, Inc. (''NYSE Arca'') do not provide logical ports or ports used for the retransmission of market data free of charge.[18]

The Exchange believes that its proposed changes to logical port fees are reasonable in light of the benefits to Exchange participants of direct market access and receipt of data. In addition, the Exchange believes that its fees are equitably allocated among Exchange constituents based upon the number of access ports that they require to receive data from the Exchange. Further, the Exchange believes that its fees are not unreasonably discriminatory because all market participants are charged standard fees for port usage. The Exchange notes that it believes its prior fee structure, under which two ports were provided free of charge, was reasonable, equitably allocated and not unreasonably discriminatory because it was available to all market participants and was intended to encourage Members and non-members to connect to the Exchange. However, by moving towards a more uniform approach to port descriptions and charges across the BGM Affiliated Exchanges, the Exchange believes that its fees are even more equitably allocated and nondiscriminatory. The Exchange also believes that its fees for access services will enable it to better cover its infrastructure costs and to improve its market technology and services.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Members. All Members that voluntarily select various service options will be charged the same amount for the same services. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

MidPoint Discretionary Order Add Volume Tier

The Exchange believes amending the criteria for the MidPoint Discretionary Order Add Volume Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it is designed to further incentivize Members to increase their use of MidPoint Discretionary orders on EDGA. MidPoint Discretionary Orders increase displayed liquidity on the Exchange while also enhancing execution opportunities at the mid-point of the NBBO. Promotion of displayed liquidity at the NBBO enhances market quality for all Members. Members utilizing MidPoint Discretionary orders provide liquidity at the midpoint of the NBBO increasing the potential for an order to receive price improvement, and easing the tier's criteria so that Members may be eligible for a decreased fee is a reasonable means by which to encourage the use of such orders. In addition, the Exchange believes that by encouraging the use of MidPoint Discretionary orders by easing the tier's criteria, Members seeking price improvement would be more motivated to direct their orders to EDGA because they would have a heightened expectation of the availability of

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(4).

[17] *See* supra note 8.

[18] *See* Nasdaq Rule 7015 (providing no FIX or non-Trading FIX ports free of charge) *and* the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated February 26, 2105).

liquidity at the midpoint of the NBBO. The Exchange also believes that the proposed addition of the MidPoint Discretionary Order Add Volume Tier is non-discriminatory because it will be available to all Members.

Non-Substantive Changes

The Exchange believes that the non-substantive clarifying changes to its Fee Schedule are reasonable because none of the proposed changes are designed to amend any fee, nor alter the manner in which it assesses fees or calculates rebates. These non-substantive changes to the Fee Schedule are intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Logical Ports

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, other than no longer providing two (2) ports or ports used for the retransmission of market data for free each month, it does not proposes to alter the fees charged from their current levels. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. In addition, allowing the Exchange to implement substantively identical logical port fees across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGA. Lastly, the Exchange believes the proposal to no longer provide two (2) ports or ports used for the retransmission of market data for free each month would enhance intermarket competition because Nasdaq and NYSE Arca do not provide logical ports or ports used for the retransmission of market data free of charge.[19] The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

MidPoint Discretionary Order Add Volume Tier

The Exchange believes that its proposal to ease the criteria for the MidPoint Discretionary Order Add Volume Tier would increase intermarket competition because it would further incentivize Members to send an increased amount MidPoint Discretionary orders to the Exchange in order to qualify for the tier's decreased fee. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the MidPoint Discretionary Order Add Volume Tier would apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased liquidity at the midpoint of the NBBO and better market quality at the Exchange.

Non-Substantive Changes

The Exchange believes that the non-substantive changes to the Fee Schedule will not affect intermarket nor intramarket competition because none of these changes are designed to amend any fee or alter the manner in which the Exchange assesses fees or calculates rebates.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

[19] *Id.*

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2015–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2015–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2015–16, and should be submitted on or before May 7, 2015

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08701 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74705; File No. SR–NYSEArca–2014–117]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Remove the Exchange's Quote Mitigation Plan as Provided by Commentary .03 to Exchange Rule 6.86

April 10, 2015.

### I. Introduction

On October 2, 2014, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove the Exchange's quote mitigation plan as provided by Commentary .03 to NYSE Arca Rule 6.86. The proposed rule change was published for comment in the **Federal Register** on October 21, 2014.[3] On December 2, 2014, the Commission extended the time period in which to either approve the proposal, disapprove the proposal, or to institute proceedings to determine whether to approve or disapprove the proposal, to January 19, 2015.[4] On January 16, 2015, the Commission instituted proceedings to determine whether to approve or disapprove the proposal.[5] The Commission received 2 comment letters in further support of the proposal from NYSE Arca.[6]

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[8] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9] The proposed rule change was published for notice and comment in the **Federal Register** on October 21, 2014. April 19, 2015, is 180 days from that date, and June 18, 2015, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposal, and the issues raised in NYSE Arca's comment letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates June 18, 2015 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2014–117).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08699 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73362 (October 15, 2014), 79 FR 62983 (''Notice'').

[4] *See* Securities Exchange Act Release No. 73720 (December 2, 2014), 79 FR 72747 (December 8, 2014).

[5] *See* Securities Exchange Act Release No. 74088 (January 16, 2015), 80 FR 3687 (January 23, 2015) (''Order Instituting Proceedings'').

[6] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Elizabeth King, Secretary & General Counsel, Exchange, dated January 8, 2015 and February 27, 2015.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[9] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74703; File No. SR–BYX–2015–21]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the fees charged for and description of the logical ports [6] offered by the Exchange.

Currently, the Exchange maintains logical ports for order entry, drop copies and the receipt of market data for which it currently charges $400 per month per port with the exception of Multicast PITCH Spin Server Ports and GRP Ports.[7] Multicast PITCH Spin Server Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feed. The Exchange does charge $400 per month for such ports, however, the Exchange separately delineates such fees because of various details related to the use of such ports. Specifically, Multicast PITCH Spin Server Ports are offered as a complete set, including one logical port for each channel of the Exchange's Multicast PITCH data feed, and can be taken for either of the Exchange's primary Multicast PITCH data feeds.[8] Similarly, Multicast PITCH GRP Ports can be taken for either of the Exchange's primary Multicast PITCH data feeds. The Exchange offers Multicast PITCH Spin Server Ports for a fee of $400 per month for a set of primary ports (A or C feed) and Multicast PITCH GRP Ports for a fee of $400 per month per primary port (A or C feed). The Exchange offers and will continue to offer for free the ports necessary to receive the Exchange's redundant Multicast ''B feed'' and ''D feed'', as well as all ports made available in the Exchange's secondary data center.

In early 2014, the Exchange and its affiliate, BATS Exchange, Inc. (''BZX''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with the Exchange, BZX and EDGX, the ''BGM Affiliated Exchanges'').[9] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. This includes migrating the BGM Affiliated Exchanges, which are currently located in different data centers, into a single data center. As part of the data center migration and the integration of the BGM Affiliated Exchanges, the Exchange is proposing to increase the fees charged from $400 per month to $500 per month for all categories of logical ports, including sets of Multicast PITCH Spin Server Ports for the A feed and the C feed, individual GRP Ports for the A feed and the C feed, and all other logical ports. The Exchange notes that EDGA and EDGX currently charge $500 per month for most logical ports.[10] The Exchange communicated to Members and non-Members regarding these changes via a trading notice issued on October 7, 2014.[11]

In addition to increasing the port fees charged by the Exchange, the Exchange proposes to add the words ''Multicast PITCH'' before GRP Ports to mirror the description of fees for Multicast PITCH Spin Server Ports. As noted above, the separate fees for Spin Server Ports and GRP Ports both relate to the Exchange's Multicast PITCH data feed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that its proposed changes, combined with the planned filings for EDGA, EDGX and BZX,[15] would allow the BGM Affiliated Exchanges to provide consistent logical port offerings across each of the BGM Affiliated Exchanges. Consistent offerings, in turn, will simplify the connectivity requirements for Members of the Exchange that are also participants on EDGA, BZX and/or BYX [sic]. The proposed rule change would result in greater uniformity and less burdensome and more efficient understanding of Exchange connectivity requirements.

The Exchange believes that the increase of fees for logical ports represents an equitable allocation of reasonable dues, fees and other charges. The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

[7] FIX and BOE ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including the Multicast PITCH Spin Server Port and GRP Port, permit Members and non-members to receive information from the Exchange.

[8] The Exchange's primary Multicast PITCH data feeds are identified as the ''A feed'' and the ''C feed'' and contain the same information. The A feed and the C feed differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the ''B feed'' and the ''D feed''.

[9] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[10] The Exchange notes that BZX intends to file a proposal very similar to this proposal that will align its logical port fees across each of the BGM Affiliated Exchanges. The Exchange also notes that EDGA and EDGX also intend to file a proposal to charge $500 per month for all types of logical ports as well as to change the descriptions used for logical port fees to mirror the descriptions used by the Exchange and BZX.

[11] *See* BATS Global Markets Access Fee Changes for 2015, *available at http://cdn.batstrading.com/resources/fee_schedule/2015/BATS-Global-Markets-Access-Services-Fee-Changes-for-2015.pdf* (issued October 7, 2014).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(4).

[15] *See* supra note 10.

revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Lastly, the Exchange believe [sic] its proposed fees are reasonable because the Nasdaq Stock Market LLC (''Nasdaq'') and the NYSE Arca, Inc. (''NYSE Arca'') charge comparable rates for logical ports to access such markets.[16] As noted above, EDGA and EDGX also charge the same rate for access to most logical ports.

The Exchange believes that its proposed changes to logical port fees are reasonable in light of the benefits to Exchange participants of direct market access and receipt of data. In addition, the Exchange believes that its fees are equitably allocated among Exchange constituents based upon the number of access ports that they require to access and receive data from the Exchange. The Exchange also believes that its fees for access services will enable it to better cover its infrastructure costs and to improve its market technology and services.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Members. All Members that voluntarily select various service options will be charged the same amount for the same services. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe its proposed amendments to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change to logical port fees represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2015–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2015–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2015–21, and should be submitted on or before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08697 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

[16] *See* Nasdaq Rule 7015 (providing no FIX or non-Trading FIX ports free of charge) *and* the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated February 26, 2015). The Exchange recognizes that some participants may be charged the lower rate of $200 per month to the extent such participants maintain a low number of ports with NYSE Arca. The Exchange nonetheless believes that its proposed fees are comparable despite the fact that it does not proposed [sic] a lower fee for such participants.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74706; File No. SR–ISE–2015–11]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees to introduce a Member Order Routing Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to introduce a Member Order Routing Program (''MORP'') that will provide enhanced rebates to order routing firms that select the Exchange as the default routing destination (as described below) for unsolicited Crossing Orders.[3] The MORP is intended to compete with similar programs offered by competitor options exchanges. The Exchange designates this filing to become effective on April 1, 2015.[4]

MORP Qualifications

To be eligible to participate in MORP, an Electronic Access Member (''EAM'') must: (1) Provide to its clients, systems that enable the electronic routing of option orders to all of the U.S. options exchanges, including ISE; (2) interface with ISE to access the Exchange's electronic options trading platform; (3) offer to its clients a customized interface and routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders entered by the EAM,[5] provided that market conditions allow the Crossing Order to be executed on ISE; (4) configure its own option order routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on ISE, with respect to all option orders as to which the EAM has routing discretion; and (5) ensure that the default routing functionality permits users submitting option orders through such system to manually override the ISE as the default destination on an order-by-order basis.[6]

EAMs that wish to participate in the program must certify that they meet the above MORP requirements, in writing, on a monthly basis and in a form to be determined by the Exchange. The relevant notice must be provided by the last business day of the month for members to be eligible to participate in the MORP effective the first business day of the following month.[7]

Rebate for Unsolicited Crossing Orders

An EAM that is MORP eligible will receive a rebate for all unsolicited Crossing Orders of $0.05 per originating contract side, provided that the member executes a minimum average daily volume (''ADV'') in unsolicited Crossing Orders of at least 30,000 originating contract sides. This rebate is increased to $0.07 per originating contract side, provided that the member executes a higher ADV in unsolicited Crossing Orders of 100,000 originating contract sides. The rebate for the highest tier achieved will be applied retroactively to all eligible contracts traded in a given month. As is ISE's current practice with respect to ADV calculations, any day that the Exchange is not open for the entire trading day may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The Exchange will provide a notice, and post it on the Exchange's Web site, to inform members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

Facilitation and Solicitation Break-Up Rebate

In addition, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more will also be eligible for increased Facilitation and Solicitation break-up rebates. Currently, the Exchange provides a Facilitation and Solicitation break-up rebate of $0.15 per contract for regular and complex orders in Select Symbols. This rebate applies to all Non-ISE Market Maker,[8] Firm Proprietary [9]/Broker-Dealer,[10] Professional Customer,[11] and Priority Customer [12] orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order, except when those orders trade against pre-existing orders and quotes on the Exchange's order books. For MORP eligible members that execute a qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, the Exchange now proposes to increase this Facilitation and Solicitation break-up rebate to $0.35 per contract for regular and complex orders in Select Symbols. In addition, the Exchange proposes to adopt a Facilitation and Solicitation break-up rebate in Non-Select Symbols and FX option classes specifically for members that meet the MORP qualifications described above. The rebate in Non-Select Symbols will be $0.15 per contract for regular orders and $0.80 per contract for complex orders. For FX option classes, the rebate will be $0.15 per contract for both regular and complex orders. With this proposed

[3] A '' Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (''PIM'') or submitted as a Qualified Contingent Cross (''QCC'') order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Solicited Crossing Orders will not qualify for MORP as they are already eligible for the QCC and Solicitation Rebate. *See* Schedule of Fees, Section IV.A.

[4] The Exchange notes that members must opt in to MORP by March 31, 2015 to be eligible to participate in the program on April 1, 2015. *See* note 7 *infra*.

[5] An unsolicited Crossing Order is a Crossing Order entered by a member that has not solicited the contra side of the trade.

[6] The Exchange notes that these requirements are based, in part, on similar programs offered by other options exchanges. *See* notes 15 and 19 infra and accompanying text.

[7] Members must provide this notice by March 31, 2015 to be eligible to participate in MORP when the program becomes effective on April 1, 2015.

[8] A ''Non-ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[9] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.

[10] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

[11] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[12] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Rule 100(a)(37A).

change, the Exchange notes that eligible members will receive the same break-up rebates for their Facilitation and Solicitation orders as they currently do for orders submitted to the PIM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange proposes to provide the MORP rebate and higher break-up rebates to EAMs that connect directly to the Exchange and provide their clients with order routing functionality that includes all U.S. options exchanges, including ISE. Order routing firms are already provided enhanced rebates by some of the Exchange's competitors, including, for example, NYSE Amex Options (''Amex''), which provides volume based rebates to members that provide access and connectivity to their market.[15] The Exchange believes that it is appropriate at this time to offer a similar rebate to order routing firms on ISE in order to compete with these programs on other options markets.

The Exchange believes the proposed fee program is reasonable and equitable because it is designed to encourage order routing firms to execute additional unsolicited Crossing Order volume on the ISE. The Exchange notes that it currently offers other incentive programs to promote and encourage growth in specific business areas, including, for example, rebates for Market Makers that routinely quote at the national best bid or offer,[16] and volume-based Priority Customer complex order rebates.[17] The proposed rule change is targeted towards Crossing Orders, and, in particular, unsolicited Crossing Orders, which is yet another segment of order flow that the Exchange seeks to encourage members to execute on ISE. The Exchange believes that it is reasonable and equitable to tailor the proposed rule change to unsolicited Crossing Orders. ISE already charges fees and provides rebates for non-Crossing Orders that are effective in attracting that order flow to the Exchange. In addition, solicited Crossing Orders already benefit from the QCC and Solicitation Rebate, which applies to all QCC and/or other solicited Crossing Orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms. The Exchange believes that the QCC and Solicitation Rebate has proven to be an effective incentive for members to send solicited crosses to the ISE. The proposed rule change would supplement this incentive by encouraging eligible firms to send unsolicited Crossing Orders to the Exchange as well, which will benefit all market participants on ISE by creating additional liquidity and increased opportunity to trade on the Exchange.

The Exchange notes that the proposed MORP rebate levels are within the range of rebates currently offered by Amex, whose market access and connectivity subsidy ranges from $0.04 per contract to $0.08 per contract based on a member's volume tier.[18] In addition, the Exchange notes that the proposed Facilitation and Solicitation break-up rebates are equivalent to break-up rebates already provided for PIM orders traded on ISE.

As a condition for participating in MORP, an EAM must configure its option order routing functionality so that ISE will be the default destination for all unsolicited Crossing Orders, and must offer to its clients a customized interface and routing functionality that similarly defaults such orders to ISE. Defaulting to ISE will not be required if market conditions do not allow the Crossing Order to be executed on the Exchange. In addition, MORP eligible firms must allow users to manually override ISE as the default order routing destination on an order-by-order basis. The Exchange believes that these proposed requirements are reasonable and equitable as they protect investors, while allowing member firms to qualify for enhanced rebates that reduce their trading costs on ISE. Furthermore, the Exchange notes that members that set ISE as their default routing destination will not be relieved of complying with their best execution obligations. If, based on its regular best execution analysis, a MORP eligible member determines that the routing functionality described above would conflict with its duty of best execution, such member may discontinue participation in the program. The Exchange believes that the safeguards described above will ensure that client orders are appropriately protected under MORP. In this regard, the Exchange notes that the proposed protections mirror protections previously adopted by NASDAQ OMX PHLX, LLC (''Phlx''), where a similar program was introduced in 2007.[19]

Finally, the Exchange believes that the proposed program is both equitable and not unfairly discriminatory because any qualifying EAM that offers market access and connectivity to the Exchange will be able to participate in the program on an equal and non-discriminatory basis. While there will be two tiers of MORP rebates, the sole basis for differentiation among the tiers will be participant volume in unsolicited Crossing Orders.[20] The Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to members that execute a higher volume of order flow on ISE. With respect to break-up rebates, the Exchange notes that all members that qualify for a MORP rebate will also receive enhanced break-up rebates.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[21] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change evidences the strength of competition in the options industry. Specifically, the Exchange believes that the proposed fee change will enhance the competiveness of the ISE relative to other options exchanges, such as Amex, that offer similar programs under their respective fee schedules. In doing so, eligible order routing firms will benefit from an innovative program that reduces trading costs by providing a valuable rebate for their unsolicited Crossing Orders. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Securities Exchange Act Release No. 71532 (February 12, 2014), 79 FR 9563 (February 19, 2014) (SR–NYSEMKT–2014–12).

[16] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates, Market Maker Plus.

[17] *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[18] *See* supra note 15.

[19] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54).

[20] As explained above, the proposed rule change is targeted towards unsolicited Crossing Orders as this is the segment of order flow that the Exchange is seeking to encourage members to execute on ISE. The Exchange does not believe that this is unfairly discriminatory as all MORP eligible members can achieve the applicable rebates by executing unsolicited Crossing Orders on the ISE.

[21] 15 U.S.C. 78f(b)(8).

Exchange believes that the proposed fee changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [22] and subparagraph (f)(2) of Rule 19b–4 thereunder,[23] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2015–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2015–11, and should be submitted on or before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08700 Filed 4–15–15; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74712; File No. SR–DTC–2015–01]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Discontinue the Prospectus Repository System Service

April 10, 2015.

**I. Introduction**

On February 13, 2015, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2015–01 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the *Federal Registrar* on March 2, 2015.[3] The Commission did not receive any comments on the Proposed Rule Change. This order approves the Proposed Rule Change.

**II. Description**

DTC filed the Proposed Rule Change to discontinue DTC's Prospectus Repository System ("PRS") and its Terms of Use ("Terms of Use"), as discussed below.

DTC launched PRS in 2003 to provide DTC participants ("Participants") and DTC-authorized third parties (collectively, "Users") [4] access to prospectuses and official statements relating to new issues of corporate and municipal securities ("Documents").[5] Today, however, there are few Users of PRS because many of the Documents provided through PRS are publicly available. As such, DTC states that it is not worth the cost of maintaining PRS and, thus, will discontinue it.

**III. Discussion**

Section 19(b)(2)(C) of the Act [6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7]

The Commission finds the Proposed Rule Change consistent with the Act. More specifically, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[8] By eliminating a service that is not economically efficient to maintain or central to DTC's core clearing business, DTC can better allocate its economic resources to support the safeguarding of securities or funds in its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 74358 (February 24, 2015), 80 FR 11243 (March 2, 2015) (SR–DTC–2015–01).

[4] Third-party Users of PRS include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel and financial advisors. Individual investors do not have access to PRS.

[5] Securities Exchange Act Release No. 47410 (February 26, 2003), 68 FR 10558 (March 5, 2003) (SR–DTC–2002–13).

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] *Id.*

custody or control, and promote the prompt and accurate clearance and settlement of securities transactions.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2015–01 be, and hereby is, *approved.*[10]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08704 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74709; File No. SR–CBOE–2015–036]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective April 1, 2015. Specifically, the Exchange proposes to amend its fees for the Russell 2000 Index (''RUT''). As of April 1, 2015, RUT will be listed exclusively on CBOE and C2 Options Exchange Incorporated (''C2''). As such, the Exchange proposes to make certain conforming changes to its Fees Schedule.

By way of background, a specific set of proprietary products had been commonly listed out in the Fees Schedule as being included or excluded from a variety of programs, qualification calculations and transactions fees. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange recently adopted the term ''Underlying Symbol List A,'' to represent these products.[3] Currently, Underlying Symbol List A is defined in Footnote 34 and represents the following proprietary products: OEX, XEO, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options The Exchange notes that the reason the products in Underlying Symbol List A are often collectively included or excluded from certain programs, qualification calculations and transactions fees is because the Exchange has expended considerable resources developing and maintaining its proprietary, exclusively-listed products. Similar to the products currently represented by ''Underlying Symbol List A,'' RUT will no longer be listed on any other exchange (other than C2). As such, the Exchange proposes to exclude or include RUT in the same programs as the other products in Underlying Symbol List A (except as otherwise noted below), as well as add RUT to the definition of Underlying Symbol List A in Footnote 34. Specifically, like the other products in Underlying Symbol List A, the Exchange proposes to except RUT from the Liquidity Provider Sliding Scale, the Marketing Fee, the Clearing Trading Permit Holder Fee Cap (''Fee Cap'') and exemption from fees for facilitation orders, and the Order Router Subsidy (ORS) and Complex Order Router Subsidy (CORS) Programs. Like all other products in Underlying Symbol List A (with the exception of SROs), the Exchange proposes to apply to RUT the CBOE Proprietary Products Sliding Scale. Unlike the products in Underlying Symbol List A, the Exchange does intend to keep RUT volume in the calculation of qualifying volume for the rebate of Floor Broker Trading Permit fees.

Next, as the Exchange proposes to include RUT in Underlying Symbol List A, the reference to RUT in the ''Index Options Rate Table—All Index Products Excluding Underlying Symbol List A'' table will be deleted and new references to RUT, where applicable, will be added to the ''Specified Proprietary Index Options Rate Table—Underlying Symbol List A'' table. Additionally, the Exchange will add ''RUT'' to the list of products excluded from the Customer section of the Index Options Rate Table. The Exchange also proposes to spell out and add a separate row for the remaining products of Underlying Symbol List A for Broker-Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals and Joint Back Offices (''JBOs'') transaction fees.

The Exchange also proposes to amend certain transaction fees for RUT options. Currently, Clearing Trading Permit Holder proprietary (''F'' origin code) and Non-Trading Permit Holder Affiliate (''L'' origin code) RUT transactions are assessed $0.35 per contract for electronic transactions and $0.20 per contract for both manual and Automated Improvement Mechanism (''AIM'') transactions. The Exchange proposes to assess a $0.25 per contract transaction fee for all Clearing Trading Permit Holder and Non-Trading Permit Holder Affiliate transactions, which is the same fee amount assessed to Clearing Trading Permit Holder

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[9] 15 U.S.C. 78q–1.

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73832 (December 12, 2014), 79 FR 243 (December 18, 2014) (SR–CBOE–2014–092).

proprietary and Non-Trading Permit Holder Affiliate transactions for all products in Underlying Symbol List A.[4] Next, the Exchange notes that currently, RUT is subject to the Liquidity Provider Sliding Scale, which provides for reduced transaction fees for Market-Makers that reach certain volume thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options. As mentioned above, the Liquidity Provider Sliding Scale will no longer apply to RUT as RUT will now be exclusively listed on CBOE (and C2) and part of Underlying Symbol List A. As such, the Exchange proposes to assess Market-Makers $0.20 per contract for all RUT transactions, which is also the same fee amount as applies to Market-Makers for all products in Underlying Symbol List A.

The Exchange also proposes to amend the AIM transaction RUT fees for Broker-Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals and Joint Back Offices (''JBOs''). Currently, the Exchange assesses these market participants $0.20 per contract for AIM Agency/Primary transactions and $0.05 per contract for AIM Contra transactions. The Exchange proposes to charge all RUT AIM transactions $0.25 per contract. The current fees of $0.65 per contract for Broker-Dealer, Non-Trading Permit Holder Market-Maker, and JBO electronic RUT transactions and $0.25 per contract for manual transactions are not changing. Currently, Customer transactions are assessed $0.18 per contract for all RUT orders other than AIM Contra orders. AIM Contra transactions are currently assessed $0.05 per contract. The Exchange proposes to increase the AIM Contra fee to $0.18 per contract, so that all Customer transactions will be assessed the same rate (*i.e.,* $0.18). The Exchange notes that Customer AIM orders (both AIM Agency/Primary and Contra) for other Underlying Symbol List A products are also charged the same amount(s) as apply to Customer non-AIM transactions for each respective product.

The Exchange also proposes to apply to RUT, like the other products in Underlying Symbol List A, the Floor Brokerage Fee of $0.04 per contract ($0.02 per contract for crossed orders) (the Floor Brokerage Fee applies only to Floor Brokers, and only for open outcry trading).

Currently, the Exchange assesses an Index License Surcharge for RUT of $0.30 per contract for all non-customer orders. The Exchange now proposes to increase the RUT Surcharge from $0.30 to 0.45 per contract in order to recoup the increased costs associated with the RUT license. The Exchange will still be subsidizing the costs of the RUT license.

Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A, DJX, XSP, XSPAM, mini-options and subcabinet trades, will receive a rebate on that Floor Broker's Trading Permit Holder's Floor Broker Trading Permit Fees. The Exchange notes that although RUT is being added to ''Underlying Symbol List A'', it wishes to continue to include RUT in the calculation of the qualifying volume for the rebate of Floor Broker Trading Permit fees. As such, the Exchange seeks to explicitly note in Footnote 25 that RUT will be included in the calculation, notwithstanding its inclusion in Underlying Symbol List A. The Exchange wishes to continue to encourage Floor Brokers to execute open-outcry trades in RUT options and believes that continuing to include RUT in the qualifying volume will provide such incentive. Additionally, the Exchange notes that as discussed above, Floor Brokers will now be assessed floor brokerage fees for RUT, which had not been assessed to them previously.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Particularly, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for other proprietary products. The Exchange also believes that the proposed fee amounts for RUT orders are reasonable because the proposed fee amounts are within the range of amounts assessed for the Exchange's other proprietary products.[8]

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to other market participants because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to Customers are intended to attract more Customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly discriminatory to, assess lower fees to Market-Makers as compared to other market participants other than Customers because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market

[4] The $0.25 per contract fee for Clearing Trading Permit Holders and Non-Trading Permit Holder Affiliates is subject to the applicability of the CBOE Proprietary Products Sliding Scale.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* CBOE Fees Schedule, Specified Proprietary Index Options Rate Table.

participants. Additionally, the proposed fee for Market-Makers will be applied equally to all Market-Makers (meaning that all Market-Makers will be assessed the same amount). This concept also applies to orders from all other origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in RUT, which should therefore serve to benefit all Exchange market participants. Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary orders than those of other market participants (except Customers and Market-Makers) because Clearing Trading Permit Holders also have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. The Exchange also notes that the RUT fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.* all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.).

The Exchange believes the proposed changes to AIM transaction fees for Brokers Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals, JBOs and Customers are reasonable because the amounts are still lower than assessed for AIM transactions in other proprietary products.[9] The Exchange believes it's equitable and not unfairly discriminatory to assess lower fees for AIM executions as compared to electronic executions because AIM is a price-improvement mechanism, which the Exchange wishes to encourage and support.

Assessing the Floor Brokerage Fee of $0.04 per contract for non-crossed orders and $0.02 per contract for crossed orders to Floor Brokers (and not other market participants) trading RUT orders is equitable and not unfairly discriminatory because only Floor Brokers are statutorily capable of representing orders in the trading crowd, for which they charge a commission. Moreover, this fee is already assessed, in the same amounts, to the other products in Underlying Symbol List A.

Increasing the Index License Surcharge Fee from $0.30 to $0.45 per contract to RUT transactions is reasonable because the Exchange still pays more for the RUT license than the amount of the proposed RUT Index License Surcharge Fee (meaning that the Exchange will be subsidizing the costs of the RUT license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the RUT Surcharge applies. Not applying the RUT Index License Surcharge Fee to Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer RUT orders, which increases liquidity and provides greater trading opportunities to all market participants.

Excepting RUT from the Liquidity Provider Sliding Scale, the Marketing Fee, the Fee Cap, and the exemption from fees for facilitation orders is reasonable because other Underlying Symbol List A products (*i.e.,* other products that are exclusively-listed) are excepted from those same items. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to except RUT from items on the Fees Schedule from which other proprietary products are also excepted.

Applying to RUT the CBOE Proprietary Products Sliding Scale is reasonable because it also applies to other Underlying Symbol List A products. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to apply to RUT the same items on the Fees Schedule that apply to Underlying Symbol List A options classes (*i.e.,* proprietary options classes that are not listed on other exchanges).

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to continue to include RUT in the calculation of the qualifying volume for the Floor Broker Trading Permit Fees rebate because the Exchange wishes to support and encourage open-outcry trading of RUT, which allows for price improvement and has a number of positive impacts on the market system.

Finally, the Exchange believes the proposed change to relocate the RUT fees from the ''Index Options Rate Table- All Index Products Excluding Underlying Symbol List A'' to the ''Specified Proprietary Index Options Rate Table- Underlying Symbol List A'' and make other technical conforming changes to the Fees Schedule makes clear to market participants that RUT is now part of Underlying Symbol List A and reduces potential confusion as to which Rate Table applies. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market-Makers have quoting obligations that other market participants do not have.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because RUT will now be exclusively listed on CBOE (and C2). To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2015–036 on the subject line.*

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–036 and should be submitted on or before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08703 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74701; File No. SR–NYSEArca–2015–18]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 of Shares of the Vanguard Tax-Exempt Bond Index Fund

April 10, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 6, 2015, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, the shares of the Vanguard Tax-Exempt Bond Index Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Vanguard Tax-Exempt Bond Index Fund's ETF share class (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes.[4] The Fund is a series of the Vanguard Municipal Bond Funds Trust (''Trust'').[5] The Vanguard Group, Inc.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission previously has approved proposed rule changes relating to listing and trading on the Exchange of Units based on municipal bond indexes. *See* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67729 (August 24, 2012), 77 FR 52776 (August 30, 2012) (SR–NYSEArca–2012–92) (notice of proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR–NYSEArca–2013–118) (order approving listing and trading of shares of the Market Vectors Short High-Yield Municipal Index ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72523, (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72172 (May 15, 2014), 79 FR 29241 (May 21, 2014) (SR–NYSEArca–2014–37) (notice of proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of shares of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94). The Commission has approved for Exchange listing and trading of shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR® Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[5] On January 6, 2015, the Trust filed a registration statement on Form N–1A under the Securities Act

Continued

will be the investment adviser to the Fund (''Adviser'').

State Street Bank and Trust Company will serve as custodian for the Fund. Vanguard Marketing Corporation will be the distributor (''Distributor'') for the Fund's Shares.

Principal Investments

According to the Registration Statement, the Fund will seek to track the performance of a benchmark index that measures the investment-grade segment of the U.S. municipal bond market. The Fund will invest by sampling its benchmark index, meaning that it holds a range of securities that, in the aggregate, approximates the full index in terms of key risk factors and other characteristics. All of the Fund's investments will be selected through the sampling process, and, under normal circumstances [6], at least 80% of the Fund's assets will be invested in securities held in its benchmark index. Under normal circumstances, at least 80% of the Fund's income will be exempt from federal income taxes.

The Fund has proposed to use the Standard & Poor's National AMT-Free Municipal Bond Index (''Index'') as its benchmark index.[7] The Index includes municipal bonds from issuers that are primarily state or local governments or agencies whose interest is exempt from U.S. federal income taxes and the federal alternative minimum tax (AMT). To be eligible for inclusion in the Index, each bond must have a rating of at least investment-grade, as determined by a nationally recognized statistical rating organization (*e.g.,* at least BBB- by Fitch Ratings, Inc.); be denominated in U.S. dollars; and have a minimum par amount of $25 million. In addition, to be included in the Index, each bond must have a minimum term to maturity and/or pre-refunded or call date greater than or equal to one calendar month. The following bond types are specifically excluded from the Index: bonds subject to the AMT; commercial paper; derivative securities (inverse floaters, forwards, swaps); housing bonds; insured conduit bonds where the obligor is a for-profit institution; non-insured conduit bonds; non-rated bonds; notes; taxable municipals; tobacco bonds; and variable rate debt. Each bond in the Index must be a constituent of a deal where the deal's original offering amount was at least $100 million. Index constituents normally undergo a review and rebalancing once a month. At each monthly rebalancing, no one issuer can represent more than 25% of the weight of the Index; and individual issuers that represent at least 5% of the weight of the Index cannot account for more than 50% of the weight of the Index in the aggregate.

Non-Principal Investments

While under normal circumstances, at least 80% of the Fund's assets will be invested in securities held in its benchmark index, as described above, the Fund may invest up to 20% of its assets in other securities and financial instruments, as described below.

According to the Registration Statement, up to 20% of the Fund's assets may be used to purchase nonpublic, investment-grade securities, generally referred to as 144A securities, as well as smaller public issues or medium-term notes not included in its benchmark index because of the small size of the issue. The vast majority of these securities will have characteristics and risks similar to those in the benchmark index. Subject to the same 20% limit, the Fund may also purchase other investments that are outside of its benchmark index or may hold bonds that, when acquired, were included in the benchmark index but subsequently were removed.

The Fund may invest in U.S. Treasury futures contracts, exchange-traded and over-the-counter (''OTC'') options on such futures contracts, exchange-traded and OTC fixed income options, centrally cleared and non-centrally cleared interest rate swaps, centrally cleared and non-centrally cleared total return swaps, and centrally cleared and non-centrally cleared credit default swaps.

The Fund may invest in non-investment-grade securities, also referred to as ''high-yield securities'' or ''junk bonds'', which are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (*e.g.,* lower than Baa3/P–2 by Moody's Investors Service, Inc. (Moody's), or below BBB–/A–2 by Standard & Poor's) or, if unrated, are determined to be of comparable quality by the Adviser.

The Fund may invest in variable and floating rate securities, which are debt securities that provide for periodic adjustments in the interest rate paid on the security. Variable rate securities provide for a specified periodic adjustment in the interest rate, while floating rate securities have interest rates that change whenever there is a change in a designated benchmark rate or the issuer's credit quality.

The Fund may purchase shares of exchange-traded funds (''ETFs'') [8], including ETF shares issued by other Vanguard funds.

The Fund may invest in hybrid instruments.[9]

In addition to the municipal securities referenced in the ''Principal Investments'' section above, the Fund may invest in other municipal securities, which are debt obligations issued by states, municipalities, U.S. jurisdictions or territories, and other political subdivisions and by agencies, authorities, and instrumentalities of states and multistate agencies or authorities (collectively, municipalities). Municipal securities also include a variety of structures geared toward accommodating municipal-issuer short-term cash flow requirements. These structures include, but are not limited to, general market notes, commercial paper, put bonds, and variable-rate demand obligations (''VRDOs'').

The Fund may invest in Build America Bonds.

The Fund may purchase certain variable-rate demand-preferred securities (''VRDPs'') issued by closed-end municipal bond funds, which, in turn, invest primarily in portfolios of tax-exempt municipal bonds. The Fund

of 1933 (15 U.S.C. 77a) (''1933 Act'') and the Investment Company Act of 1940 *(''1940 Act'')* (15 U.S.C. 80a–1) (File *Nos.* 2–57689 and 811–02687) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 27773 (April 2, 2007) (File No. 812–13336) (''Exemptive Order'').

[6] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[7] S&P Dow Jones Indices (''S&P'') is the ''Index Provider'' with respect to the Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[8] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on national securities exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (*e.g.,* 2X or 3X).

[9] According to the Registration Statement, a hybrid instrument is an interest in an issuer that combines the characteristics of an equity security, a debt security, a commodity, and/or a derivative. Examples of hybrid instruments include exchange-traded or OTC convertible securities, contingent convertible securities; trust-preferred securities, and commodity-linked bonds.

may invest in securities issued by single-state or national closed-end municipal bond funds. VRDPs are issued by closed-end funds to leverage returns for common shareholders.

The Fund may participate in tender option bond programs, which are a type of municipal bond derivative structure, which is taxed as a partnership for federal income tax purposes. These programs provide for tax-exempt income at a variable rate. In such programs, high-quality longer-term municipal bonds are held inside a trust and varying economic interests in the bonds are created and sold to investors.

Investment Restrictions

The Fund may invest in other investment companies to the extent permitted by applicable law or Commission exemption and consistent with Section 12(d)(1) of the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, in accordance with Commission guidance.[10] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[11]

The Fund is classified as diversified within the meaning of the 1940 Act.[12]

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986.[13]

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The Index meets all such requirements except for those set forth in Commentary .02(a)(2).[14] Specifically, as of February 7, 2015, 33.69% of the weight of the Index components have a minimum original principal amount outstanding of $100 million or more.

As of February 7, 2015, 98.72% of the weight of the Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately $2.424 billion and the average dollar amount outstanding of issues in the Index was approximately $60 million. Further, the most heavily weighted component represents 0.27% of the weight of the Index and the five most heavily weighted components represent 0.96% of the weight of the Index.[15] In addition, the average daily notional trading volume for Index components for the period from January 2, 2014 to December 31, 2014 was $1,272,356,609 and the sum of the notional trading volumes for the same period was $318,089,152,147.

Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 10,015 issues and 969 unique issuers. In addition, the Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (98.72%) of the Index weight is composed of maturities that are part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Index issues, as referenced above.

Purchase and Issuance of Shares in Creation Units

The Fund will issue and sell Shares only in ''Creation Units'' through the Distributor, without a sales load, at its net asset value (''NAV'') next determined after receipt of an order in proper form on any business day.

The consideration for purchase of a Creation Unit from the Fund generally will consist of the in-kind deposit of a designated portfolio of securities (Deposit Securities) and an amount of cash (''Cash Component'') consisting of a purchase balancing amount and a transaction fee (both described in the following paragraphs). Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit''.

The purchase balancing amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities (Deposit Amount). It ensures that the NAV of a Fund Deposit (not including the transaction fee) is identical to the NAV of the Creation Unit it is used to purchase. If the purchase balancing amount is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities), then that amount will be paid by the purchaser to the Fund in cash. If the purchase balancing amount is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities), then that amount will be paid by the Fund to the purchaser in cash (except as offset by the transaction fee).

Vanguard, through the National Securities Clearing Corporation (''NSCC''), will make available after the close of each business day a list of the names and the number of shares of each Deposit Security to be included in the next business day's Fund Deposit for the Fund (subject to possible amendment or correction). The Fund reserves the right

[10] Several factors considered in monitoring illiquidity determinations include the valuation of a security; the availability of qualified institutional buyers, brokers, and dealers that trade in the security; and the availability of information about the security's issuer.

[11] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[12] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[13] 26 U.S.C. 851.

[14] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[15] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

to accept a nonconforming Fund Deposit.

The identity and number of shares of the Deposit Securities required for a Fund Deposit may change from one day to another to reflect rebalancing adjustments, corporate actions, and interest payments on underlying bonds or to respond to adjustments to the weighting or composition of the component securities of the Index.

In addition, the Fund reserves the right to permit or require the substitution of an amount of cash—referred to as ''cash-in-lieu''—to be added to the Cash Component to replace any Deposit Security. This might occur, for example, if a Deposit Security is not available in sufficient quantity for delivery, is not eligible for transfer through the applicable clearance and settlement system, or is not eligible for trading by an ''Authorized Participant'' or the investor for which an Authorized Participant is acting.

To initiate a purchase order for a Creation Unit, an Authorized Participant must submit an order in proper form to the Distributor and such order must be received by the Distributor prior to the closing time of regular trading of the New York Stock Exchange (''NYSE'') (Closing Time) (ordinarily 4 p.m. Eastern time) to receive that day's NAV. Authorized Participants must transmit orders using a transmission method acceptable to the Distributor pursuant to procedures set forth in the ''Participant Agreement''.

Redemption of Shares in Creation Units

Redemption orders must be placed by an Authorized Participant. Shares may be redeemed only in Creation Units.

Unless cash redemptions are available or specified for the Fund, an investor tendering a Creation Unit generally will receive redemption proceeds consisting of (1) a basket of ''Redemption Securities''; plus (2) a redemption balancing amount in cash equal to the difference between (x) the NAV of the Creation Unit being redeemed, as next determined after receipt of a request in proper form, and (y) the value of the Redemption Securities; less (3) a transaction fee. If the Redemption Securities have a value greater than the NAV of a Creation Unit, the redeeming investor will pay the redemption balancing amount in cash to the Fund rather than receive such amount from the Fund.

Vanguard, through the NSCC, will make available after the close of each business day a list of the names and the number of shares of each Redemption Security to be included in the next business day's redemption basket for the Fund (subject to possible amendment or correction). The basket of Redemption Securities provided to an investor redeeming a Creation Unit may not be identical to the basket of Deposit Securities required of an investor purchasing a Creation Unit. If the Fund and a redeeming investor mutually agree, the Fund may provide the investor with a basket of Redemption Securities that differs from the composition of the redemption basket published through the NSCC.

The Fund reserves the right to deliver cash in lieu of any Redemption Security for the same reason it might accept cash in lieu of a Deposit Security, or if the Fund could not lawfully deliver the security or could not do so without first registering such security under federal or state law.

If an Authorized Participant, or a redeeming investor acting through an Authorized Participant, is subject to a legal restriction with respect to a particular security included in the basket of Redemption Securities, such investor may be paid an equivalent amount of cash in lieu of the security.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the NYSE or the Exchange is closed (other than customary weekend and holiday closings), (2) for any period during which trading on the NYSE or the Exchange is suspended or restricted, (3) for any period during which an emergency exists as a result of which disposal of the Fund's portfolio securities or determination of its NAV is not reasonably practical, or (4) in such other circumstances as the Commission permits.

A creation and redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act [16] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and the applicable Intraday Indicative Value (''IIV''),[17] rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (''ETP Holders''), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[18]

The current value of the Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c).

The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their percentage weighting, will be available from major market data vendors. In addition, as disclosed in the Registration Statement, the portfolio of securities held by the Fund will be disclosed monthly on the Fund's Web site at *www.vanguard.com.*

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[19] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will

[16] 17 CFR 240.10A–3.

[17] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs *taken from* the Consolidated Tape Association (''CTA'') or other data feeds.

[18] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[19] 15 U.S.C. 78f(b)(5).

be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[20] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. As of February 7, 2015, there were approximately 10,015 issues in the Index. The Index meets all such requirements except for those set forth in Commentary .02(a)(2).[21] Specifically, as of February 7, 2015, 33.69% of the weight of the Index components have a minimum original principal amount outstanding of $100 million or more.

As of February 7, 2015, 98.72% of the weight of the Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately $2.424 billion and the average dollar amount outstanding of issues in the Index was approximately $60 million. Further, the most heavily weighted component represents 0.27% of the weight of the Index and the five most heavily weighted components represent 0.96% of the weight of the Index.[22] Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 10,015 issues and 969 unique issuers. The Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (98.72%) of the Index weight is composed of maturities that are part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Index issues, as referenced above. In addition, the average daily notional trading volume for Index components for the period from January 2, 2014 to December 31, 2014 was $1,272,356,609 and the sum of the notional trading volumes for the same period was $318,089,152,147.

The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their respective percentage weightings, will be available from major market data vendors. In addition, as disclosed in the Registration Statement, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site. The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session. The Adviser represents that, within a single municipal bond issuer, separate issues by the same issuer are also likely to trade similarly to one another. In addition, the Adviser represents that individual CUSIPs within the Index that share characteristics with other CUSIPs have a high yield to maturity correlation, and frequently have a correlation of one or close to one.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. As disclosed in the Registration Statement, the Fund's portfolio holdings will be periodically disclosed on the Fund's Web site. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the Index values are not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Fund may be halted. In addition, investors will have ready access to information regarding the IIV, and

[20] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[21] *See* note 14, *supra*.

[22] *See* note 15, *supra*.

quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that invests principally in municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that invests principally in municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–18 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–18, and should be submitted on or before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08695 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74713; File No. SR–OCC–2014–811]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendment No. 2 to an Advance Notice Concerning the Monthly Resizing of the Clearing Fund and the Addition of Financial Resources

April 10, 2015.

Pursuant to section 806(e)(1) of title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 [1] (''Payment, Clearing and Settlement Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Exchange Act''),[2] notice is hereby given that on March 4, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') Amendment no. 2 to the advance notice (''Amendment No. 2'') as described in Items I, II and III below, which Items have been prepared by OCC. On December 1, 2014, OCC originally filed the advance notice with the Commission. On December 16, 2014, OCC filed Amendment No.1 to the advance notice (''Amendment No. 1''), which amended and replaced, in its entirety, the advance notice as originally filed on December 1, 2014.[3] Amendment No. 1 to the advance notice was published for comment in the **Federal Register** on January 26, 2015.[4]

[23] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] In Amendment No. 1, OCC amended the advance notice to include the Monthly Clearing Fund Sizing Procedure and the Financial Resource Monitoring and Call Procedure as exhibits to the filing, both defined hereinafter, as Exhibit 5A and Exhibit 5B, respectively. OCC has requested confidential treatment for Exhibit 5A, Exhibit 5B, and Exhibit 5C, referred to hereinafter, pursuant to Exchange Act Rule 24b–2.

[4] Securities Exchange Act Release No. 74091 (January 20, 2015), 80 FR 4001 (January 26, 2015) (File No. SR–OCC–2014–811). OCC also filed the proposal contained in the advance notice, and Amendment No. 1 thereto, as a proposed rule change, and subsequent amendment no. 1 thereto, under section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. *See* Securities Exchange Act

The Commission did not receive any comments on Amendment No. 1 to the advance notice. Amendment No. 2 to the advance notice amends and replaces, in its entirety, Amendment No. 1 to the advance notice. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with OCC's proposal to establish procedures regarding the monthly resizing of its Clearing Fund and the addition of financial resources through intra-day margin calls and/or an intra-month increase of the Clearing Fund to ensure that it maintains adequate financial resources in the event of a default of a Clearing Member or group of affiliated Clearing Members presenting the largest exposure to OCC.

This Amendment No. 2 to SR–OCC–2014–811 (SR–OCC–2014–811 is hereinafter defined as the ''Filing'') amends and replaces in its entirety the Filing as originally submitted on December 1, 2014, and amended on December 16, 2014. The purpose of this Amendment No. 2 is to clarify the operation of a Margin Call Event in the period of time between the calculation of the next month's Clearing Fund Sizing and the collection of the funds pursuant to the Clearing Fund Sizing. Specifically, the amendment clarifies that: (i) Funds deposited by a clearing member pursuant to a Margin Call Event are considered in aggregate with other funds remaining on deposit with OCC by the same Clearing Member pursuant to a separate Margin Call Event within the same monthly period, as applicable; and (ii) funds deposited by a clearing member pursuant to a Margin Call Event(s) may not be withdrawn until OCC collects all funds to satisfy the next regular monthly Clearing Fund resizing. OCC is also proposing amendments that clarify the definition of ''Financial Resources'' within the Filing. A restated description of the purpose of the proposed rule change is below. In addition, conforming changes were made to Exhibit 5B, the Financial Resources Monitoring and Call Procedure, which is attached hereto. Further, OCC is proposing to add the Clearing Fund Intra-Month Re-Sizing Procedure, as Exhibit 5C to the Filing, through this Amendment No. 2. The Clearing Fund Intra-Month Re-Sizing Procedure would provide additional clarity regarding the resizing process discussed above.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

### *(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others*

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

### *(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act*

The proposed change would establish new procedures regarding the monthly resizing of the Clearing Fund and the addition of financial resources through intra-day margin calls and/or an intra-month increase of the Clearing Fund to ensure that OCC maintains adequate Financial Resources in the event of a default of a Clearing Member or group of affiliated Clearing Members presenting the largest exposure to OCC.

Purpose of the Proposed Change

The proposed change is intended to describe the situations in which OCC would exercise authority under its Rules to ensure that it maintains adequate Financial Resources [5] in the event that stress tests reveal a default of the Clearing Member or Clearing Member Group [6] presenting the largest exposure would threaten the then-current Financial Resources. This proposed change would establish procedures governing: (i) OCC's resizing of the Clearing Fund on a monthly basis pursuant to Rule 1001(a) (the ''Monthly Clearing Fund Sizing Procedure''); and (ii) the addition of Financial Resources through an intra-day margin call on one or more Clearing Members under Rule 609 and, if necessary, an intra-month increase of the Clearing Fund pursuant to Rule 1001(a) (the ''Financial Resource Monitoring and Call Procedure'').[7] The Monthly Clearing Fund Sizing Procedure would permit OCC to determine the size of the Clearing Fund by relying on a broader range of sound risk management practices than those historically used under Rule 1001(a).[8] The Financial Resource Monitoring and Call Procedure would require OCC to collect additional Financial Resources in certain circumstances, establish how OCC calculates and collects such resources and provide the timing by which such resources would be required to be deposited by Clearing Members.

Background

OCC monitors the sufficiency of the Clearing Fund on a daily basis but, prior to emergency action taken on October 15, 2014,[9] OCC had no express authority to increase the size of the Clearing Fund on an intra-month basis.[10] During ordinary course daily monitoring on October 15, 2014, and as a result of increased volatility in the financial markets in October 2014, OCC determined that the Financial Resources needed to cover the potential loss associated with a default of the Clearing Member or Clearing Member Group presenting the largest exposure could

Release No. 73853 (December 16, 2014), 79 FR 76417 (December 22, 2014) (File No. SR–OCC–2014–22). The Commission did not receive any comments on the proposed rule change.

[5] ''Financial Resources'' means, with respect to a projected loss attributable to a particular Clearing Member or Clearing Member Group, as defined below, the sum of the margin deposits (less any excess margin a Clearing Member or Clearing Member Group may have on deposit at OCC) and deposits in lieu of margin in respect of such Clearing Members' or Clearing Member Groups' accounts, and the value of OCC's Clearing Fund, including both the Base Amount, as defined below, and the prudential margin of safety, as discussed below.

[6] ''Clearing Member Group'' means a Clearing Member and any affiliated entities that control, are controlled by or are under common control with such Clearing Member. *See* OCC By-Laws, Article I, sections 1.C.(15) and 1.M(11).

[7] This advance notice filing has also been filed as a proposed rule change (SR–OCC–2014–22).

[8] The procedures described herein would be in effect until the development of a new standard Clearing Fund sizing methodology. Following such development, which will include a quantitative approach to calculating the ''prudential margin of safety,'' as discussed below, OCC will file a separate rule change and advance notice with the Commission that will include a description of the new methodology as well as a revised Monthly Clearing Fund Sizing Procedure.

[9] On October 16, 2014, OCC filed an emergency notice with the Commission to suspend the effectiveness of the second sentence of Rule 1001(a). *See* Securities Exchange Act Release No. 73579 (November 12, 2014), 79 FR 68747 (November 18, 2014) (SR–OCC–2014–807). On November 13, 2014, OCC filed SR–OCC–2014–21 with the Commission to delete the second sentence of Rule 1001(a), preserving the suspended effectiveness of that sentence until such time as the Commission approves or disapproves SR–OCC–2014–21. *See* Securities Exchange Act Release No. 73685 (November 25, 2014), 79 FR 71479 (December 2, 2014), (SR–OCC–2014–21).

[10] *See* OCC Rule 1001(a).

have exceeded the Financial Resources then available to apply to such a default.

To permit OCC to increase the size of its Clearing Fund prior to the next monthly resizing that was scheduled to take place on the first business day of November 2014, OCC's Executive Chairman, on October 15, 2014, exercised certain emergency powers as set forth in Article IX, section 14 of OCC's By-Laws [11] to waive the effectiveness of the second sentence of Rule 1001(a), which states that OCC will adjust the size of the Clearing Fund monthly and that any resizing will be based on data from the preceding month. OCC then filed an emergency notice with the Commission pursuant to section 806(e)(2) of the Payment, Clearing and Settlement Supervision Act of 2010 [12] and increased the Clearing Fund size for the remainder of October 2014 as otherwise provided for in the first sentence of Rule 1001(a).[13]

Clearing Members were informed of the action taken by the Executive Chairman [14] and the amount of their additional Clearing Fund requirements, which were met without incident. As a result of these actions, OCC's Clearing Fund for October 2014 was increased by $1.8 billion. In continued reliance on the emergency rule waiver and in accordance with the first sentence of Rule 1001(a), OCC set the November 2014 Clearing Fund size at $7.8 billion, which included an amount determined by OCC to be sufficient to protect OCC against loss under simulated default scenarios (*i.e.,* $6 billion), plus a prudential margin of safety (the additional $1.8 billion collected in October).[15] All required contributions to the November 2014 Clearing Fund were met by affected Clearing Members.

Under Article IX, section 14(c), absent the submission of a proposed rule change to the Commission seeking approval of OCC's waiver of the provisions of the second sentence of Rule 1001(a), such waiver would not be permitted to continue for more than thirty calendar days from the date thereof.[16] Accordingly, on November 13, 2014, OCC submitted SR–OCC–2014–21 to delete the second sentence of Rule 1001(a) and, by the terms of Article IX, section 14(c), preserve the suspended effectiveness of the second sentence of Rule 1001(a) beyond thirty calendar days.[17]

SR–OCC–2014–21 was submitted in part to permit OCC to determine the size of its Clearing Fund by relying on a broader range of sound risk management practices than considered in basing such size on the average daily calculations under Rule 1001(a) that are performed during the preceding calendar month. The Monthly Clearing Fund Sizing Procedure, as described below, is based on such broader risk management practices and establishes the procedures OCC would use to determine the size of the Clearing Fund on a monthly basis. Similarly, SR–OCC–2014–21 was submitted in part to permit OCC to resize the Clearing Fund more frequently than monthly when the circumstances warrant an increase of the Clearing Fund. The Financial Resource Monitoring and Call Procedure, as described below, establishes the procedures that OCC would use to add Financial Resources through an intra-day margin call on one or more Clearing Members under Rule 609 and, if necessary, an intra-month increase of the Clearing Fund pursuant to Rule 1001(a).[18]

## Monthly Clearing Fund Sizing Procedure

Under the Monthly Clearing Fund Sizing Procedure, OCC would continue to calculate the size of the Clearing Fund based on its daily stress test exposures under simulated default scenarios as described in the first sentence of Rule 1001(a) and resize the Clearing Fund on the first business day of each month. However, instead of resizing the Clearing Fund based on the average of the daily calculations during the preceding calendar month, as stated in the suspended second sentence of Rule 1001, OCC would resize the Clearing Fund so that it is the sum of: (i) An amount equal to the peak five-day rolling average of Clearing Fund draws observed over the preceding three calendar months of daily idiosyncratic default and minor systemic default scenario calculations based on OCC's daily Monte Carlo simulations (''Base Amount'') and (ii) a prudential margin of safety determined by OCC and currently set at $1.8 billion.[19]

OCC believes that the proposed Monthly Clearing Fund Sizing Procedure provides a sound and prudent approach to ensure that the Financial Resources are adequate to protect against the largest risk of loss presented by the default of a Clearing Member or Clearing Member Group. By virtue of using only the peak five-day rolling average and by extending the look-back period, the proposed Monthly Clearing Fund Sizing Procedure is both more responsive to sudden increases in exposure and less susceptible to recently observed decreases in exposure that would reduce the overall sizing of the Clearing Fund, thus mitigating procyclicality.[20] Furthermore, the prudential margin of safety provides an additional buffer to absorb potential future exposures not previously observed during the look-back period. The proposed Monthly Clearing Fund Sizing Procedure would be supplemented by the Financial Resource Monitoring and Call Procedure, described below, to provide further assurance that the Financial Resources are adequate to protect against such risk of loss.

## Financial Resource Monitoring and Call Procedure

Under the Financial Resource Monitoring and Call Procedure, OCC would use the same daily idiosyncratic default calculation as under the Monthly Clearing Fund Sizing Procedure to monitor daily the adequacy of the Financial Resources to withstand a default by the Clearing Member or Clearing Member Group presenting the largest exposure under

[11] OCC also has submitted an advance notice that would provide greater detail concerning conditions under which OCC would increase the size of the Clearing Fund intra-month. The change would permit an intra-month increase in the event that the five-day rolling average of projected draws are 150% or more of the Clearing Fund's then current size. *See* Securities Exchange Act Release No. 72804 (August 11, 2014), 79 FR 48276 (August 15, 2014) (SR–OCC–2014–804).

[12] 12 U.S.C. 5465(e)(2).

[13] *See supra,* note 10.

[14] *See* Information Memorandum #35397, dated October 16, 2014, available on OCC's Web site, *http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp.* Clearing members also were informed that a prudential margin of safety of $1.8 billion would be retained until a new Clearing Fund sizing formula has been approved and implemented.

[15] *See* Information Memorandum #35507, dated October 31, 2014, available on OCC's Web site, *http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp.*

[16] *See* OCC By-Laws, Article IX, section 14(c).

[17] *See supra,* note 10. OCC also submitted this proposed rule change to the Commodity Futures Trading Commission.

[18] As noted in SR–OCC–2014–21, OCC would use its intra-month resizing authority only to increase the size of the Clearing Fund where appropriate, not to decrease the size of the Clearing Fund.

[19] On a daily basis, OCC computes its exposure under the idiosyncratic and minor systemic events. The greater of these two exposures is that day's ''peak exposure.'' To calculate the ''rolling five day average'' OCC computes the average of the peak exposure for each consecutive five-day period observed over the prior three-month period. To determine the Base Amount, OCC would use the largest five-day rolling average observed over the past three-months. This methodology was used to determine the Base Amount of the Clearing Fund for November 2014 and December 2014.

[20] Considering only the peak exposures is a more conservative methodology that gives greater weighting to sudden increases in exposure experienced by Clearing Members, thus enhancing the responsiveness of the procedure to such sudden increases. By using a longer look-back period, the methodology would respond more slowly to recently observed decreases in peak exposures.

extreme but plausible market conditions.[21] If such a daily idiosyncratic default calculation projected a draw on the Clearing Fund (a ''Projected Draw'') that is at least 75% of the Clearing Fund maintained by OCC, OCC would be required to issue an intra-day margin call pursuant to Rule 609 against the Clearing Member or Clearing Member Group that caused such a draw (''Margin Call Event'').[22] Subject to a limitation described below, the amount of the margin call would be the difference between the Projected Draw and the Base Clearing Fund (''Exceedance Above Base Amount''). In the case of a Clearing Member Group that causes the Exceedance Above Base Amount, the Exceedance Above Base Amount would be pro-rated among the individual Clearing Members that compose the Clearing Member Group based on each individual Clearing Member's proportionate share of the ''total risk'' for such Clearing Member Group as defined in Rule 1001(b), *i.e.,* the margin requirement with respect to all accounts of the Clearing Member Group exclusive of the net asset value of the positions in such accounts aggregated across all such accounts. However, in the case of an individual Clearing Member or a Clearing Member Group, the margin call would be subject to a limitation under which it could not exceed the lower[23] of: (a) $500 million, or (b) 100% of a Clearing Member's net capital. Such limitation would be measured in aggregate with any funds remaining on deposit with OCC deposited by the same Clearing Member pursuant to a Margin Call Event within the same monthly period, as applicable, until collection of all funds to satisfy the next regular monthly Clearing Fund resizing (the ''500/100 Limitation'').[24]

Upon satisfaction of the margin call, OCC would use its authority under Rule 608 to preclude the withdrawal of such additional margin amount until it collects all of the funds determined by the next Monthly Clearing Fund Sizing Procedure. Based on three years of back testing data, OCC determined that it would have had Margin Call Events in 10 of the months during this time period. For each of these months, the maximum call amount would have been equal to $500 million, with one exception in which the maximum call amount for the month was $7.7 million.[25] After giving effect to the intra-day margin calls, *i.e.,* by increasing the Financial Resources by $500 million, there was only one Margin Call Event where there was an observed stress test exceedance of the Financial Resources.

To address this one observed instance, the Financial Resource Monitoring and Call Procedure also would require OCC to increase the size of the Clearing Fund (''Clearing Fund Intra-month Increase Event'') if a Projected Draw exceeds 90% of the Clearing Fund, after applying any funds then on deposit with OCC from the applicable Clearing Member or Clearing Member Group pursuant to a Margin Call Event. The amount of such increase (''Clearing Fund Increase'') would be the greater of: (a) $1 billion; or (b) 125% of the difference between (i) the Projected Draw, as reduced by the deposits resulting from the Margin Call Event and (ii) the Clearing Fund. Each Clearing Member's proportionate share of the Clearing Fund Increase would equal its proportionate share of the variable portion of the Clearing Fund for the month in question as calculated pursuant to Rule 1001(b). OCC would notify the Risk Committee of the Board of Directors (the ''Risk Committee''), Clearing Members and appropriate regulatory authorities of the Clearing Fund Increase on the business day on which the Clearing Fund Intra-month Increase Event occurred. This ensures that OCC management maintains authority to address any potential Financial Resource deficiencies when compared to its Projected Draw estimates. The Risk Committee would then determine whether the Clearing Fund Increase was sufficient, and would retain authority to increase the Clearing Fund Increase or the margin call made pursuant to a Margin Call Event in its discretion. Clearing Members would be required to meet the call for additional Clearing Fund assets by 9:00 a.m. CT on the second business day following the Clearing Fund Intra-Month Increase Event. OCC believes that this collection process ensures additional Clearing Fund assets are promptly deposited by Clearing Members following notice of a Clearing Fund Increase, while also providing Clearing Members with a reasonable period of time to source such assets. Based on OCC's back testing results, after giving effect to the intra-day margin call in response to a Margin Call Event plus the prudential margin of safety, the Financial Resources would have been sufficient upon implementing the one instance of a Clearing Fund Intra-month Increase Event.

OCC believes the Financial Resource Monitoring and Call Procedure strikes a prudent balance between mutualizing the burden of requiring additional Financial Resources and requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear such burden. As noted above, in the event of a Margin Call Event, OCC limits the margin call until collection of all funds to satisfy the next regular monthly resizing to an aggregate of $500 million, or 100% of a Clearing Member's net capital in order to avoid putting an undue liquidity strain on any one Clearing Member. However, where a Projected Draw exceeds 90% of OCC's Clearing Fund, OCC must act to ensure that it has sufficient Financial Resources, and determined that it should mutualize the burden of the additional Financial Resources at this threshold through a Clearing Fund Increase. OCC believes that this balance would provide OCC with sufficient Financial Resources without increasing the likelihood that its procedures would, based solely on stress testing results, cause a liquidity strain on any on Clearing Member that could result in such member's default.

The following examples illustrate the manner in which the Financial Resource Monitoring and Call Procedure would be applied. All assume that the Clearing Fund size is $7.8 billion, $6 billion of which is the Base Amount and $1.8 billion of which is the prudential margin of safety. The 75% threshold in these examples is $5.85 billion.

[21] Since the minor systemic default scenario contemplates two Clearing Members' simultaneously defaulting and OCC maintains Financial Resources sufficient to cover a default by a Clearing Member or Clearing Member Group representing the greatest exposure to OCC, OCC does not use the minor systemic default scenario to determine the adequacy of the Financial Resources under the Financial Resource Monitoring and Call Procedure.

[22] Rule 609 authorizes OCC to require the deposit of additional margin in any account at any time during any business day by any Clearing Member for, *inter alia,* the protection of OCC, other Clearing Members or the general public. Clearing Members must meet a required deposit of intra-day margin in immediately available funds at a time prescribed by OCC or within one hour of OCC's issuance of debit settlement instructions against the bank account(s) of the applicable Clearing Member(s), thereby ensuring the prompt deposit of additional Financial Resources.

[23] ''Capping'' the intra-day margin call avoids placing a ''liquidity squeeze'' on the subject Clearing Member(s) based on exposures presented by a hypothetical stress test, which would have the potential for causing a default on the intra-day margin call. Back testing results determined that such calls would have been made against Clearing Members that are large, well-capitalized firms, with more than sufficient resources to satisfy the call for additional margin with the proposed limitations.

[24] The Risk Committee would be notified, and could take action to address potential Financial Resource deficiencies, in the event that a Projected Draw resulted in a Margin Call Event and as a result of the 500/100 Limitation the margin call was less than the Exceedance Above Base Amount, but the Projected Draw was not so large as to result in an increase in the Clearing Fund as discussed below.

[25] The back testing analysis performed assumed a single Clearing Member caused the exceedance.

Example 1: Single CM

Under OCC's stress testing the Projected Draw attributable to Clearing Member ABC, a Clearing Member with no affiliated Clearing Members and net capital of $500 million, is $6.4 billion, or 82% of the Clearing Fund. OCC would make a margin call for $400 million, which represents the Exceedance Above Base Amount. In this case the 500/100 Limitation would not be applicable because the Exceedance Above Base Amount is less than $500 million and 100% of the Clearing Member's net capital. The Clearing Member would be required to meet the $400 million call within one hour unless OCC prescribed a different time, and OCC would retain the $400 million until collection of all the funds to satisfy the next monthly Clearing Fund sizing calculation.

If, on a different day within the same month, CM ABC's Projected Draw minus the $400 million already deposited with OCC results in an Exceedance above Base Amount, another Margin Call Event would be triggered, with the amount currently deposited with OCC applying toward the 500/100 Limitation.

Example 2: Clearing Member Group

Under OCC's stress testing the Projected Draw attributable to Clearing Member Group DEF, comprised of two Clearing Members each with net capital of $800 million, is $6.2 billion, or 79% of OCC's Clearing Fund. OCC would initiate a margin call on Clearing Member Group DEF for $200 million. The call would be allocated to the two Clearing Members that compose the Clearing Member Group based on each Clearing Member's risk margin allocation. In this case the 500/100 Limitation would not be applicable because the Exceedance Above Base Amount is less than $500 million and 100% of net capital. The margin call would be required to be met within one hour of the call unless OCC prescribed a different time. For example, in the case where one Clearing Member accounts for 75% of the risk margin for the Clearing Member Group, that Clearing Member would be allocated $150 million of the call and the other Clearing Member, accounting for 25% of the risk margin for the Clearing Member Group, would be allocated $50 million of the call. The funds would remain deposited with OCC until collection of all the funds to satisfy the next monthly Clearing Fund sizing calculation.

Example 3: Clearing Member Group With $500 Million Cap

Under OCC's stress testing the Projected Draw attributable to Clearing Member Group GHI, comprised of two Clearing Members each with net capital of $800 million, is $6.8 billion, or 87% of the Clearing Fund. The Exceedance Above Base Amount would be $800 million, allocated to the two Clearing Members that compose the Clearing Member Group based on each Clearing Member's risk margin allocation. Using the 75/25 risk margin allocation from Example 2, one Clearing Member would be allocated $600 million and the other Clearing Member would be allocated $200 million. The first Clearing Member would be required to deposit $500 million with OCC, which is the lowest of $500 million, that member's net capital, or that member's share of the Exceedance Above Base Amount, and the other Clearing Member would be required to deposit $200 million with OCC. After collecting the additional margin, OCC would determine whether the Projected Draw would exceed 90% of the Clearing Fund after reducing the Projected Draw by the additional margin. This calculation would divide a Projected Draw of $6.1 billion, which is the original Projected Draw of $6.8 billion reduced by the additional margin, by the Clearing Fund of $7.8 billion. The resulting percentage of 78% would be below the 90% threshold, and accordingly there would not be a Clearing Fund Intra-month Increase Event.

Example 4: Margin Call and Increase in Size of Clearing Fund

Under OCC's stress testing the Projected Draw attributable to Clearing Member JKL, a Clearing Member with no affiliated Clearing Members and net capital of $600 million, is $10.0 billion, or 128% of the Clearing Fund. OCC would make a margin call for $500 million, which represents the lowest of the Exceedance Above Base Amount, $500 million and 100% of net capital. The Clearing Member would be required to meet the $500 million call within one hour unless OCC prescribed a different time, and OCC would retain the $500 million until collection of all the funds to satisfy the next monthly Clearing Fund sizing calculation. After collecting the additional margin, OCC would determine whether the Projected Draw would exceed 90% of the Clearing Fund after reducing the Projected Draw by the additional margin. This calculation would divide a Projected Draw of $9.5 billion, which is the original Projected Draw of $10 billion reduced by the additional margin, by the Clearing Fund of $7.8 billion. The resulting percentage of 122%, while lower, would still exceed the 90% threshold, and accordingly OCC would declare a Clearing Fund Intra-month Increase Event. To calculate the Clearing Fund Increase, OCC would first determine the difference between the modified Projected Draw ($9.5 billion) and the Clearing Fund ($7.8 billion), which in this case would be $1.7 billion, OCC would then multiply this by 1.25, resulting in $2.125 billion. Because this amount is greater than $1 billion, the Clearing Fund Increase would be $2.125 billion and a modified Clearing Fund of OCC totaling $9.925 billion ($425 million in excess of the modified Projected Draw of $9.5 billion).

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes that the proposed change regarding the establishment of the Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure described above is consistent with section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act [26] because the proposed procedures will promote robust risk management by setting forth a process in order to ensure that OCC maintains adequate Financial Resources in the event of a default of a Clearing Member or Clearing Member Group presenting the largest exposure to OCC. The proposed change regarding the establishment of these procedures is also consistent with section 806(e)(2) of the Payment, Clearing and Settlement Supervision Act, upon which OCC relied in originally suspending the effectiveness of the second sentence of Rule 1001(a) and increasing the size of the Clearing Fund on October 15, 2014, because it allows OCC to continue to provide its services in a safe and sound manner.[27]

Anticipated Effect on and Management of Risk

OCC believes that the proposed change will reduce OCC's overall level of risk because the proposed change makes it less likely that OCC's Clearing Fund would be insufficient should OCC need to use its Clearing Fund to manage a Clearing Member or Clearing Member Group default. The Monthly Clearing Fund Sizing Procedure would permit OCC to determine the size of its Clearing Fund by relying on a broader range of sound risk management practices than

[26] 12 U.S.C. 5464(b)(1).

[27] 12 U.S.C. 5464(e)(2); *see* SR–OCC–2014–807, *supra*, note 8.

those considered in the suspended second sentence of Rule 1001(a). OCC believes that using the peak five-day rolling average of Clearing Fund draws observed over a three-month period will result in a monthly resizing of the Clearing Fund that will better reflect the risks posed by sudden increases in exposure experienced by Clearing Members. OCC also believes that the proposed prudential margin of safety will provide an additional buffer to protect against exposures not reflected in the three-month look-back period. The Financial Resource Monitoring and Call Procedure would enable OCC to minimize losses in the event of a default of a Clearing Member or Clearing Member Group presenting the largest exposure to OCC, by allowing it the flexibility to obtain additional Financial Resources either through an intra-day margin call or an intra-month increase in the size of the Clearing Fund, which would ensure that the clearance and settlement of transactions in options and other contracts occurs without interruption. Accordingly, OCC believes that the proposed changes would reduce risks to OCC and its participants. Moreover, and for the same reasons, the proposed change will facilitate OCC's ability to manage risk.

## III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The advance notice may be implemented if the Commission does not object to the advance notice within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the advance notice if the Commission has any objection to the advance notice.

The Commission may extend the period for review by an additional 60 days if the advance notice raises novel or complex issues, subject to the Commission providing OCC with prompt written notice of the extension. An advance notice may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the advance notice and authorizes OCC to implement the advance notice on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2014–811 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–811. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_811.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–811 and should be submitted on or before May 7, 2015.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08712 Filed 4–15–15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31549; File No. 812–14357]**

## Dreyfus TMT Opportunities Fund, Inc., et al.; Notice of Application

April 7, 2015.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

**APPLICANTS:** Dreyfus TMT Opportunities Fund, Inc. (''TMT Fund'') and The Dreyfus Corporation (''Dreyfus'' and, together with TMT Fund, the ''Applicants'').

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

**DATES:** *Filing Dates:* The application was filed on September 5, 2014 and amended on February 18, 2015.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 4, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** The Commission: Brent J. Fields, Secretary, U.S. Securities and

Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.
Applicants: Jeff S. Prusnofsky, Esq., The Dreyfus Corporation, 200 Park Avenue, New York, NY 10166; and David Stephens, Esq., Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038.

**FOR FURTHER INFORMATION CONTACT:** Anil K. Abraham, Senior Special Counsel, at (202) 551–2614, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

## Applicants' Representations

1. TMT Fund is a corporation newly organized under the laws of Maryland and is a non-diversified, closed-end management investment company registered with the Commission under the Act.[1] TMT Fund's investment objective is to seek total return consisting of current income, current gains, and long-term capital appreciation. TMT Fund intends to apply for listing of its shares of common stock on the New York Stock Exchange (''NYSE''), a national securities exchange (as defined in Section 2(a)(26) of the Act). The Funds may incur leverage through the issuance of preferred stock and debt securities, by entering into a credit agreement, or otherwise as permitted by applicable law. Applicants believe that investors in closed-end funds may prefer an investment vehicle that provides regular current income through fixed distribution policies that would be available through a Distribution Policy (as defined below).

2. Dreyfus, a corporation organized under the laws of the State of New York, is a wholly owned subsidiary of the Bank of New York Mellon, a global financial services company. Dreyfus is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will serve as investment adviser to TMT Fund. Each Adviser to a Fund will be registered as an investment adviser under the Advisers Act. The portfolio of a Fund may be managed by one or more investment sub-advisers or investment managers (each, a ''Future Sub-Adviser''). Any Future Sub-Adviser will be registered under the Advisers Act or not subject to registration.

3. Applicants state that prior to a Fund's implementing a Distribution Policy in reliance on the order, the board of directors or trustees of each Fund (the ''Board''), including a majority of the directors or trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (the ''Independent Board Members''), will request, and the Adviser will provide, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed Distribution Policy. In particular, the Board and the Independent Board Members will review information regarding the purpose and terms of the Distribution Policy; the likely effects of the Distribution Policy on the Fund's long-term total return (in relation to market price and its net asset value per share of common stock (''NAV'')); the expected relationship between the Fund's distribution rate on its shares of common stock under the Distribution Policy and the Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of the Distribution Policy on the Fund's long-term total return (in relation to market price and NAV). The Independent Board Members also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of the Distribution Policy. Applicants state that, only after considering such information will the Board, including the Independent Board Members, of each Fund approve a Distribution Policy and in connection with such approval will determine that the Distribution Policy is consistent with the Fund's investment objectives and in the best interests of the holders of the Fund's common stock.

4. Applicants state that the purpose of a Distribution Policy, generally, would be to permit a Fund to distribute periodically, over the course of each year, an amount closely approximating the total taxable income of such Fund during the year through distributions in relatively equal amounts (plus any required special distributions) that are composed of payments received from portfolio companies, supplemental amounts generally representing realized capital gains, or, possibly, returns of capital that may represent unrealized capital gains. Under the Distribution Policy of a Fund, such Fund would distribute periodically (as frequently as twelve times in any taxable year) to its respective common stockholders a fixed percentage of the market price of such Fund's common stock at a particular point in time or a fixed percentage of NAV at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time. It is anticipated that under a Distribution Policy, the minimum annual distribution rate with respect to such Fund's common stock would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the calendar year, each distribution on the Fund's common stock would be at the stated rate then in effect. The Board will periodically review the amount of potential distributions in light of the investment experience of the Fund, and may modify or terminate a Distribution Policy at any time.

5. Applicants state that prior to the implementation of a Distribution Policy for any Fund in reliance on the order, the Board of such Fund will have adopted policies and procedures under rule 38a–1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to the Fund's stockholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3(a)

[1] The existing registered closed-end investment company that currently intends to rely on the order has been named as an applicant. Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by Dreyfus or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Dreyfus (including any successor in interest) (each such entity, including Dreyfus, the ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with TMT Fund, are collectively the ''Funds'' and, individually, a ''Fund''). Any Fund that may rely on the order in the future (each, a ''Future Fund'') will comply with the terms and conditions of the application. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

**Applicants' Legal Analysis**

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that stockholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that the same information will be included in the Funds' annual reports to stockholders and on the Internal Revenue Service Form 1099 DIV, which will be sent to each common and preferred stockholder who received distributions during a particular year.

4. Applicants further state that each Fund will make the additional disclosures required by the conditions set forth below, and each Fund will adopt compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to stockholders. Applicants state that the information required by section 19(a), rule 19a–1, the Distribution Policy, the policies and procedures under rule 38a–1 noted above, and the conditions listed below will help ensure that each Fund's stockholders are provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, that do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common stock of closed-end funds often trades in the marketplace at a discount to such funds' NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gains.

7. Applicants assert that the application of rule 19b–1 to a Distribution Policy actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of long-term capital gain dividends that a Fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are either fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a specified periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation preference, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred stock for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund.

**Applicants' Conditions**

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

*1. Compliance Review and Reporting*

The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order, and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

*2. Disclosures to Fund Stockholders*

(a) Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by section 19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per share of common stock basis, together with the amounts of such distribution amount, on a per share of common stock basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per share of common stock basis, together with the amounts of such cumulative amount, on a per share of common stock basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Distribution Policy'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' '' [3]; and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.'' Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to stockholders under rule 30e–1 under the Act, the Fund will:

(i) Describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund stockholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

(c) Each report provided to stockholders under rule 30e–1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

[3] The disclosure in condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

*3. Disclosure to Stockholders, Prospective Stockholders and Third Parties*

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Distribution Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund stockholder, prospective stockholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

*4. Delivery of 19(a) Notices to Beneficial Owners*

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

*5. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium*

If:

(a) The Fund's common stock has traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's shares of common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Board Members:

(1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Distribution Policy is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Distribution Policy is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

*6. Public Offerings*

The Fund will not make a public offering of the Fund's common stock other than:

(a) A rights offering below NAV to holders of the Fund's common stock;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[4] expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [5] and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its shares of common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding shares of preferred stock as such Fund may issue.

*7. Amendments to Rule 19b–1*

The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08819 Filed 4–15–15; 8:45 am]

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[4] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Form 10–Q. SEC File No. 270–49, OMB Control No. 3235–0070.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 10–Q (17 CFR 249.308a) is filed by issuers of securities to satisfy their quarterly reporting obligations pursuant to Sections 13(a) or 15(d) of the Exchange Act (''Exchange Act'')(15 U.S.C. 78m and 78o(d)). The information provided by Form 10–Q is intended to help ensure the adequacy of information available to investors about an issuer. Form 10–Q takes approximately 187.43 hours per response to prepare. Approximately 22,907 Forms 10–Q are filed with the Commission annually. We estimate that 75% of the approximately 187.43 hours per response (140.57 hours) is prepared by the company for an annual reporting burden of 3,220,037 hours (140.57 hours per response × 22,907 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08694 Filed 4–15–15; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74702; File No. SR–BATS–2015–31]**

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.23, ''Auctions''

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.23, entitled ''Auctions.''

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make several changes to Rule 11.23 in order to improve the Exchange auction process. Specifically, the Exchange is proposing to make several minor changes to Rule 11.23, which include: (i) To eliminate from each of the Opening Auction, Closing Auction, IPO and Halt Auction, and Volatility Closing Auction the language stating that an auction will occur at the price of the Volume Based Tie Breaker (or ''VBTB''),[5] Final Last Sale Eligible Trade,[6] or issuing price, as applicable, where no limit orders from one or both sides would participate in the auction; (ii) to amend the definition of Volume Based Tie Breaker; (iii) to amend the definition of Reference Price Range;[7] (iv) to amend the definition of Late-Limit-On-Close[8] (''LLOC'') and Late-Limit-On-Open[9] (''LLOO''); and (v) to make a non-substantive change to delete the definitions of ZBB,[10] ZBO,[11] and ZBBO.[12]

Limit Order Participation

Currently, each of Rules 11.23(b)(2)(B), (c)(2)(B), (d)(2)(C), and (e)(2)(B) contain language that provides an alternate price at which an auction will occur where no limit orders from one or both sides (the buy side, the sell side, or both the buy and sell side) would otherwise participate in an auction (an ''Alternate Price''). For Opening and Closing Auctions the Alternate Price is the Volume Based Tie Breaker; for Halt and Volatility Closing Auctions the Alternate Price is the Final Last Sale Eligible Trade; and for IPO Auctions the Alternate Price is the issuing price. While the Exchange added the Alternate Price requirement in order to ensure that, for auctions with minimal liquidity, either limit orders were participating in the auction and would aid in price discovery or that the auction would occur at a pre-determined price, this protection has,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in BATS Rule 11.23(a)(23).

[6] As defined in BATS Rule 11.23(a)(9).

[7] As defined in BATS Rule 11.23(a)(20).

[8] As defined in BATS Rule 11.23(a)(11).

[9] As defined in BATS Rule 11.23(a)(12).

[10] As defined in BATS Rule 11.23(a)(24).

[11] *Id.*

[12] *Id.*

based on analysis by the Exchange and feedback from issuers and market participants, resulted in orders not receiving executions in auctions that would have otherwise occurred at prices that would have been acceptable to both parties to the execution that did not occur. To illustrate this point, the Exchange presents the following example: At the time that an Opening Auction is occurring, there is no ZBBO and the NBBO is $9.90 × $10.10. In this situation, the Volume Based Tie Breaker would be the midpoint of the NBBO,[13] which would be $10.00.[14] Based on a Volume Based Tie Breaker of $10.00, the Collar Price Range [15] would be $9.00 to $11.00 (the range from 0.90*VBTB to 1.10*VBTB). In this example, there are only two orders on the Auction Book [16] for the security: A Limit-On-Open[17] buy order for 100 shares with a limit price of $9.99 and a Market-On-Open [18] sell order for 100 shares. Without the requirement that the auction occur at the Alternate Price where a limit order from both sides does not participate in the auction, there would have been an execution of 100 shares in the Opening Auction at $9.99.[19] However, because there would be no limit orders on the sell side that would participate in the Opening Auction, under current functionality the Opening Auction would be forced to occur at the Volume Based Tie Breaker, which is $10.00. However, because the limit price of the Limit-On-Open buy order is $9.99, no execution will occur, both orders will be cancelled, and trading will transition into Regular Trading Hours.[20] This example is identical to how a Closing Auction would occur and is nearly identical to examples of how the Alternate Price could affect other auctions.

The Exchange is proposing to eliminate the language that provides an Alternate Price at which an auction will occur where no limit orders from one or both sides (the buy side, the sell side, or both the buy and sell side) would otherwise participate in an auction. As proposed, the example constructed above would result in an execution of 100 shares at $9.99, which would represent a full execution for both orders. It's worth noting that the Limit-On-Open order could have been priced as low as $9.00 (the low end of the Collar Price Range) and the auction would have occurred at the price of the Limit-On-Open order. The Exchange originally added the language that it is proposing to delete as part of a proposal to eliminate the possibility that a single, non-marketable limit order could affect the price at which an auction occurred.[21, 22] The resulting rule text, however, took the solution beyond merely preventing a single limit order from determining the price at which an auction would occur and instead provided that limit interest on both sides must participate in an auction or the auction would be forced to occur at an Alternate Price. The Exchange now believes, however, that the current rule text adopted the wrong approach to solving the problem described above, which has resulted in the unnecessary prevention of certain otherwise marketable limit orders, such as the $9.99 Limit On Open order from the example above, from executing in auctions on the Exchange. Further, the Exchange also believes that the current rule text creates an overly restrictive collar on market orders entered to participate in auctions under the conditions described above: where no limit orders participate on one or both sides of the market, a market order can never be priced more aggressively than the Alternate Price. The Exchange believes that the rule text results in the treatment of market orders that differs from the general understanding of how market orders are priced and, as mentioned above, the Exchange has received feedback from market participants and issuers indicating an agreement with this belief. The proposed amendments would result in market orders being treated in a manner similar to aggressively priced limit orders, which is more in line with the generally understood definition of a market order. This feedback from stakeholders along with an internal review of auctions occurring on the Exchange that arrived at similar conclusions have led the Exchange to believe that allowing market orders to execute at any point within the Collar Price Range regardless of whether any limit interest would participate in the auction will allow executions to occur in the auctions at prices that are more reflective of market conditions at the time of the auction by allowing marketable limit orders priced within the Collar Price Range to interact with contra-side market orders. The Exchange notes that both market and limit orders will still have several protections in place as auctions can only occur within the Collar Price Range and the protections afforded under the Exchange's clearly erroneous rules in BATS Rule 11.17 also apply to executions that occur in an auction.

Volume Based Tie Breaker

Currently, the term ''Volume Based Tie Breaker'' shall mean the midpoint of the ZBBO for a particular security. In the event that there is either no ZBB or

[13] *See* supra note 4 [sic]. By definition, where there is no ZBBO, the Volume Based Tie Breaker will be the midpoint of the NBBO.

[14] The Exchange notes that it is proposing to amend the definition of Volume Based Tie Breaker, as further described below, but none of the proposed changes would affect the outcome of this example.

[15] *See* BATS Rule 11.23(a)(6). By definition, for Opening Auctions where the Volume Based Tie Breaker is $25.00 or less, the Collar Price Range shall be the range from 10% below the VBTB to 10% above the VBTB, which would be $9.00 to $11.00 in the example above.

[16] As defined in BATS Rule 11.23(a)(1).

[17] As defined in BATS Rule 11.23(a)(14).

[18] As defined in BATS Rule 11.23(a)(16).

[19] Absent the existing Alternate Price language, the price of the Opening Auction in the above described example would be determined by the first two sentences of BATS Rule 11.23(b)(2)(B), which provide the following: ''The Opening Auction price will be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Auction Book in the Opening Auction. In the event of a volume based tie at multiple price levels, the Opening Auction price will be the price closest to the Volume Based Tie Breaker.'' In the example described above, there would be an equal number of shares that could be executed at every price level from $9.00 to $9.99, however the price of the auction would be $9.99 because that is the price level at which there is a volume based tie that is closest to the Volume Based Tie Breaker. Such language is currently the basis for determining the price of every auction that occurs on the exchange except in those instances that there is no limit interest participating in one or both sides or no auction occurs (noting that the Opening and Closing Auctions both use VBTB, while Halt and Volatility Closing Auctions use the Final Last Sale Eligible Trade and IPO Auctions use the issue price for resolving ties at multiple price levels). Further, in the event that there is no limit interest that would participate on either side of an auction (*i.e.* only market interest on both sides), such language would create the same auction price (the Alternate Price) as the language that the Exchange is proposing to delete because there would be a tie at every price level within the Collar Price Range, meaning that the price would default to the Alternate Price.

[20] As defined in BATS Rule 1.5(w).

[21] *See* Securities Exchange Act Release No. 68788 (January 31, 2013), 78 FR 8640 (February 6, 2013) (SR–BATS–2012–046) (the ''Filing''). On pages 7 and 8 of the Filing, the Exchange provides: ''Where no limit orders from either or both sides would participate in the auction, the Exchange is proposing that the auction will occur at the price of the Default Price. By providing that the auction price will be the Default Price where no limit orders from one or both sides would participate in an Exchange Auction, this proposed language [sic] would aid in price discovery and help to prevent erroneous executions by ensuring that a single limit order on one side of an auction that might not even participate in the Exchange Auction cannot on its own determine the auction price.''

[22] Prior to the changes implemented upon approval of the Filing, the language for Opening and Closing Auctions that preceded the current Alternate Price language read as follows: ''In the event that at the time of the [auction] there are no limit orders on both the Continuous Book and the Auction Book, the [auction] will occur at the price of the Final Last Sale Eligible Trade.'' For IPO and Halt Auctions, the language read as follows: ''In the event that there are no limit orders among the Eligible Auction Orders for a [auction], the [auction] will occur at the [Alternate Price].

ZBO for the security, the NBBO will be used if there is at least one limit order on either the Continuous Book [23] or the Auction Book. In the event that there is also no NBB or NBO for the security or no limit orders on the Continuous Book and the Auction Book, the price of the Final Last Sale Eligible Trade will be used.

The Exchange is proposing to eliminate the concept of ZBBO from the definition of Volume Based Tie Breaker. Specifically, the Exchange is proposing to amend the definition such that the Volume Based Tie Breaker will either be the midpoint of the NBBO or the price of the Final Last Sale Eligible Trade.

The Exchange is also proposing to validate a NBBO prior to using the midpoint of that NBBO as the Volume Based Tie Breaker. Specifically, the Exchange is proposing to validate that a NBBO is sufficiently tight to use the NBBO as a basis for establishing the Volume Based Tie Breaker as follows: A NBBO is a valid NBBO where (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO. The Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. The Exchange will retain discretion to set and adjust the Maximum Percentage as it deems appropriate, but notes that the Maximum Percentage will never exceed the clearly erroneous thresholds from BATS Rule 11.17 based on the price of the security and that it will communicate any changes to the Maximum Percentage via circular to Members. The Exchange has monitored its auction process historically and believes that the initial levels that it sets for the Maximum Percentage will be appropriate. The Exchange does not anticipate adjusting the Maximum Percentage on a regular basis, however it will continue to monitor its auction process going forward and believes that retaining the discretion to increase or decrease the Maximum Percentage in order to adjust the threshold for what it believes to be a sufficiently narrow NBBO to choose a reasonable Volume Based Tie Breaker will allow it the administrative flexibility to make adjustments that will ensure sufficient protections for all participants in auctions on the Exchange. The Exchange notes that it will not apply separate standards for the Maximum Percentage on a security by security basis. Further, this discretion applies to only one of three factors in determining whether a NBBO is a Valid NBBO and where the NBBO is determined not to be a Valid NBBO, the Volume Based Tie Breaker will still be based on market conditions: the Final Last Sale Eligible Trade will be used instead of the midpoint of the NBBO. As part of this proposal, the Exchange would also eliminate the rule text requiring that there be a limit order on either the Continuous Book or the Auction Book for the midpoint of the NBBO to be used as the Volume Based Tie Breaker.

Reference Price Range

Currently, the term Reference Price Range means the range from the ZBB to the ZBO for a particular security. In the event that there is either no ZBB or ZBO for the security, the NBBO will be used if there is at least one limit order on either the Continuous Book or the Auction Book. In the event that there is also either no NBB or NBO for the security or no limit orders on the Continuous Book and the Auction Book, the price of the Final Last Sale Eligible Trade will be used.

The Exchange is proposing to amend the definition of Reference Price Range in order to eliminate the concept of ZBBO from the calculation of the Reference Price Range. Specifically, the Exchange is proposing to amend the definition such that the Reference Price Range will either be the range from the NBB to the NBO for a particular security or the price of the Final Last Sale Eligible Trade. As part of this proposal, the Exchange would also eliminate the rule text requiring that there be a limit order on either the Continuous Book or the Auction Book for the Reference Price Range to be the range from the NBB to the NBO.

LLOC and LLOO

The Exchange is proposing to amend the definition of LLOC and LLOO orders to eliminate the use of ZBBO in pricing the orders. Currently, the Exchange first looks to the ZBBO to determine the most aggressive price that LLOC and LLOO orders can be priced and, where there is no ZBB or ZBO, the Exchange instead looks to the NBB or NBO, respectively. Where there is no NBB or NBO, the Exchange allows the LLOC or LLOO bid or offer, respectively, to be priced at its entered limit price. The Exchange is proposing to eliminate the ZBBO component of the process and instead to either restrict an order's price based on the NBBO or, absent either a NBB or NBO, to allow a bid or offer, respectively, to be priced at its entered limit price. As part of these proposed changes, the Exchange is also proposing to add language to make clear that a LLOC or LLOO bid will only be priced as aggressively as the NBB, even if there is no NBO and that an offer will only be priced as aggressively as the NBO, even if there is no NBB. Currently, the rule states that if there is no NBBO, the LLOC or LLOO will assume its entered limit price. The Exchange is proposing to make clear that where there is no NBB, a LLOC or LLOO bid will assume its entered limit price and where there is no NBO, a LLOC or LLOO offer will assume its entered limit price. A LLOC or LLOO bid will not assume its entered price only because there is no NBO and a LLOC or LLOO offer will not assume its entered price only because there is no NBB. This is consistent with existing behavior and is merely intended to provide additional clarity about how LLOC and LLOO orders are priced.

ZBBO

In conjunction with the changes proposed above, the Exchange is also proposing to delete Rule 11.23(a)(24) which defines the terms ZBB, ZBO, and ZBBO because the Exchange is also proposing to delete each reference to ZBB, ZBO, and ZBBO in its rules and the definition is no longer necessary.

2. *Statutory Basis*

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[24] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[25] because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Generally, the Exchange believes that the proposed changes will improve the price discovery process for securities listed on the Exchange along with those additional benefits enumerated below.

Limit Order Participation

The Exchange believes that the proposed amendments to each of the Opening Auction, Closing Auction, IPO and Halt Auction, and Volatility Closing Auction would promote just and equitable principles of trade, remove

[23] As defined in BATS Rule 11.23(a)(7).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest in that it would eliminate a protection from the auction process that, as described above, was more restrictive than anticipated. As stated above, the current implementation that provides that an auction must occur at an Alternate Price where there would not be limit order participation on both sides of an auction was intended to eliminate the possibility that a single, non-marketable limit order could affect the price at which an auction occurred.[26] However, as illustrated by the examples above, the current rule text went beyond merely preventing a single limit order from determining the price at which an auction would occur and instead provided that limit interest on both sides must participate in an auction or the auction would be forced to occur at an Alternative Price. The Exchange now believes, however, that the current rule text adopted the wrong approach to solving the problem described above, which has resulted in the unnecessary prevention of certain otherwise marketable limit orders, such as the $9.99 Limit On Open order from the example above, from executing in auctions on the Exchange. Further, the Exchange also believes that the current rule text creates an overly restrictive collar on market orders entered to participate in auctions under the conditions described above: where no limit orders participate on one or both sides of the market, a market order can never be priced more aggressively than the Alternate Price. The Exchange believes that the rule text results in the treatment of market orders that differs from the general understanding of how market orders are priced and, as mentioned above, the Exchange has received feedback from market participants and issuers indicating an agreement with this belief. As such, the Exchange believes that the proposal would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest by allowing executions to occur in auctions at prices that are more reflective of market conditions at the time of the auction by allowing marketable limit orders priced within the Collar Price Range to interact with contra-side market orders. The Exchange emphasizes that it is not proposing to allow market orders to participate in its auctions without any price protections. Rather, the Exchange is proposing to treat market orders in its auctions in a manner broadly consistent with the rules of other exchanges.[27] The Exchange believes that the Collar Price Range, which is based on the clearly erroneous standards in BATS Rule 11.17, and the clearly erroneous process in BATS Rule 11.17, which applies to executions in the auctions and could be used to cancel any executions to which it applies, provide sufficient protections against executions in the auctions occurring at extreme prices. As such, the Exchange believes that a better characterization is that the Exchange is proposing to treat market orders in a manner more similar to aggressively priced limit orders, which is more in line with the generally understood meaning of a market order. With this in mind, the Exchange believes that the proposed amendments to eliminate the Alternate Price where there would not be limit order participation on both sides of an auction would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Volume Based Tie Breaker

The Exchange believes that the proposed amendments to the Volume Based Tie Breaker would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest in that it would ensure that the Volume Based Tie Breaker would be calculated using a full picture of the market in a particular security by looking to the NBBO instead of the ZBBO, regardless of whether there are any limit orders on the Continuous Book or Auction Book. Because the NBBO by definition accounts for the ZBBO, the NBBO will always be equal to or tighter than the ZBBO, which the Exchange believes creates a Volume Based Tie Breaker that better reflects current market conditions. Further to this point, the Exchange believes that creating a process to validate the NBBO or, where the NBBO is not valid, to use the Final Last Sale Eligible Trade will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest in that it will ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate Volume Based Tie Breaker.

Reference Price Range

The Exchange believes that the proposed amendments to the definition of Reference Price Range would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest in that it would ensure that the Reference Price Range would be calculated using a full picture of the market in a particular security by looking to the NBBO instead of the ZBBO, regardless of whether there are any limit orders on the Continuous Book or Auction Book. Because the NBBO by definition accounts for the ZBBO, the NBBO will always be equal to or tighter than the ZBBO, which the Exchange believes creates a Reference Price Range that better reflects current market conditions.

LLOC and LLOO

The Exchange believes that the proposed amendments to the definition of LLOC and LLOO would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest in that it would ensure that the LLOC and LLOO orders would be priced using a full picture of the market in a particular security by looking to the NBBO instead of the ZBBO. Because the NBBO by definition accounts for the ZBBO, the NBBO will always be equal to or tighter than the ZBBO, which the Exchange believes provides a better basis by which to price a LLOC or LLOO order because it better reflects current market conditions. The Exchange also believes that the clarifying changes to the definitions of LLOC and LLOO explained above will contribute to the protection of investors and the public interest by making the functionality of LLOC and LLOO orders as clear as possible.

ZBBO

The Exchange believes that the non-substantive proposal to delete the

[26] *See* supra notes 21 and 22.

[27] *See* NYSE Arca, Inc. (''Arca'') Rule 7.35 and NASDAQ Stock Market LLC (''Nasdaq'') Rules 4752, 4753, and 4754. While each of the exchanges have very diverse rules governing auctions/crosses on their respective venues, neither Arca nor Nasdaq have a comparable requirement that unless limit interest from both sides would participate in the auction, the auction will occur at a default price. As such, the Exchange believes that elimination of the requirement is broadly consistent with the rules of other exchanges.

definitions of ZBB, ZBO, and ZBBO, as discussed above, will contribute to the protection of investors and the public interest by eliminating the definition of a term that is no longer used in the Exchange's Rules which will make the Exchange's Rules easier to understand and help to avoid confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to make the above proposed modifications to Rule 11.23 in order to allow an auction to occur at a price that is not the Alternate Price where there isn't limit interest on both sides (Limit Order Participation), to eliminate the use of ZBB, ZBO, and ZBBO from the auction process (Volume Based Tie Breaker, Reference Price Range, LLOC and LLOO, and ZBBO), to validate the NBBO before using it to establish the Volume Based Tie Breaker (Volume Based Tie Breaker), and to eliminate the requirement that there be at least one limit order on either the Continuous Book or the Auction Book in order to use the NBBO for the Volume Based Tie Breaker or the Reference Price (Volume Based Tie Breaker and Reference Price) will, in the aggregate, allow the Exchange to better compete with other exchanges as a listing venue by improving the Exchange's auction process by allowing more executions to occur at more reasonable prices that are based on market-wide pricing. As mentioned above, the Exchange has received feedback from market participants and issuers alike regarding these issues and the proposed amendments will both address this feedback and improve the Exchange's auction process, allowing it to better compete as both a listing and execution venue.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has, however, as described above, received unsolicited comments from both Members and issuers that helped lead to the changes proposed herein.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–31 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–31, and should be submitted on or before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Brent J. Fields,**

*Secretary.*

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[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 17 CFR 240.19b–4(f)(6).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74708; File No. SR–EDGX–2015–16]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGX Exchange, Inc.

April 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members [5] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend the fees charged for and description of the logical ports [6] offered; and (ii) make a series of immaterial, non-substantive changes.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to: (i) Amend the fees charged for and description of the logical ports offered; and (ii) make a series of immaterial, non-substantive changes.

Logical Ports

Currently, the Exchange maintains logical ports for order entry, drop copies, testing, and market data for which it currently charges $500 per month per port, with the first two (2) ports provided free of charge. Ports used to request a re-transmission of market data from the Exchange are also provided free of charge.

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (''EDGA''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the ''BGM Affiliated Exchanges'').[7] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. This includes migrating the BGM Affiliated Exchanges, which are currently located in different data centers, into a single data center. As part of the data center migration, the operation and categorization of logical ports provided to access the Exchange would be identical to those utilized to access BZX and BYX. Therefore, the Exchange proposes to harmonize its description of logical ports within its Fee Schedule to align with the descriptions included in the BZX and BYX fee schedules.[8] As a result, the Exchange also proposes to no longer provide free of charge: (i) The first two (2) logical ports per month; and (ii) ports used to request a re-transmission of market data from the Exchange. The Exchange communicated to Members and non-Members of [sic] these changes via a trading notice issued on October 7, 2014.[9]

First, the Exchange proposes to harmonize its description of logical ports within its Fee Schedule to align with the descriptions included in the BZX and BYX fee schedules. As part of the data center migration discussed above, the operation and categorization of ports provided to access the Exchange would be identical to those utilized to access BZX and BYX. Currently, the Exchange charges direct session logical ports fees of $500 per month and separately categorizes those ports as FIX, EDGE XPRS (HPI–API), Data, DROP, EdgeRisk. To harmonize the description of the logical ports offered with those of BZX and BYX, the Exchange proposes to no longer individually list the available ports (other than Multicast PITCH Spin Server and GRP ports described below) as all of the above are encompassed under the term logical ports. In addition, EdgeRisk ports will also no longer be separately listed within in [sic] the Fee Schedule. EdgeRisk ports enable Members, and non-Member service bureaus that act as conduits for orders entered by Members that are their customers, access to a System [10] test environment through which they can test their automated systems that integrate with the Exchange.[11] Under BATS technology, Members and non-Members would no longer need a dedicated port to access the Exchange's test environment as they would be able to utilize any of their existing ports to do so. Therefore, the Exchange proposes to not individually list EdgeRisk as a separate logical port.

Second, other than no longer providing certain ports free of charge as described below, the Exchange does not propose to amend the monthly fee [sic] logical port fees. All logical ports will continue to be subject to a fee of $500 per month per port. In addition, logical port fees proposed above would be limited to logical ports in the Exchange's primary data center and no logical port fees would be assessed for redundant secondary data center ports. In addition, the Exchange also proposes to no longer provide the first two (2) logical ports free of charge. The Exchange, like BZX and BYX, will assess the monthly per logical port fees

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

[7] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[8] The Exchange notes that EDGA intends to file a proposal very similar to this proposal that will align its logical port fees across each of the BGM Affiliated Exchanges. The Exchange also notes that BZX and BYX also intend to file a proposal to increase its port fees from $400 per month per port to $500 per month per port as well as to change references to ''GRP Ports'' to ''Multicast PITCH GRP Ports''.

[9] *See* BATS Global Markets Access Fee Changes for 2015, *available at http://cdn.batstrading.com/resources/fee_schedule/2015/BATS-Global-Markets-Access-Services-Fee-Changes-for-2015.pdf* (issued October 7, 2014).

[10] The term ''System'' is defined in Rule 1.5(cc).

[11] *See* Securities Exchange Act Release Nos. 69670 (May 30, 2013), 78 FR 33871 (June 5, 2013) (SR–EDGX–2013–18); *and* 69669 (May 30, 2013), 78 FR 33880 (June 5, 2013) (SR–EDGA–2013–14).

for all of a Member and non-Member's logical ports.

Currently, the Exchange provides ports used to request a retransmission of data free of charge. Going forward, the Exchange would no longer offer such ports free of charge, as proposed below. There are currently two types of logical ports used to request and receive a retransmission of data from the Exchange,[12] Multicast PITCH Spin Server Ports and Multicast PITCH GRP Ports. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant fees, identified as the ''B feed'' and the ''D feed.''

The Exchange proposes to offer Multicast PITCH Spin Server Ports for a fee of $500 per month for a set of primary ports (A or C feed) and Multicast PITCH GRP Ports for a fee of $500 per month for a primary port (A or C feed). The Exchange will continue to offer for free the ports necessary to receive the Exchange's redundant Multicast ''B feed'' and ''D feed'', as well as all ports made available in the Exchange's secondary data center. Accordingly, this proposal only applies to ports used to receive an Exchange primary Multicast PITCH feeds at the Exchange's primary data center. The proposed fees for Multicast PITCH Spin Server Ports and GRP Ports are identical to those charged by BZX and BYX.

Lastly, the Exchange proposes to rename this section of its Fee Schedule entitled ''Port Fees'' as ''Logical Port Fees.''

Non-Substantive Changes

The Exchange also proposes to make a series of immaterial, non-substantive changes to its Fee Schedule. None of the changes proposed are intended to amend any fee or rebate. These changes are:

- Remove the word ''the'' from the description of fee code D;
- Remove the word ''the'' from the description of fee code RN;
- Amend footnote 2 to add a colon after Tape B Step Up Tier;
- Amend the Market Data Section to add a colon after BATS One Feed$^{sm}$;
- Add a colon after ConnectEdge; and
- Add a colon after Licensing and Continuing Education.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on April 1, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Logical Ports

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that its proposed changes, combined with the planned filings for EDGA, BZX and BYX,[16] would allow the BGM Affiliated Exchanges to provide consistent logical port offerings across each of the BGM Affiliated Exchanges. Consistent offerings, in turn, will simplify the connectivity requirements for Members of the Exchange that are also participants on EDGA, BZX and/or BYX. The proposed rule change would result in greater uniformity and less burdensome and more efficient understanding of Exchange connectivity requirements.

The Exchange also believes that no longer providing the first two (2) logical ports for free as well as ports used to request a retransmission of market data also represents an equitable allocation of reasonable dues, fees and other charges. The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Lastly, the Exchange believe its proposed fees are reasonable because the Nasdaq Stock Market LLC (''Nasdaq'') and the NYSE Arca, Inc. (''NYSE Arca'') do not provide logical ports or ports used for the retransmission of market data free of charge.[17]

The Exchange believes that its proposed changes to logical port fees are reasonable in light of the benefits to Exchange participants of direct market access and receipt of data. In addition, the Exchange believes that its fees are equitably allocated among Exchange constituents based upon the number of access ports that they require to receive data from the Exchange. Further, the Exchange believes that its fees are not unreasonably discriminatory because all market participants are charged standard fees for port usage. The Exchange notes that it believes its prior fee structure, under which two ports were provided free of charge, was reasonable, equitably allocated and not unreasonably discriminatory because it was available to all market participants and was intended to encourage Members and non-members to connect to the Exchange. However, by moving towards a more uniform approach to

[12] FIX and BOE ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including the Multicast PITCH Spin Server Port and GRP Port, permit Members and non-members to receive information from the Exchange.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* supra note 8.

[17] *See* Nasdaq Rule 7015 (providing no FIX or non-Trading FIX ports free of charge) *and* the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated February 26, 2105).

port descriptions and charges across the BGM Affiliated Exchanges, the Exchange believes that its fees are even more equitably allocated and nondiscriminatory. The Exchange also believes that its fees for access services will enable it to better cover its infrastructure costs and to improve its market technology and services.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Members. All Members that voluntarily select various service options will be charged the same amount for the same services. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

Non-Substantive Changes

The Exchange believes that the non-substantive clarifying changes to its Fee Schedule are equitable, reasonable, and non-discriminatory because none of the proposed changes are designed to amend any fee, nor alter the manner in which it assesses fees or calculates rebates. These non-substantive changes to the Fee Schedule are intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Logical Ports

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, other than no longer providing two (2) ports or ports used for the retransmission of market data for free each month, it does not proposes to alter the fees charged from their current levels. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. In addition, allowing the Exchange to implement substantively identical logical port fees across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGA. Lastly, the Exchange believes the proposal to no longer provide two (2) ports or ports used for the retransmission of market data for free each month would enhance intermarket competition because Nasdaq and NYSE Arca do not provide logical ports or ports used for the retransmission of market data free of charge.[18] The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

Non-Substantive Changes

The Exchange believes that the non-substantive changes to the Fee Schedule will not affect intermarket nor intramarket competition because none of these changes are designed to amend any fee or alter the manner in which the Exchange assesses fees or calculates rebates.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2015–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

2015–16, and should be submitted onor before May 7, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–08702 Filed 4–15–15; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice 9099]**

### Foreign Affairs Policy Board Meeting Notice

**AGENCY:** Department of State.

**Closed Meeting**

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on April 30, 2015, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App section 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Gloria Lee at (202) 647–1965.

Dated: April 13, 2015.

**Andrew McCracken,**

*Designated Federal Officer.*

[FR Doc. 2015–08864 Filed 4–15–15; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 9098]**

### In the Matter of the Designation of Ali Ouni Harzi Also Known as Ali Harzi Also Known as Ali Bin Al-tahar Bin Al-falah Al-ouni Al-Harzi as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ali Ouni Harzi, also known as Ali Harzi, also known as Ali Bin Al-tahar Bin Al-falah Al-ouni Al-Harzi, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 30, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015–08772 Filed 4–15–15; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice: 9095]**

### Provision of Certain Temporary and Limited Sanctions Relief Under the National Defense Authorization Act for Fiscal Year 2012 in Order To Continue Implementing the Joint Plan of Action of November 24, 2013 Between the P5+1 and the Islamic Republic of Iran, as Extended Through June 30, 2015

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** On November 24, 2013, the United States and its partners in the P5+1—France, the United Kingdom, Russia, China, and Germany—reached an initial understanding with Iran, outlined in a Joint Plan of Action (JPOA),that halts progress on its nuclear program and rolls it back in key respects. In return, the P5+1 committed to provide limited, temporary, and targeted sanctions relief to Iran.

The JPOA was renewed by mutual consent of the P5+1 and Iran on July 19, 2014, and again on November 24, 2014, extending the temporary sanctions relief provided under the JPOA to cover the period beginning on November 24, 2014, and ending June 30, 2015 (the Extended JPOA Period), in order to continue negotiations aimed at achieving a long-term comprehensive solution to ensure that Iran's nuclear program will be exclusively peaceful.

This Notice outlines the U.S. Government (USG) actions taken to extend certain sanctions relief under the National Defense Authorization Act for Fiscal Year 2012 as part of this understanding.

**DATES:** *Effective Date:* The effective dates of these waiver actions are as described in the determinations set forth below.

**FOR FURTHER INFORMATION CONTACT:** On general issues: Paul Pavwoski, Office of Economic Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–8836.

**SUPPLEMENTARY INFORMATION:** The U.S. government has executed temporary, partial waivers of certain sanctions under the National Defense Authorization Act for Fiscal Year 2012 (NDAA), in order to continue implementing the sanctions relief under the JPOA. All U.S. sanctions not explicitly waived or suspended pursuant to the JPOA as extended remain fully in force, including sanctions on transactions with individuals and entities on the SDN List unless otherwise specified.

Furthermore, U.S. persons and foreign entities owned or controlled by U.S. persons (''U.S.-owned or -controlled foreign entities'') continue to be generally prohibited from conducting transactions with Iran, including any transactions of the types permitted pursuant to the JPOA as extended, unless licensed to do so by OFAC. The U.S. government will continue to enforce U.S. sanctions laws and regulations against those who engage in sanctionable activities that are not covered by the suspensions and temporary waivers issued pursuant to the JPOA as extended.

Sanctions suspended under the NDAA are scheduled to resume on July 1, 2015 unless further action is taken by the P5+1 and Iran and subsequent waivers are issued by the U.S. government. Companies engaging in activities covered by the temporary sanctions relief described in this notice should expect sanctions to apply to any activities that extend beyond the current end date of the Extended JPOA Period, June 30, 2015. The temporary suspension of sanctions applies only to activities that begin and end during the period January 20, 2014 to June 30, 2015.

[21] 17 CFR 200.30–3(a)(12).

The Secretary of State took the following actions:

Acting under the authorities vested in me as Secretary of State, including through the applicable delegations of authority, I hereby make the following determinations and certifications:

Pursuant to section 1245(d)(5) of the National Defense Authorization Act for Fiscal Year 2012, I determine that it is in the national security interest of the United States to waive the imposition of sanctions under Section 1245(d)(1) with respect to:

(1) Foreign financial institutions under the primary jurisdiction of China, India, Japan, the Republic of Korea, the authorities on Taiwan, and Turkey, subject to the following conditions:

a. This waiver shall apply to a financial transaction only for trade in goods and services between Iran and the country with primary jurisdiction over the foreign financial institution involved in the financial transaction (but shall not apply to any transaction for the sale, supply, or transfer to Iran of precious metals involving funds credited to an account described in paragraph (b));

b. any funds owed to Iran as a result of such trade shall be credited to an account located in the country with primary jurisdiction over the foreign financial institution involved in the financial transaction; and

c. with the exception that certain foreign financial institutions notified directly in writing by the U.S. Government may engage in financial transactions with the Central Bank of Iran in connection with the repatriation of revenues and the establishment of a financial channel, to the extent specifically provided for in the Joint Plan of Action of November 24, 2013, as extended; and

(2) foreign financial institutions under the primary jurisdiction of Switzerland that are notified directly in writing by the U.S. Government, to the extent necessary for such foreign financial institutions to engage in financial transactions with the Central Bank of Iran: (i) Within the scope of the waiver of Sections 1245(a)(1) and 1245(c) of the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XXI of Public Law 112–239, 22 U.S.C. 8801 *et seq.*) (IFCA) issued on November 25, 2014 and any extension of that waiver; and (ii) in connection with the repatriation of revenues and the establishment of a financial channel as specifically provided for in the Joint Plan of Action of November 24, 2013, as extended.

(3) Foreign financial institutions under the primary jurisdiction of Oman that are notified directly in writing by the U.S. Government, to the extent necessary for such foreign financial institutions to engage in financial transactions with the Central Bank of Iran in connection with the repatriation of revenues and the establishment of a financial channel as specifically provided for in the Joint Plan of Action of November 24, 2013, as extended; and

(4) Foreign financial institutions under the primary jurisdiction of South Africa subject to the following conditions:

a. This waiver shall apply to a financial transaction only for trade in goods and services between Iran and South Africa (but shall not apply to any transaction for the purchase of crude oil from Iran or any transaction for the sale, supply, or transfer to Iran of precious metals involving funds credited to an account described in paragraph (b));

b. any funds owed to Iran as a result of such trade shall be credited to an account located in South Africa; and

c. with the exception of certain foreign financial institutions notified directly in writing by the U.S. government to the extent necessary for such financial institutions to engage in financial transactions with the Central Bank of Iran within the scope of the waiver of Sections 1245(a)(1) and 1245(c) of IFCA issued on November 25, 2014 and any extension of that waiver.

This waiver shall take effect upon their transmittal to Congress.

(Signed John F. Kerry, Secretary of State)

Therefore, these sanctions have been waived as described in the determinations above. Relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice.

Dated: April 6, 2015.

**Kurt W. Tong,**

*Acting Assistant Secretary for Economic and Business Affairs.*

[FR Doc. 2015–08774 Filed 4–15–15; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice: 9094]**

### Industry Advisory Group; Notice of Open Meeting

The Industry Advisory Group (IAG) of the Bureau of Overseas Buildings Operations (OBO) will meet on Thursday, May 7 from 10:00 a.m. until 12:00 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, the public must enter and exit the building using only the 23rd Street entrance.

This committee serves the U.S. government in a solely advisory capacity concerning industry and academia's latest concepts, methods, best practices, innovations, and ideas related to OBO's mission to provide safe, secure, and functional facilities that represent the U.S. government to the host nation and support our staff in the achievement of U.S. foreign policy objectives. These facilities should represent American values and the best in American architecture, engineering, technology, sustainability, art, culture, and construction execution.

The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and IAG representatives, with reasonable time provided for members of the public to provide comment.

Admittance to the State Department building will be by means of a pre-arranged clearance list. To register for the meeting, please visit the OBO Web site at *http://overseasbuildings.state.gov/* for the registration page by Friday, April 24. In order to register, you must provide the following information: first and last name, company/firm name, date of birth, country of citizenship, and the number and issuing country/state associated with a valid government-issued ID (*i.e.,* U.S. government ID, U.S. military ID, passport, or driver's license). Requests for reasonable accommodation should also be sent to the same email address by April 24. The public may attend this meeting as seating capacity allows. Requests made after that date will be considered, but may not be able to be fulfilled.

Personal data is requested pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and E.O. 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database.

Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Please contact Christy Foushee at *FousheeCT@state.gov* or (703) 875–4131 with any questions.

Dated: April 1, 2015.

**Lydia Muniz,**

*Director, U.S. Department of State, Bureau of Overseas Buildings Operations.*

[FR Doc. 2015–08765 Filed 4–15–15; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2015–0083]; [OMB No. 2105–0551]**

**RIN 2105–ADO4**

### Application to Renew Information Collection Request

**AGENCY:** Office of the Secretary, Department of Transportation (Department).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department's intention to apply to the Office of Management and Budget (OMB) to renew approval of the information collection request (ICR) OMB No. 2105–0551, ''Reporting Requirements for Disability-Related Complaints.''

**DATES:** Comments on this notice must be received by June 15, 2015.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT–OST–2015–0083] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building, Ground Floor, Rm. W–12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001 (between 9 a.m. and 5 p.m. EST, Monday through Friday, except on Federal holidays).

**FOR FURTHER INFORMATION CONTACT:** Maegan Johnson, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9342 (Voice), 202–366–7152 (Fax), or *maegan.johnson@dot.gov* (Email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individuals.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting Requirements for Disability-Related Complaints

*OMB Control Number:* 2105–0551

*Type of Request:* Renewal of Information Collection Request

*Background:* On July 8, 2003, the Office of the Secretary published a final rule that requires most certificated U.S. and foreign air carriers operating to, from and within the U.S. that conduct passenger-carrying service utilizing at least one large aircraft to record complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability. The carriers must also categorize these complaints according to the type of disability and nature of complaint, prepare a summary report annually of the complaints received during the preceding calendar year, submit the report to the Department's Aviation Consumer Protection Division, and retain copies of correspondence and records of action taken on the reported complaints for three years. The rule requires carriers to submit their annual report via the World Wide Web except if the carrier can demonstrate an undue burden by doing so and receives permission from the Department to submit it in an alternative manner. The first required report covered disability-related complaints received by carriers during calendar year 2004, which was due to the Department on January 31, 2005. Carriers have been required to submit all subsequent reports on the last Monday in January for the prior calendar year.

*Respondents:* Certificated U.S. and foreign air carriers operating to, from, and within the United States that conduct passenger-carrying service with at least one large aircraft.

| Requirements | Number of respondents | Frequency (per year) | Estimated annual burden (per respondent) | Estimated total annual burden (all respondents) |
|---|---|---|---|---|
| Record an Categorize Complaints Received | 175 | 0 to 5,000 | 0 to 1,250 hours | 6,900 hours |
| Prepare and Submit Annual Report | 175 | 1 | .5 hour | 87.5 hours |
| Retain Correspondences and Record of Action Taken | 175 | 0 to 5,000 | 1 hour | 175 hours |

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on April 9, 2015.

**Blane A. Workie,**

*Assistant General Counsel for Aviation Enforcement and Proceedings.*

[FR Doc. 2015–08738 Filed 4–15–15; 08:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Consensus Standards, Light-Sport Aircraft

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces the availability of eleven revised consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed the revised standards with Federal Aviation Administration (FAA) participation. By this notice, the FAA finds the revised standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

**DATES:** Comments must be received on or before June 15, 2015.

**ADDRESSES:** Mail comments to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114,

Attention: Terry Chasteen, Room 301, 901 Locust, Kansas City, Missouri 64106. Comments may also be emailed to: *9-ACE-AVR-LSA-Comments@faa.gov.* Specify the standard being addressed by ASTM designation and title. Mark all comments: Consensus Standards Comments.

**FOR FURTHER INFORMATION CONTACT:** Terry Chasteen, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; email: *terry.chasteen@faa.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces the availability of eleven revised consensus standards that supersede previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light-Sport Aircraft developed the revised standards. The FAA expects a suitable consensus standard to be reviewed periodically. The review cycle will result in a standard revision or reapproval. A standard is revised to make changes to its technical content or is reapproved to indicate a review cycle has been completed with no technical changes. A standard is issued under a fixed designation (*e.g.,* F2245); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses following the year of original adoption or revision indicates the year of last reapproval. For example, F2242–05 (2013) designates a standard that was originally adopted (or revised) in 2005 and reapproved in 2013. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (*i.e.,* superscript epsilon [ε]) are considered accepted by the FAA without need for an NOA.

*Comments Invited:* Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

*Background:* Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'', dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

## Comments on Previous Notices of Availability

In the Notice of Availability (NOA) issued on February 21, 2014, and published in the **Federal Register** on February 27, 2014 the FAA asked for public comments on the new and revised consensus standards accepted by that NOA. The comment period closed on April 28, 2014. No public comments were received regarding the standards accepted by this NOA.

## Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards on the FAA Web site.

## The Revised Consensus Standard and Effective Period of Use

The following previously accepted consensus standards have been revised, and this NOA is accepting the later revision. Either the previous revision or the later revision may be used for the initial certification of special light-sport aircraft until October 15, 2015. This overlapping period of time will allow aircraft that have started the initial certification process using the previous revision level to complete that process. After October 15, 2015, manufacturers must use the later revision and must identify the later revision in the Statement of Compliance for initial certification of special light-sport aircraft unless the FAA publishes a specific notification otherwise. The following Consensus Standards may not be used after October 15, 2015:

ASTM Designation F2241–13, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft

ASTM Designation F2244–13, titled: Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft

ASTM Designation F2245–13b, titled: Standard Specification for Design and Performance of a Light Sport Airplane

ASTM Designation F2352–11, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft

ASTM Designation F2355–13, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft

ASTM Designation F2415–09, titled: Standard Practice for Continued Airworthiness System for Light Sport Gyroplane Aircraft

ASTM Designation F2564–13, titled: Standard Specification for Design and Performance of a Light Sport Glider

ASTM Designation F2746–12, titled: Standard Specification for Pilot's Operating Handbook (POH) for Light Sport Airplane

ASTM Designation F2840–11, titled: Standard Practice for Design and Manufacture of Electric Propulsion Units for Light Sport Aircraft

ASTM Designation F2930–13, titled: Standard Guide for Compliance with Light Sport Aircraft Standards

The following previously accepted consensus standard has been revised, and this NOA is accepting the later revision. Either the previous revision or the later revision may be used for the initial certification of special light-sport aircraft until October 14, 2016. This overlapping period of time will allow aircraft that have started the initial

certification process using the previous revision level to complete that process. After October 14, 2016, manufacturers must use the later revision and must identify the later revision in the Statement of Compliance for initial certification of special light-sport aircraft unless the FAA publishes a specific notification otherwise. The following Consensus Standard may not be used after October 14, 2016:

ASTM Designation F2972–12, titled: Standard Specification for Light Sport Aircraft Manufacturer's Quality Assurance System

**The Consensus Standards**

The FAA finds the following revised consensus standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule. The following consensus standards become effective April 16, 2015 and may be used unless the FAA publishes a specific notification otherwise:

ASTM Designation F2241–14, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft

ASTM Designation F2244–14, titled: Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft

ASTM Designation F2245–14, titled: Standard Specification for Design and Performance of a Light Sport Airplane

ASTM Designation F2352–14, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft

ASTM Designation F2355–14, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft

ASTM Designation F2415–14, titled: Standard Practice for Continued Airworthiness System for Light Sport Gyroplane Aircraft

ASTM Designation F2564–14, titled: Standard Specification for Design and Performance of a Light Sport Glider

ASTM Designation F2746–14, titled: Standard Specification for Pilot's Operating Handbook (POH) for Light Sport Airplane

ASTM Designation F2840–14, titled: Standard Practice for Design and Manufacture of Electric Propulsion Units for Light Sport Aircraft

ASTM Designation F2930–14a, titled: Standard Guide for Compliance with Light Sport Aircraft Standards

ASTM Designation F2972–14$\varepsilon^{1}$, titled: Standard Specification for Light Sport Aircraft Manufacturer's Quality Assurance System

**Availability**

ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959 copyrights these consensus standards. Individual reprints of a standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (email), or through the ASTM Web site at *www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Christine DeJong, Staff Manager for Committee F37 on Light-Sport Aircraft: (610) 832–9736, *cdejong@astm.org.*

Issued in Kansas City, Missouri, on March 27, 2015.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–08589 Filed 4–15–15; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0275]**

### Hours of Service of Drivers: U.S. Department of Defense (DOD); Application for Renewal of Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the U.S. Department of Defense (DOD) Military Surface Deployment and Distribution Command (SDDC) for a renewal of its exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. SDDC currently holds an exemption for the period October 22, 2013, through October 21, 2015. The exemption renewal would allow these drivers to use 30 minutes or more of attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break. FMCSA requests public comment on SDDC's application for renewal of the exemption.

**DATES:** If granted, this exemption would be effective from October 22, 2015, through October 21, 2017. Comments must be received on or before May 18, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2013–0275 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice contact Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

**Request for Exemption Renewal**

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations including a new provision requiring drivers to take a rest break of at least 30 minutes during the work day under certain circumstances.

FMCSA did not specify when drivers must take the break, but the rule requires that they wait no longer than 8 hours after the last off-duty period of 30 minutes or more to take it if they want to drive a CMV. Drivers who already take shorter breaks during the work day could comply with the rule by extending one of those breaks to 30 minutes. The new requirement took effect on July 1, 2013.

The SDDC manages the motor carrier industry contracts for the DOD. Certain motor carriers under contract to the SDDC provide protective services while transporting weapons, munitions, and sensitive/classified cargo.

SDDC's initial exemption application for relief from the HOS rest break requirement was submitted in 2013; a copy of the application is in the docket identified at the beginning of this notice. That 2013 application describes fully the nature of the operations of SDDC's contracted drivers. The exemption was granted on October 28, 2013 (78 FR 64265).

SDDC requests a renewal of its limited exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow SDDC-contracted drivers providing dual driver-protective services to be treated the same as drivers transporting explosives. As provided in § 395.1(q), operators of CMVs carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a minimum 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of ''attendance time'' to meet the requirement for a rest break. SDDC believes that shipments moved under the requested exemption would achieve a level of safety and security that is at least equivalent to what would be obtained by following the normal break requirements in § 395.3(a)(3)(ii).

**Method To Ensure an Equivalent or Greater Level of Safety**

SDDC states that it requires continuous attendance and surveillance of such shipments until they reach their final destination. SDDC states that it has instituted several technical and administrative controls to ensure the efficient transportation of cargo requiring protective services, controls that would remain in effect under the requested exemption. They include the following:

- Conducting review of carrier compliance requirements and procedures for moving hazardous cargo.
- Evaluating carrier authority to operate on United States roadways.
- Evaluating carrier compliance with the Federal Motor Carrier Safety Administration's Compliance Safety Accountability program Safety Measurement System standards.
- Providing over-the-road vehicle surveillance.
- Inspecting carrier facilities and corporate headquarters for compliance with DOD and DOT standards.

Further details regarding SDDC's safety controls can be found in its application for exemption. The application can be accessed in the docket identified at the beginning of this notice. SDDC asserts that granting the exemption would allow driver teams to manage their enroute rest periods efficiently and also perform mandated shipment security surveillance, resulting in both safe driving performance and greater security of cargo during long-distance trips.

SDDC anticipates no safety impacts from this exemption and believes that its contract employee drivers should be allowed to follow the requirements in § 395.1(q) when transporting shipments of sensitive DOD cargo. SDDC believes that shipments made under the requested exemption would achieve a level of safety and security that is at least equivalent to that which would be obtained by following the normal break requirement in § 395.3(a)(3)(ii).

SDDC indicated that approximately 1,942 power units and 3,000 drivers would be covered by the exemption. The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300. SDDC reported two crashes in 2014 in which drivers were cited. Neither crash was connected to fatigue that was related to the 30 minute break.

**Terms of the Exemption**

1. Drivers authorized by SDDC to utilize the exemption, if granted, must have a copy of the exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

2. All motor carriers operating under this exemption must have a ''Satisfactory'' safety rating with FMCSA, or be ''unrated;'' motor carriers with ''Conditional'' or ''Unsatisfactory'' FMCSA safety ratings are prohibited from using this exemption.

3. Motor carriers operating under this exemption must have Safety Measurement System (SMS) scores that are all below FMCSA's intervention thresholds, as displayed at *http://ai.fmcsa.dot.gov/sms/*.

*Period of the Exemption*

The requested exemption from the requirements of 49 CFR 395.3(a)(3)(ii) would be effective from 12:01 a.m., October 22, 2015, through 11:59 p.m., October 21, 2017.

*Extent of the Exemption*

The exemption would be restricted to SDDC's contract driver-employees transporting security-sensitive materials. This exemption would be limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). These drivers would be required to comply with all other applicable provisions of the FMCSRs.

*Preemption*

During the periods this exemption would be in effect, no State shall enforce any law or regulation that

conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

*Notification to FMCSA*

The SDDC would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and driver's license number and State of issuance

d. Vehicle number and State license plate number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision would be emailed to *MCPSD@DOT.GOV*.

*Termination*

The FMCSA does not believe the drivers covered by this exemption, if granted, will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the SDDC's application for an exemption from certain provisions of the HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on May 18, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: April 10, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08724 Filed 4–15–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2013–0022]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective May 19, 2015. Comments must be received on or before May 18, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2013–0022], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**II. Exemption Decision**

This notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Luis A. Bejarano (AZ), Richard T. Berendt (OH), James O. Cook (GA), Alfred D. Hewitt (IL), Wesley J. Jenkins (NV), Mark A. Kleinow (IA), Kevin R. Lambert (NC), James P. Lanigan (OH), Nusret Odzakovic (FL),

Raymond J. Paiz (CA), Scott W. Schilling (ND), Randy E. Sims (WA), Mark E. Studer (KS).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (74 FR 7097; 74 FR 15584; 76 FR 15361; 76 FR 17481; 76 FR 18824; 76 FR 28125; 76 FR 29024; 78 FR 12815; 78 FR 16761; 78 FR 22602; 78 FR 24300; 79 FR 24298). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2013–0022), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2013–0022'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

*Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2013–0022'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: April 10, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08727 Filed 4–15–15; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0024]**

## Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective May 20, 2015. Comments must be received on or before May 18, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2013–0024], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:**

Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## II. Exemption Decision

This notice addresses 5 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Jo E. Cunningham (IN), Dolan A. Gonzalez, Jr. (FL), Paul Harpin (AZ), Donald G. Reed (FL), Randy T. Richardson (KS).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (78 FR 16912; 78 FR 29431). Each of these 5 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

### *Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2013–0024), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2013–0024'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

### *Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2013–0024'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder''

button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: April 10, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08728 Filed 4–15–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2012–0032]**

### Commercial Driver's License Standards: Application for Renewal of Exemption; Daimler Trucks North America (Daimler)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces that Daimler Trucks North America (Daimler) has requested the renewal of an exemption from the requirement for a commercial driver's license (CDL) for one commercial motor vehicle (CMV) driver, Sven Ennerst, who holds a German commercial license. The renewal would allow Mr. Ennerst to continue to test-drive Daimler vehicles on U.S. roads to better understand product requirements for these systems in ''real world'' environments, and verify results. Daimler believes that German regulations ensure that holders of a German commercial license will likely achieve a level of safety equal to or greater than that of drivers who hold a U.S. CDL.

**DATES:** Comments must be received on or before May 18, 2015. Proposed effective dates of the exemption renewal are July 22, 2015 through July 22, 2017.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0032 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time and in the box labeled ''SEARCH for'' enter FMCSA–2012–0032 and click on the tab labeled ''SEARCH.''

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the CDL requirements of 49 CFR 383.23 for a maximum 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption renewal would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for granting or denying the exemption renewal, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

#### Daimler Application for Exemption Renewal

Daimler has applied for a 2-year renewal of an exemption for one of its engineers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. This driver, Sven Ennerst, holds a valid German commercial license but is unable to obtain a CDL in any of the U.S. States due to residency requirements. A copy of the request for renewal, dated February 18, 2015, is in the docket identified at the beginning of this notice.

FMCSA initially granted an exemption to Mr. Ennerst on July 22, 2014 (79 FR 42626). This exemption was effective July 22, 2014 and expires July 22, 2015. Detailed information about the qualifications and experience of Mr. Ennerst was provided by Daimler in its original application, a copy of which is in the docket referenced above. Renewal of the exemption will enable Mr. Ennerst to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to develop improved safety and emission technologies. According to Daimler, Mr. Ennerst will typically drive for no more than 6 hours per day for 2 consecutive days, and 10 percent of the test driving will be on two-lane State highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be

traveled. Daimler requests that the exemption renewal cover a two-year period.

Daimler has explained in prior exemption requests that the German knowledge and skills tests and training program ensure that Daimler's drivers operating under the exemption will achieve a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

**Method To Ensure an Equivalent or Greater Level of Safety**

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of Part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. In the past 2 years, FMCSA has published several similar Daimler exemption requests, most recently a notice granting a 2-year exemption to Daimler driver Dr. Wolfgang Bernhard (79 FR 51641, August 29, 2014).

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on Daimler's request for a renewal of Mr. Ennerst's exemption from 49 CFR 383.23. The Agency will consider all comments received by close of business on May 18, 2015.

FMCSA will review all comments received by this date and determine whether renewal of the exemption is consistent with the requirements of 49 U.S.C. 31136(e) and 31315. As indicated above, on prior occasions, the Agency determined that providing an exemption for other Daimler drivers does not compromise the level of safety that would exist if the exemption were not granted. These prior FMCSA decisions were based on careful consideration of the comments received, and on the merits of each driver's demonstrated knowledge and skills about the safe operation of CMVs.

Issued on: April 8, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08726 Filed 4–15–15; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0301]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 23 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions were granted March 7, 2015. The exemptions expire on March 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**II. Background**

On February 4, 2015, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (80 FR 6162). That notice listed 23 applicants' case histories. The 23 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 23 applications on their merits and made a determination to grant exemptions to each of them.

**III. Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 23 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including optic nerve damage, neuropathy due to meningitis, retinal detachment, phthisical cornea, amblyopia, macular scarring, retinal scarring, central retinal artery obstruction, corneal scar, conjunctional cyst, strabismic amblyopia, complete loss of vision, chorioretinal scarring, prosthetic eye, and central retinal vein occlusion. In most cases, their eye conditions were not recently developed.

Sixteen of the applicants were either born with their vision impairments or have had them since childhood.

The seven individuals that sustained their vision conditions as adults have had it for a range of three to 22 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 23 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging from two to 35 years. In the past three years, none of drivers were involved in crashes and none were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 4, 2015 notice (80 FR 6162).

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 23 applicants, no drivers were involved in crashes, and none were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 23 applicants listed in the notice of February 4, 2015 (80 FR 6162).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 23 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the

following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## V. Discussion of Comments

FMCSA received two comments in this proceeding. The comments are discussed below.

Danielle Snyder is in favor of granting all drivers listed on the notice an exemption from the vision standard.

Alycia Chase's AP Government class at West Bloomfield High School in West Bloomfield, MI is not in favor of granting the exemptions due to their perceived risks to the public. As stated in this notice, FMCSA has determined that granting these drivers an exemption from the vision standard ''would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.''

## VI. Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Jason P. Atwater (UT), Barry W. Borger (PA), William W. Dugger (KY), Steven D. Ellsworth (IL), Travis B. Giest (ID), Arlan T. Hrubes (WY), Abdalla M. Jalili (IL), David M. Krause (WI), Stephen C. Martin (PA), Troy L. McCord (TX), Ronald M. Metzger (NY), Gerald D. Milner, Jr. (IL), Ali Nimer (IL), Richard A. Pierce (MO), Richard D. Pontious (OH), Richard P. Rebel (ND), Kevin L. Riddle (FL), Mustafa Shahadeh (OH), Charles P. Smith (MO), Timothy R. Tedford (IL), Sean E. Twohig (NY), Melvin L. Vaughn (WI), Rick L. Wood (PA).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 10, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–08729 Filed 4–15–15; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2014–0018]**

### Bus and Bus Facilities Formula Program: Guidance and Application Instructions

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a circular, to assist recipients in their implementation of the Section 5339 Bus and Bus Facilities Formula Program (Bus Program). The purpose of this circular is to provide recipients of FTA financial assistance with instructions and guidance on program administration and the grant application process. This circular is a result of the new Bus Program enacted through the Moving Ahead for Progress in the 21st Century Act (MAP–21).

**DATES:** The final circular becomes effective May 18, 2015.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Sam Snead, Office of Transit Programs, (202) 366–1089 or *samuel.snead@dot.gov.* For legal matters, Michelle Hershman, Office of Chief Counsel, (202–493–0197) or *michelle.hershman@dot.gov.* Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## II. Overview

The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141), signed into law on July 6, 2012, establishes the Section 5339 Bus and Bus Facilities Formula program (Section 5339 or Bus Program), replacing some of the elements of the Bus and Bus Facilities discretionary program (formerly 49 U.S.C. 5309(b)(3) under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act of 2005 (SAFETEA–LU)). The Section 5309 Bus and Bus Facilities Program under SAFETEA–LU provided discretionary funds for capital bus and bus facility grants, which from 2010–2012, were primarily used in support of the U.S. Department of Transportation's (U.S. DOT) State of Good Repair, Bus Livability, Veterans Transportation and Community Living, and Clean Fuels initiatives. In addition, SAFETEA–LU allocated funds under this program for Ferry Boat Systems, Fuel Cell Bus, and the Bus Testing program. The new Section 5339 Bus Program provides funding to replace, rehabilitate, and purchase buses and related equipment as well as to construct bus-related facilities.

The FTA is implementing new circular 5100.1, ''Bus and Bus Facilities Program: Guidance and Application Instructions,'' in order to provide grantees with guidance for applying for funding under the Bus Program. In addition, the circular addresses the requirements that must be met in the application for Section 5339 program assistance.

On July 30, 2014, FTA issued a notice of availability of the proposed circular in the **Federal Register** (79 FR 44241) and requested public comment on the proposed circular. The comment period closed on September 29, 2014. The FTA received comments from 76 entities, including trade associations, State DOTs, metropolitan planning organizations, public transportation providers, and individuals. This notice addresses comments received and explains changes FTA made to the proposed circular in response to comments.

This document does not include the revised circular; however, an electronic

version is available on FTA's Web site, at *www.fta.dot.gov.* Paper copies may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865.

## III. Chapter-by-Chapter Analysis

### *A. General Comments*

This section addresses comments that were not directed at specific chapters, but to the circular as a whole.

Two commenters recommended that FTA provide flexibility to recipients of FTA funds whenever the statute can accommodate such flexibility. With regards to this circular, one of the commenters asserted that flexibility was necessary so that small transit systems are not burdened with requirements applicable to large systems. In response, most of the FTA programs authorized by Congress do not provide for varying program requirements based on the size of the public transportation provider. Certainly where such flexibility exists, FTA grants that flexibility. The same commenter noted the length of the proposed circular in relation to the length of the statutory provision and suggested that FTA streamline the guidance document to focus on issues specific to Section 5339 and make greater use of cross references to other FTA guidance documents. In response, FTA notes the purpose of the document is to provide detailed guidance in order to address all of the legal provisions required in delivering an FTA program. The content contained within the circular ensures grantees fully understand the requirements of Section 5339.

Another commenter urged FTA to use consistent language and definitions throughout its regulatory documents. The FTA has updated this circular to be as consistent and uniform as possible with other circulars.

A few commenters recommended FTA add language to the ''Purpose'' section to clarify its understanding of the intended purpose of the Section 5339 program. In response, FTA notes that the purpose of the circular and the Bus and Bus Facilities formula program is clearly stated on the cover page of the circular.

### *B. Chapter I—Introduction and Background*

Chapter I of the circular is an introductory chapter that covers general information about FTA and its authorizing legislation, provides a brief history of the Bus Program, includes definitions applicable to the Bus Program and defines terms applicable across all FTA programs. Where appropriate, we have used the same definitions found in rulemakings or other circulars to ensure consistency.

The FTA received six comments on this chapter, five of which related to definitions and one which related to fleet management plans. One commenter indicated that the term ''original useful life'' is not defined in the circular or any other FTA documents and could be interpreted as a minimum useful life, an economic useful life or a service life. The commenter stated that the distinction between a minimum useful life and a service life is critical in determining if an activity can be eligible as an overhaul. The FTA has amended the circular to reflect the terminology, ''minimum useful life,'' and notes the definition of overhaul is identical to the definition of overhaul in Circular 9030.1E, Urbanized Area Formula Program: Program Guidance and Application Instructions. One commenter recommended incorporating the definition of ''rehabilitation'' from the proposed Section 5337 State of Good Repair Grants Program Circular (5300.1) into the final version of this circular. In response, FTA has defined ''rehabilitate'' in section 4 of Chapter 1 to mean rebuild of a revenue vehicle to the original specifications of the manufacturer. Further, given FTA's response to comments regarding the eligibility of mid-life overhaul activities, which is explained in more detail in the Chapter 3 analysis in this notice, FTA has expanded the definition of rehabilitate to include mid-life overhaul activities. This definition specifically relates to the Bus and Bus Facilities Program as the definition in FTA Circular 5300.1 ''State of Good Repair Grants Program: Guidance and Application Instructions,'' pertains mostly to fixed guideway transit projects.

Two commenters suggested revising the definition of ''Clean Fuel Bus'' to incorporate hydraulic hybrid technology and other eligible vehicle technologies. In response, FTA notes that the definition included in the proposed circular mirrors the statutory language used by Congress in creating the program (see, 49 U.S.C. 5308 [Repealed]) and includes ''other low or zero emissions technology'' which is expansive enough to cover hydraulic hybrid and other technologies. The FTA also notes that as most transit vehicles are already eligible for a Federal match greater than 80 percent because of their Americans with Disabilities Act (ADA) and Clean Air Act (CAA) compliance, the specific inclusion of the other technologies is not going to qualify recipients for a greater FTA match beyond the existing ceiling.

One commenter questioned the efficiency of requiring both the Fleet Management Plan and Reporting and the Transit Asset Management (TAM) Plans and Reporting. The commenter suggested FTA consider consolidating the Fleet Management Plan and Reporting under the Transit Asset Management Plans and Reporting to avoid redundancy. In response, FTA recognizes that some of the information gathered for the Fleet Management Plan may be useful when reporting to the National Transit Database for Transit Asset Management and recognizes that the requirements for the TAM plans and reporting are being promulgated through a rule-making. Therefore, FTA is unable to consolidate them at this time, nor does it see these requirements as redundant, but rather as complementary. We will continue to review these processes for the possibility of streamlining.

### *C. Chapter II—Program Overview*

Chapter II covers general information about the Bus Program, including program administration, eligibility and oversight. Chapter II clarifies that FTA will only apportion Bus Program funds for urbanized areas (UZA) to the State and to designated recipients that operate or allocate funding to fixed-route bus operators. There are no other eligible direct recipients for the Bus Program under MAP–21. This section also describes the process for allocating funds to subrecipients and discusses pass-through arrangements whereby a State or designated recipient may pass its Bus Program grant funds through to a subrecipient to carry out the project agreed to in the grant. Unlike supplemental agreements between a designated recipient, direct recipient, and FTA, a pass-through arrangement to a subrecipient does not relieve the designated recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

The FTA received 18 comments on this chapter, 10 of which related to recipient eligibility and the designated recipient's role in program administration for this program.

Several of the commenters expressed concerns that only States and designated recipients can apply for funds under the Section 5339 program and suggested FTA broaden eligibility to include fixed route bus operators that are not designated recipients. A few commenters suggested that the existing procedure for Section 5307 which involves designated recipients for a metropolitan area and public transit

agencies executing supplemental agreements to permit public transit agencies to apply directly to FTA and assume all responsibilities under a grant agreement with FTA be followed under Section 5339 to relieve the administration burden on designated recipients. Another commenter suggested that FTA exercise its administrative authority to interpret eligible recipients similar to the former Section 5308 Clean Fuels program. In response, FTA notes that the statutory language in Section 5339(c) clearly states that ''eligible recipients in this section are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators'' and thus, FTA has no flexibility in its interpretation of eligible recipients for Section 5339.

A few of the commenters indicated that FTA should revise Chapter II to clarify that Section 5339 funds may be used for bus facilities and vehicles that do not run in fixed-route service. In response, FTA has revised Chapter II to clarify that recipient eligibility does not limit Section 5339 funds to fixed route projects. Thus, capital projects in support of demand response services are eligible under the Bus Program.

Two commenters asked FTA to revise Chapter II to allow a Governor to transfer the funds allocated to the State for use in the UZAs of less than 200,000 in population to the Section 5307 program. The transfer provision found at Section 5339(e)(1) allows the Governor to transfer the ''National Distribution'' funds to supplement the State's Section 5311 rural apportionment or to any urbanized area's Section 5307 apportionment, but does not permit the transfer requested by commenters. The law is explicit regarding the transfer requirements of this program, and FTA has no discretion in adding additional transfer provisions.

One commenter asked FTA to clarify that cooperative planning agreements between the Section 5339 designated recipient and subrecipients developed in compliance with Federal planning regulations (23 CFR 450, Subpart C) and that specify the role of each agency in allocating Section 5339 funds will satisfy FTA's requirement for a written agreement. The FTA agrees that the suggested cooperative planning agreement is an example of a written agreement.

One commenter asked for clarification regarding whether the State may delegate Section 5339 project selection for small urbanized area funds to regional or local agencies as long as the State retains final approval of the program of projects. In response, FTA notes that States are responsible for administration of this program for small urban and rural areas. If they choose to delegate the responsibility to make recommendations for funding, that is allowable. However, the State must ensure that the funds are used in small UZAs and the State must monitor the use of the funds.

In response to the section on FTA oversight, one commenter asserted that triennial reviews should not apply to Section 5339 designated recipients that allocate funds to fixed route bus operators but do not operate bus service themselves. The FTA notes that recipients may be subject to a Triennial, State Management, or other regularly scheduled comprehensive review to evaluate their performance. Oversight reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made. To further this effort, FTA's oversight reviews programs have been augmented to incorporate questions pertaining to how designated recipients administer this program. In addition, FTA is working within its existing oversight programs to recognize where direct recipients of Section 5307 funding, who may be receiving direct oversight from FTA, may be subrecipients under the Section 5339 program. As a result, FTA will look to designated recipients for the overall administration of the program pursuant to its management plan, but will not require duplicative oversight. As appropriate, it is recommended that designated recipients review the results of subrecipients' past oversight reviews.

The FTA received six comments on section 7 of this chapter related to the Bus Program's relationship to other programs. A few commenters expressed concern that language in this section of the proposed circular regarding Section 5339 eligibility guidelines could thwart the ability of a State to effectively transfer the funds for use in the Section 5311(c) rural program. In response, FTA notes that funds available under the National Distribution allocation may be transferred from Section 5339 to Section 5311 for administrative purposes, but if the funds are transferred, they must be used for eligible bus and bus facilities capital projects.

One commenter supported FTA's clarification in this section regarding identifying ways in which the Section 5339 funds relate to other FTA programs, specifically as outlined under 49 U.S.C. 5309. Specifically, the commenter stated that this clarification offers public transit agencies some flexibility in developing financing packages for large capital projects.

Though most comments related to bus overhauls were submitted in relation to Chapter III of the proposed circular, one commenter noted in response to this section that bus overhauls are listed as eligible capital expenses in FTA Circular 9030.1E (page IV–2), which determines projects eligible for funding through Section 5307, and FTA Circular 9040.1G (page III–8), which lists eligible capital expenses under Section 5311. The commenter asked FTA to clarify whether its intent is to encourage applicants to use Sections 5307 and 5311 to obtain funding for engine overhauls instead of Section 5339. In response, recipients are eligible to utilize these other programs to support engine overhauls. However, as noted in the next section in response to comments, FTA has also expanded eligibility under the Section 5339 program to include engine overhaul activities, which is described in Chapter III.

*D. Chapter III—General Program Information*

In this Chapter information is provided regarding the availability of funding and addresses general project and program eligibility. The FTA received a number of comments on this chapter, many of which related to FTA's proposed exclusion of midlife overhauls from the list of eligible capital projects in section 5 of this chapter.

Several commenters expressed concern that not enough Section 5339 funds would be available to rural transit agencies based on the apportionment calculations for the Bus Program detailed in Chapter III of the proposed circular. Specifically, commenters asserted that the Section 5339 funds should be allocated based on need rather than population. One commenter asked that FTA revise section 1 to state that the National Distribution set aside funds should be the only Section 5339 funds available to rural transit operators. Any change to the National Distribution set aside would require legislative action. The FTA notes that Section 5336 lists how the apportionment of all FTA formula programs must be allocated. Therefore, FTA does not have the discretion to change the formula allocations for Section 5339. The same commenter asked FTA to revise section 3 to make Section 5339 funding available for the same amount of time as Sections 5307 and 5311 funds. In response, to ensure timely obligation of funds and for consistency with the Section 5309 and 5337 programs as well as the former Bus and Bus Facilities program, FTA has established the period of availability to

be 4 years—the year of apportionment plus 3 additional years.

A few commenters recommended revising section 4 to expand the Governor's ability to transfer funds to Section 5311 projects. One commenter suggested the transfer should be mandated based on vehicle replacement needs rather than Governor's discretion. FTA notes that the law does not stipulate that Governors must prioritize vehicle replacements before expansions and facilities. Therefore, FTA has no authority to mandate funding priority as it relates to types of projects or intended recipients (*e.g.* rural).

Two commenters asked FTA to allow designated recipients other than States to transfer apportionments to Section 5307 to be used for eligible Bus Program activities and to allow Section 5307 direct recipients to apply directly to FTA for their allocation in order to eliminate unreimbursed costs of full grant administration. As noted previously, the only transfer provision allowed under this section is for the National Distribution allocation, which is provided to the States. Therefore, FTA notes that only States can transfer 5339 funds, and even then it is limited to the amounts available under the National Distribution allocation. Therefore, FTA does not have the discretion to allow other recipients to transfer funds. Furthermore, a set aside was not provided for administrative funds for this program.

In regards to midlife overhauls, the circular proposed that rebuilds are eligible but overhauls and preventive maintenance are not. The majority of the commenters recommended that overhauls be expressly included in the list of eligible capital projects.

A few commenters recommended that FTA allow bus overhauls to be considered as an eligible capital expense under Section 5339 by specifically listing it as one of the capital projects eligible in section 5 with the caveat that it is the sole preventive maintenance activity allowed under Section 5339. One commenter asserted that FTA has no statutory authority to make preventive maintenance ineligible under Section 5339. A few commenters stated that the definitions for overhaul and rebuild in the proposed circular mischaracterize overhauls as a preventive maintenance activity and asserted that midlife overhauls extend far beyond those areas covered by manufacturers' recommended maintenance procedures. Several commenters asserted that MAP–21 defines Section 5339 project eligibility to include both bus rehabilitation and bus replacement/purchases, without distinguishing between mid-life overhauls and rebuilds in further defining rehabilitation.

A few commenters expressed concern that FTA's position on mid-life overhaul eligibility could reverse the positive trend of clean fuel technologies. Without Federal dollars available for mid-life energy storage replacement and upgrades, financially-strapped transit agencies may not choose to buy hybrid and electric drive buses.

In response to the myriad of comments related to bus overhauls, FTA has revised the circular to include bus overhauls as an eligible capital project, specifically as an eligible rehabilitation activity. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life. It is important to note that overhauls are the only preventive maintenance capital expenses allowed in the Section 5339 program. The FTA has also notes that the overhaul eligibility is in addition to eligibility of rehabilitation which is defined as ''rehabilitate'' in section 4 of Chapter I.

One commenter encouraged FTA to continue to allow the use of Federal funds for public artwork that enhances a transit facility or has historical meaning to the local region. In response, MAP–21 specifically repealed the eligibility of public artwork in public transportation projects. However, art can be integrated into facility design, landscaping, and historic preservation, and funded as a capital expense. Art also can be integrated through the use of floor or wall tiles that contain artist-designed and fabricated elements, use of color, use of materials, lighting, and in the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses. Procuring sculptures or other items not integral to the facility is no longer an eligible expense.

The FTA received several comments on the proposed elimination of ''intercity bus stations and terminals'' from the list of eligible projects contained in the proposed circular. Two commenters indicated that ''intercity bus stations and terminals'' is the only category of eligible projects which appears in Circular 9300.1B, but does not appear in draft Circular 5100.1A few commenters suggested that FTA revise section 5 to specify that intercity bus stations and terminals are eligible for funding as joint development improvements. Other commenters suggested FTA revise section 6 to ensure that joint development improvements may include intercity bus stations and terminals, including the outfitting of those stations and terminals. In response, FTA notes that intercity facilities are an eligible activity under the Section 5339 program as part of a joint development project. The FTA has revised section 6 to ensure joint development improvements expressly include intercity facilities. For more information on the eligibility of intercity facility joint development projects see FTA Circular 7050.1 ''Federal Transit Administration Guidance on Joint Development,'' pages I–3 section f., III–5 section 2, and III–7 section 4.

A few of the commenters indicated that the new ''fair share of revenue'' threshold detailed in FTA Circular 7050.1 makes use of Section 5339 funds difficult, if not impossible, because there would be no way for intercity bus operators to make the required payments. Specifically, the commenters asked FTA to ensure that the ''fair share of revenue'' threshold (page VI–4, section 5 of FTA Circular 7050.1) does not apply to intercity bus stations or terminals; and request FTA to use the ''publicly operated projects exception'' for such facilities so that the amount of revenue generated is less than the amount of the FTA investment. Chapter III of FTA Circular 7050.1 states that community service or publicly operated facilities can have a fair share of revenue less than the required federal threshold, but it must be based on actual revenue. In response, FTA concurs that in accordance with FTA Circular 7050.1, any intercity bus project that is within, or physically part of, a ''publicly operated'' facility (as in most cases), can have a fair share of revenue less than the federal threshold requirements (see FTA Circular 7050.1 ''Federal Transit Administration Guidance on Joint Development,'' page III–6 for additional information on FTA's fair share of revenue requirements).

One commenter stated that the proposed guidance appears to exclude as an eligible expense the procurement of replacement or expansion vans used in revenue service and related maintenance and administrative facilities, including specialized vans and related facilities used to provide ADA complementary paratransit service. The proposed circular specified the eligibility of Section 5339 Program funds for the acquisition of ''buses'' for fleet and service expansion and for bus maintenance and administrative facilities, consistent with the statutory language. The list of eligible projects in both the proposed and final circular are

intended to be illustrative. Although the proposed guidance also included a more general statement that allowed the use of Section 5339 Program funds for the ''acquisition of replacement vehicles,'' the eligibility to fund the procurement of vans to replace those that have reached or exceeded their useful life was not clearly defined. Another commenter recommended that the procurement of expansion or replacement vans and related maintenance and administrative facilities used by vans in revenue service (including those used in ADA required complementary service) be considered eligible expenses. In response, FTA notes that the procurement of expansion or replacement vans and related maintenance and administrative facilities used by vans in revenue service is an eligible activity under Section 5339. Therefore the eligible capital project language of the circular has been adjusted to include these activities.

Two commenters asked FTA to revise the definition of eligible capital projects in section 5 to expressly state that use of Section 5339 funds is not limited to projects undertaken on fixed routes. The FTA notes that the list of eligible capital projects did not expressly limit Section 5339 funds to fixed route bus purchases. However, FTA is amending the circular to clarify that eligible projects as authorized in Section 5339(a)(1) and (2) are not limited to fixed route only. The reference to fixed route only applies to determining recipient eligibility of Section 5339 program funds.

One commenter sought clarification regarding whether general administrative expenses that a designated recipient incurs are eligible as an indirect cost. The FTA notes that only project administrative costs are allowable, not program administrative costs. The same commenter suggested that FTA include the federal share for project administration costs. The Federal share of project administrative costs is 80 percent since it is considered a capital expense.

One commenter sought clarification regarding whether eligible capital projects includes only expansion of existing services or whether Section 5339 funds can be used to fund new vehicles for new transportation services. The FTA notes that Section 5339 funds can be used for both the expansion of existing services and to fund vehicles for implementation of new transportation services.

One commenter indicated that section 5 is missing information on the percent of eligible costs based on the different possible types of bus operating contracts. Specifically, the commenter asserted that the circular should contain a schedule similar to Exhibit IV–1 in Circular 9030.1E, showing for various contract types the percentage presumed to be eligible without requiring further documentation. In response, FTA notes that only some categories of capital cost of contracting are eligible for Section 5339 funding; specifically contract types that include preventative maintenance are not eligible. Therefore, FTA has updated information on capital cost of contracting in section 5 and included Exhibit III–1: ''Percent of Contract Allowed for Capital Assistance Without Further Justification.''

Section 10 proposed additional sources of local share that recipients may use as part of local match for a capital project. Two commenters expressed appreciation for FTA's provision of clear instructions regarding how the use of Transportation Development Credits (toll credits) should be indicated in a grant application.

Regarding local match, one commenter suggested that FTA allow the guaranteed annual savings of an energy savings performance contract (ESPC) to be used to offset the local match. Grantees interested in ESPC as match should contact their FTA regional office for additional information.

One commenter suggested that the circular should state that for ADA or CAA activities the federal share may not exceed those applicable shares. Specifically, the commenter stated that the circular should not remove a recipient's flexibility to not go above 80 percent Federal share for a project. The FTA notes that there is no loss in flexibility. While recipients must meet certain percentages of local match as a statutory requirement, it is a local decision as to whether to provide overmatch. Another commenter sought clarification regarding whether grantees will need to itemize those components of the vehicles (*i.e.* the lift at 90 percent and the bus itself at 80 percent) or use the 85 percent Federal share for ADA and CAA compliant vehicles. In response, the purpose of the 85 percent was to codify the previously used application of 83 percent, which was set by FTA for administrative purposes. Recipients may use the 85 percent Federal share for ADA/CAA compliant vehicles. In cases where the grantee is replacing just a piece of equipment for purposes of complying with one or both of these acts, the grantee can itemize that individual piece of equipment for 90 percent.

One commenter asserted that the match requirement should be eliminated on all formula grants and only required on competitive grants. 49 U.S.C. Chapter 53 requires a local match for all FTA formula funded projects. The FTA does not have any discretion to relax this requirement.

One commenter sought clarification regarding Section 5323(i)(2), which permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. The proposed circular elaborates further by observing that the effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted towards a recipient's local match requirement under a capital cost of contracting grant agreement. The FTA's policy on vanpool provisions was addressed in the FY 2015 Annual Apportionment notice. However, FTA has responded to the specific questions raised by the commenter in previous correspondence as the comments were specific to the commenter rather than FTA's vanpool policy.

*E. Chapter IV—Planning and Program Development*

In this chapter, FTA proposed guidance on metropolitan and statewide planning requirements. The chapter also addresses programming guidelines, environmental considerations, transfer provisions, and capital project requirements. One commenter expressed appreciation for the language FTA included in the proposed circular regarding the Governor's ability to allocate formula fund apportionments to small UZAs located within or designated as Transportation Management Areas (TMAs) that are different from the allocations FTA publishes. However, the commenter would like FTA to return to pre-MAP–21 practices to make it clear that apportionments for these TMA small urbanized areas must be allocated to these areas. In response, FTA notes that MAP–21 mandated that States and the designated recipients have the discretion as to how these funds are distributed. A change to have apportionments to go directly to small urbanized areas would require a change in the law. Therefore, such a change cannot be included in this circular. Pursuant to section 5336(e), the Governor exercises the authority to allocate section 5339 formula

apportionments to all small UZAs within the State—including those that lie within the planning areas of MPOs serving TMAs. Federal law clearly states that it is up to the State to determine the distribution method for section 5339 funds among small UZAs, and inclusion of small UZAs within the planning area of an MPO that serves a transportation management area (TMA) does not change the status of those small UZAs. They are still small UZAs and subject to the Governor's allocation. As for the funding apportioned by formula, for small UZAs, the Governor has flexibility to allocate the funds among the small UZAs to meet the capital bus needs in those areas.

Regarding FTA's proposal that Section 5339 recipients develop a program of projects (POP), two commenters asserted that MAP–21 does not specifically require a ''program of projects'' to be submitted to the Secretary for the 5339 program and would like FTA to relax the requirements for the POP. The same commenters also recommended that FTA consider adding language to the circular that allows FTA to approve whole categories of projects immediately upon filing of the POP by a grantee. The FTA notes that Section 5339(b) requires that recipients comply with Section 5307 grant requirements, and the program of projects is a requirement at 49 U.S.C. 5307(b). Further, given the statutory provision relates to recipients, FTA expects recipients to be applying on behalf subrecipients, and therefore the grant should be accompanied by a POP. Another commenter sought clarification on how the designated recipient is to notify FTA prior to making revisions to the POP. The circular instructs designated recipients to work with their FTA regional office when developing the POP. This is consistent with other FTA program circulars, particularly for programs that require POPs.

In the proposed circular, FTA provided guidance on FTA's useful life policy. One commenter recommended that FTA increase the asset limit for useful life determinations to 50 percent of the asset's original value. Revisiting the standards would require extensive research and is beyond the scope of this program circular; thus, FTA cannot address this cross-cutting issue in this circular.

Another commenter urged FTA to continue the exemption of Section 5311 operators from the rolling stock spare ratio of 20 percent. Furthermore, the commenter asked FTA to adopt an exemption for contingency fleets from the spare ratio calculation and allow vehicles that still have a federal interest or useful life be an eligible vehicle for contingency fleets. These comments are outside the scope of this particular circular as they are cross-cutting issues that apply to other FTA programs. However, recipients are reminded that the rolling stock spare ratio policy only applies to fleets of 50 or more vehicles.

One commenter asserted that FTA's proposed guidance to competitively procure rebuilding work from the private sector would restrict a transit agency's ability to use its staff and would also create conflicts with labor unions. The commenter recommended that FTA allow subrecipients that have a qualified labor force to use that labor force for vehicle rebuilds instead of procuring the service from the private sector. The commenter also sought clarification regarding what may constitute a ''mitigating circumstance'' and what FTA would consider an interference with ''normal maintenance activities'' if rebuild work is done in-house. In addition, the commenter recommended that FTA specify in its final guidance that overhaul and rebuild work conducted by in-house labor are eligible expenses. Overhaul and rebuild work conducted by in-house labor are eligible expenses. The circular does not restrict the use of a qualified labor force for vehicle rebuilds and overhauls. The use of a grantee's own labor force to accomplish a capital project is force account labor and is eligible under the program. See the current version of circular 5010 for more information and force account requirements for capital projects. Please note that force account requirements do not apply to overhaul activities as those projects are considered to be preventive maintenance.

Finally, one commenter requested clarification in response to FTA's proposal in section 7 of this chapter indicating that Section 5339 funds are not available to be transferred between FHWA and FTA for transit or highway projects. Section 5334(i) of title 49, U.S.C. provides that FHWA funds used for transit projects may be transferred to FTA, and FTA funds used for highway projects shall be transferred to FHWA for program administration. Since funds available under Section 5339 are not available for highway projects, they may not be transferred to FHWA.

*F. Chapter V—Program Management and Administrative Requirements*

This chapter outlines the requirements to which Section 5339 recipients must certify compliance, including legal, technical, and financial capacity. Recipients (including subrecipients and contractors) of Section 5339 program funds are required by statute to submit data to the National Transit Database (NTD).

One commenter asserted that NTD reporting requirements should not apply to Section 5339 recipients that are not providers of public transportation or are not also recipients of Section 5307 or Section 5311 funds. Two commenters recommended that the section on NTD reporting include language that confirms that if Section 5339 funds are awarded by the State to a Section 5307 recipient (*i.e.,* the Section 5307 recipient becomes a subrecipient of the State under the Section 5339 program), the Section 5307 recipient retains all NTD reporting obligations, including reporting for the Section 5339 funds. The commenters also recommended that FTA consider revising the reporting requirements for the Section 5311 program such that NTD reporting is rolled up at the State level and individual subrecipient reporting ends. The same commenters also expressed concerned that the proposed circular includes language that requires recipients or beneficiaries of Section 5339 funding to file monthly safety and security reports in the NTD system that contain increased reporting obligations. Although NTD reporting requirements dictate that certain grantees report, monthly safety and security reports are not required under the 5339 Program.

One commenter asked FTA to increase the limit for small purchases to $150,000 as is currently proposed in the Office of Management and Budget (OMB) Super Circular in order to allow agencies the opportunity to purchase one or two vehicles without having to complete an onerous competitive procurement for small purchases. On December 26, 2013, OMB issued final guidance 2 CFR part 200 ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' also known as the ''Super Circular.'' 78 FR 78590. The guidance, which will take effect with new grants obligated on or after December 26, 2014, will supersede and apply in lieu of the common grant rule (49 CFR parts 18 and 19), and will change the simplified acquisition threshold from $100,000 to $150,000 to match the Federal Acquisition Regulation. See 2 CFR 200.88. We have amended the circular to reflect this change.

*G. Chapter VI—State and Program Management Plans*

This chapter begins by providing a general overview of State and Program Management Plans (SMP and PMP)

which are intended to facilitate both recipient management and FTA oversight by documenting the State's and designated recipient's procedures and policies for administering the Section 5339 program. One commenter expressed concern that FTA is proposing a PMP for a program that does not warrant this high level of management. The commenter strongly suggested the FTA reconsider the requirement for a PMP. In response, FTA notes that a PMP or SMP, for the case of a State recipient, is required for any program in which the recipient will be managing subrecipients, as it facilitates both recipient management and FTA oversight by documenting the designated recipient's procedures and policies for administering the Section 5339 program. The primary purpose of the PMP/SMP is to serve as the basis for FTA to perform recipient-level management reviews of the program, and to provide public information on the recipient's administration of the Section 5339 program. It may also be used internally by the recipient as a program guide for local project applicants.

One commenter sought clarification regarding whether a PMP is required from a single designated recipient within a large Urbanized Area. If there is only one designated recipient, then a PMP is not required. However, if the designated recipient is managing and overseeing multiple subrecipients, then a PMP is required.

*H. Chapter VII—Other Provisions*

This chapter describes cross-cutting Federal requirements that apply to the Section 5339 Program. The FTA did not receive any substantive comments on this chapter and did not make any substantive edits.

*I. Appendices*

The appendices include instructions for preparing a grant application and a budget, an application checklist, and several forms and representative documents that recipients will need when applying for Section 5339 funds. One commenter recommended including a sample sub-agreement between designated recipients and potential subrecipients. The FTA notes that the designated recipient must still manage the grant in TEAM. The FTA has no role in the relationship between subrecipients and designated recipients other than determining if the subrecipient is eligible for FTA funding. Therefore, there is not a ''one-size fits all'' sample agreement between subrecipients and designated recipients.

**Therese M. McMillan,**

*Acting Administrator.*

[FR Doc. 2015–08773 Filed 4–15–15; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2015–0015; Notice 1]**

### Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Continental Tire the Americas, LLC, (CTA), has determined that certain Continental replacement passenger car tires do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* CTA has filed an appropriate report dated January 7, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

**DATES:** The closing date for comments on the petition is May 18, 2015.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Deliver: Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- Electronically: Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

**SUPPLEMENTARY INFORMATION:**

*I. CTA's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CTA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of CTA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*II. Tires Involved:* Affected are approximately 116,500 Continental ExtremeContact DWS size 225/45R17 91W, Continental ExtremeContact DW size 225/45R17 91W and General G-Max AS–03 size 225/45R17 91W passenger car tires.

*III. Noncompliance:* CTA explains that the noncompliance is that due to mold labeling errors, the sidewall markings on the subject tires do not correctly describe the actual number of plies in the tread area of the tires as required by paragraph S5.5(f) of FMVSS No. 139. Specifically, the Continental ExtremeContact DWS size 225/45R17 91W tires were manufactured with

''Tread 4 Plies: 1 Polyester + 2 Steel + 1 Polyamide.'' The correct labeling and stamping should have been ''Tread 5 Plies: 1 Polyester + 2 Steel + 2 Polyamide.'' The Continental ExtremeContact DW size 225/45R17 91W tires were manufactured with ''Tread 4 Plies: 1 Polyester + 2 Steel + 1 Polyamide.'' The correct labeling and stamping should have been ''Tread 5 Plies: 1 Polyester + 2 Steel + 2 Polyamide.'' The General G-Max AS–03 size 225/45R17 91W tires were manufactured with ''Plies: Tread: 1 Polyester + 2 Steel + 1 Polyamide.'' The correct labeling and stamping should have been ''Plies: Tread: 1 Polyester + 2 Steel + 2 Polyamide.''

*IV. Rule Text:* Paragraph S5.5 of FMVSS No. 110 requires in pertinent part:

S5.5 Tire Markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard . . .

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;

*V. Summary of CTA's Analyses:* CTA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) CTA believes that the mislabeling of the number of plies on the subject tires has no impact on the operational performance of the subject tires or on the safety of vehicles on which these tires are to be mounted. CTA states that the subject tires also meet or exceed all of the performance requirements specified by FMVSS No. 139.

(B) CTA states that they are unaware of any accidents or injuries that have occurred as a result of this noncompliance.

(C) CTA states that NHTSA has previously granted similar petitions for Inconsequential Noncompliance's in the past.

CTA has additionally informed NHTSA that it has corrected the subject noncompliance.

In summation, CTA believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt CTA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

**Jeffrey Giuseppe,**

*Director, Office of Vehicle Safety Compiance.*

[FR Doc. 2015–08692 Filed 4–15–15; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2015–0029; Notice 1]**

### Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Mercedes-Benz USA, LLC, (MBUSA) on behalf of itself and its parent company Daimler AG (DAG), collectively referred to as ''Mercedes'' has determined that certain model year (MY) 2015 Mercedes-Benz C-Class (205 Platform) passenger vehicles do not fully comply with paragraph S10.18.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Mercedes has filed an appropriate report dated February 9, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

**DATES:** The closing date for comments on the petition is May 18, 2015.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

**SUPPLEMENTARY INFORMATION:**

I. *Mercedes' Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Mercedes submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C.

Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MBUSA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Vehicles Involved:* Affected are approximately 9,137 MY 2015 Mercedes-Benz C-Class (205 Platform) passenger cars manufactured between June 18, 2014 through September 5, 2015 at Mercedes' Tuscaloosa, Alabama plant.

III. *Noncompliance:* Mercedes explains that the subject vehicles were manufactured with horizontal adjustment-visually aimed headlamps that have a lower beam and a horizontal adjustment mechanism that was not made inoperative at the factory. Specifically, the horizontal adjustment screw was not properly sealed off with non-removable sealing caps as necessary to fully meet the requirements of paragraph S10.18.4 of FMVSS No. 108.

*Rule Text:* Paragraph S10.18.4 of FMVSS No. 108 requires in pertinent part:

S10.18.4 *Horizontal adjustment-visually aimed headlamp.* A visually/optically amiable headlamp that has a lower beam must not have a horizontal adjustment mechanism unless such mechanism meets the requirements of this standard for on vehicle aiming as specified in S10.18.8.

V. *Summary of MBUSA's Analyses:* Mercedes stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Mercedes believes that new manufacturing methods, including the use of optical image processing to adjust the horizontal and the vertical illumination levels of headlamps in addition to the reduction in assembly tolerances for headlamp assemblies has resulted in optimal headlamp adjustments on vehicles leaving their manufacturing plants. As a result, on-vehicle aiming devices are no longer common in the industry. Mercedes believes that this has led to the elimination of the need for horizontal headlamp adjustment on in-use vehicles. Regarding the subject vehicles, Mercedes says there is generally no need for customers or repair shops to adjust the horizontal aim of headlamps.

(B) Mercedes states that they have only received five customer complaints in the United States, relating to alleged headlamp mis-aiming in the subject vehicles. None of the complaints relate to horizontal mis-aiming of the headlamps. In all instances customers brought their vehicles in for service by Mercedes repair shops, who know how to perform a headlamp readjustment properly, without using the horizontal adjustment screw.

(C) Mercedes' says they provide service instructions to U.S. repair shops that specify that horizontal headlamp adjustment is not permitted and do not even mention that a horizontal headlamp adjustment screw even exists. Similarly, the vehicle owner's manual does not include information about performing headlamp illumination adjustment. Thus, since the horizontal headlamp screw's existence is not mentioned in any sales or service instructions or manuals, use of the screw by the customer or repair facilities would be extremely unlikely.

(D) Mercedes also stated that even if the screw were to be used, such adjustment would result in only minimal differences in illumination levels compared to the original levels because it provides only a minimal range of adjustment. Mercedes elaborated by stating that when the horizontal adjustment screw is turned to the far left or far right end-position, only a few measuring points are slightly above or below the FMVSS No. 108 required levels. Specifically, when the horizontal adjustment screw is turned to the maximum left end-position ($-2.8°$), only 4 out of 24 measuring points are above (3) or under (1) the required illumination levels. And when the horizontal adjustment screw is turned to the maximum right end-position ($+3.2°$), only 2 out of 24 measuring points are under the required illumination levels. Thus, the difference between these worst-case levels and the required minimum or maximum levels are very small. According to Mercedes' headlamp development engineers, a difference of 300 cd [candela] is unlikely to be noticed by a driver and would not affect oncoming traffic or visibility in any material way. In addition, the subject headlamps rely on a reflection-based system which Mercedes' believes leads to less glare then projection-based system.

Mercedes has additionally informed NHTSA that it has corrected the subject noncompliance.

In summation, Mercedes believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Mercedes from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mercedes notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

**Jeffrey Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2015–08691 Filed 4–15–15; 8:45 am]

BILLING CODE 4910–59–P

## UNITED STATES INSTITUTE OF PEACE

### Notice of Meeting

**DATE/TIME:** Friday, April 24, 2015 (10:00 a.m.–1:45 p.m.)

**LOCATION:** 2301 Constitution Avenue NW., Washington, DC 20037.

**STATUS:** Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** April 24, 2015 Board Meeting; Approval of Minutes of the One Hundred Fifty-Fourth Meeting (January 23, 2015) of the Board of Directors; Chairman's Report; Vice Chairman's Report; President's Report; Reports from USIP Board Committees; Update on Afghanistan and Pakistan; Countering Violent Extremism Review; Other General Issues.

**CONTACT:** Denson Staples, Assistant to the Board Liaison Email: *dstaples@usip.org.*

Dated: April 9, 2015.

**Michael Graham,**

*Senior Vice President for Management and Chief Financial Officer, United States Institute of Peace.*

[FR Doc. 2015–08608 Filed 4–15–15; 8:45 am]

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# FEDERAL REGISTER

Vol. 80 Thursday,

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Part II

## Department of Labor

Employment and Training Administration

20 CFR Parts 676, 677, and 678

## Department of Education

34 CFR Parts 361 and 463

Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking; Proposed Rule

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Parts 676, 677, and 678**

**[Docket No. ETA–2015–0002]**

**RIN 1205–AB74**

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 361 and 463**

**RIN 1830–AA21**

# Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking

**AGENCY:** Office of Career, Technical, and Adult Education, Rehabilitation Services Administration, Education; Employment and Training Administration (ETA), Labor.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Departments of Education (ED) and Labor (DOL) are proposing, through this Notice of Proposed Rulemaking (NPRM), to implement jointly-administered activities authorized by title I of the Workforce Innovation and Opportunity Act (WIOA). Through these regulations, the Departments propose to implement job training system reforms and strengthen the nation's workforce development system to put Americans back to work and make the United States more competitive in the 21st Century. This joint proposed rule provides guidance for State and local workforce development systems that increase the skill and credential attainment, employment, retention, and earnings of participants, especially those with significant barriers to employment, thereby improving the quality of the workforce, reducing welfare dependency, and enhancing the productivity and competitiveness of the nation.

WIOA strengthened the alignment of the workforce development system's six core programs by imposing unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. In so doing, WIOA placed heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job seekers, including those with disabilities, and employers. To that end, the Departments of Education and Labor propose to issue this joint NPRM to implement jointly-administered activities under title I of WIOA. These regulations lay the foundation, through coordination and collaboration at the Federal level, for implementing the vision and goals of WIOA.

In addition to this joint NPRM, the Departments have proposed separate NPRMs to implement program-specific requirements of WIOA that fall under each Department's purview. The Department of Labor is proposing a NPRM governing program-specific requirements under titles I and III of WIOA. The Department of Education is proposing three NPRMs: one implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two NPRMs implementing all program-specific requirements for all programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Department-specific NPRMs have been simultaneously published in this issue of the **Federal Register**. Developing and issuing all five WIOA NPRMs in a coordinated manner reinforces WIOA's heightened emphasis on collaboration to ensure an integrated and seamless service delivery system for job seekers and employers.

**DATES:** To be ensured consideration, comments must be submitted in writing on or before June 15, 2015.

**ADDRESSES:** You may submit comments, identified by docket number ETA–2015–0002, for Regulatory Information Number (RIN) 1205–AB74 and/or 1830–AA21, by one of the following methods:

*Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.

*Mail and hand delivery/courier:* Written comments, disk, and CD–ROM submissions may be mailed to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

*Instructions:* Label all submissions with ''RIN 1205–AB74'' and/or ''RIN 1830–AA21.'' Please submit your comments by only one method. Please be advised that the Departments will post all comments received that are related to this NPRM on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* Web site is the Federal eRulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Departments recommend that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses included in their comments as such information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Departments encourage the public to submit comments on *http://www.regulations.gov*.

*Docket:* All comments on this proposed rule will be available on the *http://www.regulations.gov* Web site and can be found using RIN 1205–AB74 or RIN 1830–AA21. The Departments also will make all the comments it receives available for public inspection by appointment during normal business hours at the above addresses. If you need assistance to review the comments, the Departments will provide appropriate aids such as readers or print magnifiers. The Departments will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research (ETA) at (202) 693–3700 (this is not a toll-free number). You may also contact these offices at the addresses listed below.

Comments under the Paperwork Reduction Act: In addition to filing comments with ETA or the Department of Education, persons wishing to comment on the information collection aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:**

*DOL:* Adele Gagliardi, Administrator, Office of Policy and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

*ED:* Lekesha Campbell, U.S. Department of Education, OCTAE, 400 Maryland Avenue SW., Room 11–145, PCP, Washington, DC 20202–7240, Telephone: (202) 245–7808; Janet LaBreck, U.S. Department of Education, RSA, 400 Maryland Avenue SW., Room 5086 PCP, Washington, DC 20202–2800, Telephone: (202) 245–7408.

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

President Barack Obama signed WIOA into law on July 22, 2014. WIOA is landmark legislation designed to strengthen and improve our nation's public workforce system and help put Americans, especially youth and those with significant barriers to employment, back to work. WIOA supports innovative strategies to keep pace with changing economic conditions and seeks to improve coordination between the core WIOA and other Federal programs that support employment services, workforce development, adult education and literacy, and vocational rehabilitation activities.

In WIOA, Congress directed the Departments of Education and Labor to issue an NPRM to implement new statutory requirements to ensure that the workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity for those it serves and continuously improve the quality and performance of its services. Therefore, the Departments of Labor and Education are issuing this joint NPRM to implement jointly-administered activities authorized under title I of WIOA, specifically those related to the Unified and Combined State Plans, performance accountability, and the one-stop system.

The Departments of Education and Labor are publishing this joint NPRM to implement those provisions of WIOA that affect all of the WIOA core programs (titles I–IV) and which will be jointly administered by both Departments. In addition to this joint NPRM, the Departments are publishing separately four agency-specific NPRMs that implement the provisions of WIOA that are administered separately by the Departments—one published by the Department of Labor implementing the agency-specific provisions of title I, and three published by the Department of Education implementing the agency-specific provisions of titles II and IV. Readers should note that there are a number of cross-references in this joint NPRM to the agency-specific NPRMs. Finally, this NPRM has been structured so that the proposed Code of Federal Regulations (CFR) parts will align with the CFR parts in the agency-specific regulations once all of the proposed rules have been finalized.

## II. Acronyms and Abbreviations

AEFLA—Adult Education and Family Literacy Act
CBO—Community-based organization
CEO—Chief elected official
CFR—Code of Federal Regulations
CSBG—Community Services Block Grant
DINAP—Division of Indian and Native American Programs
DOL—U.S. Department of Labor
ED—U.S. Department of Education
E.O.—Executive Order
ESL—English-as-a-second-language
ETA—Employment and Training Administration
ETP—Eligible training provider
FEIN—Federal employer identification number
FR—Federal Register
HHS—Department of Health and Human Services
INA—Indian and Native American
INAP—Indian and Native American Programs
IPE—Individualized Plan for Employment
IT—Information technology
JTPA—Job Training Partnership Act
JVSG—Jobs for Veterans State Grants
LMI—Labor market information
MOU—Memorandum of Understanding
NACTP—Native American Career and Technical Education Program
NPRM—Notice of Proposed Rulemaking
OJT—On-the-job training
OMB—Office of Management and Budget
OPRD—Office of Policy and Research
PRA—Paperwork Reduction Act of 1995
Pub.L.—Public Law
PY—Program year
RFA—Regulatory Flexibility Act
RFI—Requests for Information
RFP—Request for Proposals
RIN—Regulatory Information Number
ROI—Requests of Information
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
sec.—Section of a Public Law or the United States Code
SNAP—Supplemental Nutrition Assistance Program
SSA—Social Security Administration
TANF—Temporary Assistance for Needy Families
TEGL—Training and Employment Guidance Letter
UC—Unemployment compensation
UI—Unemployment insurance
U.S.C.—United States Code
VETS—Veterans' Employment and Training Service
VR—Vocational rehabilitation
WDB—Workforce Development Board
WIA—Workforce Investment Act of 1998
WIOA—Workforce Innovation and Opportunity Act
WISPR—Workforce Investment Streamlined Performance Reporting
WRIS—Wage Record Interchange System

## III. Background

On July 22, 2014, President Obama signed WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce development system, and enhances and increases coordination among several key employment, education, and training programs.

WIOA presents an extraordinary opportunity for the workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

Most provisions in titles I–III of WIOA take effect on July 1, 2015, the first full

program year after enactment; however, the new State Plans and performance accountability system take effect July 1, 2016. Title IV took effect upon enactment.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) Increasing access to and opportunities for the employment, education, training, and support services that individuals, particularly those with barriers to employment, need to succeed in the labor market; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers, the economic growth of communities, regions and States, and the global competitiveness of the United States; and (6) providing workforce investment activities, through workforce development systems, that increase employment, retention, and earnings of participants and that increase post-secondary credential attainment and, as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

WIOA offers an opportunity to continue to modernize the workforce system, and achieve key hallmarks of a strong workforce system: A customer-centered system, where the needs of business and workers drive workforce solutions; a system where one-stop career centers and partners provide excellent customer service to job seekers and businesses, and where the workforce system supports strong regional economies.

To achieve these goals, WIOA requires an integrated approach to the implementation, administration, service delivery, and evaluation of the services provided under the core programs at the Federal, State, and local levels. The core programs consist of: (1) The adult, dislocated worker, and youth formula programs administered by DOL under title I of WIOA; (2) the AEFLA program administered by ED under title II of WIOA; (3) the Wagner-Peyser Act employment services program administered by DOL under title III of WIOA; and (4) the vocational rehabilitation program administered by ED under title IV of WIOA. Integration of the core programs essential to the effective operation of the workforce development system is achieved through the development of a Unified or Combined State Plan, the implementation of a common performance accountability system, and the design of the one-stop service delivery system. Under a Unified or Combined State Plan every State collaborates across the core programs (adult, dislocated worker, and youth; Wagner-Peyser; AEFLA; and Vocational Rehabilitation) and one-stop partner programs and other partners at the local and State levels to create a single unified and integrated strategic State Plan. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the workforce system is designed to meet those needs. States use the certification process and competition to help achieve this vision and ensure continuous improvement.

State and Local Boards, one-stop center operators and partners must increase coordination of programs and resources to support a comprehensive system providing integrated seamless services to all job seekers and workers and effective strategies that meet businesses' workforce needs across the business life cycle. The Departments will work with State and Local Boards, one-stop center operators and partners to achieve an integrated data system for the core programs and other programs to ensure interoperability and the accurate and standardized collection of program and participant information. Integrated data systems will allow for unified and streamlined intake, case management and service delivery; minimize the duplication of data; ensure consistently defined and applied data elements; facilitate compliance with performance reporting and evaluation requirements; and provide meaningful information about core program participation to inform operations.

To facilitate the integration of the core programs, the Departments of Labor and Education have jointly developed this NPRM to implement the jointly-administered activities authorized under title I of WIOA, specifically those related to the Unified and Combined State Plan, performance accountability, and one-stop requirements. In so doing, the Departments agreed, for purposes of this NPRM, that the joint regulations would be identical across all core programs in order to ensure consistency. However, we recognize that some of the proposed regulations may not be applicable for a particular core program. For example, proposed provisions related to local areas would not be applicable to the Vocational Rehabilitation program because it operates solely at a State level.

Furthermore, various provisions of these proposed regulations reference joint guidance that the Departments plan to develop in the near future. The guidance may include: (1) Procedural requirements, such as how to submit a State Plan to the Department of Labor; (2) interpretative rules; and (3) the information that will be collected by the Departments pursuant to the Paperwork Reduction Act (PRA) information collection process, which includes an opportunity for public comment.

*Legal Basis*

On July 22, 2014, the President signed WIOA (Pub. L. 113–128) into law. WIOA repeals WIA (29 U.S.C. 2801 *et seq.*). As a result, the WIA regulations no longer reflect current law, thus necessitating this NPRM for jointly-administered activities. Furthermore, sec. 503(f) of WIOA requires the Departments of Education and Labor to issue NPRMs and then final rules that implement the changes made by WIOA. To that end, the Departments of Labor and Education are issuing this joint NPRM to implement jointly-administered activities authorized under title I of WIOA. The Departments of Labor and Education will each issue separate NPRMs, simultaneously with this joint NPRM, to implement program-specific requirements imposed by WIOA.

## IV. Section-by-Section Discussion of Proposed Regulations

### *A. Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 676; 34 CFR Part 361, Subpart D; 34 CFR Part 463, Subpart H)*

WIOA requires the Governor of each State to submit a Unified or Combined State Plan to the Secretary of DOL that outlines a 4-year strategy for the State's workforce development system. States must have approved State Plans in place to receive funding for the six core programs under WIOA—the adult, dislocated worker, and youth programs (title I of WIOA); the AEFLA program (title II of WIOA); the Wagner-Peyser Act employment services program (title III of WIOA); and the Vocational Rehabilitation program under title I of the Rehabilitation Act of 1973 (title IV of WIOA). Previously, WIA gave States the option of submitting a plan similar

to the Combined State Plans (referred to as Unified Plans in WIA).

WIOA reforms State Plan requirements to foster better alignment of Federal investments in job training, to integrate service delivery across programs, and to ensure that the workforce system is job-driven and matches employers with skilled individuals. At a minimum, States must submit a Unified State Plan, which encompasses the six core programs under WIOA. States are strongly encouraged to submit a Combined State Plan, which includes the six core programs of the Unified State Plan, plus one or more optional programs, as described at § 676.140. Coordination across multiple Federal programs provides a wider range of coordinated and streamlined services to the customer.

One of WIOA's principal areas of reform is to require States to plan across the programs and include this planning process in the Unified or Combined State Plans, which promotes a shared understanding of the workforce needs of a State and a comprehensive strategy for addressing those needs. Unified or combined planning can support better alignment of resources, increased coordination among programs, and improved efficiency in service delivery.

This proposed part describes the submission process and content requirements for the Unified and Combined State Plans under WIOA. The major content areas of the Unified or Combined State Plan include strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers, and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor or Education, or other Secretaries, as appropriate.

WIOA separates the strategic and operational plan elements to facilitate cross-program strategic planning. The separation of strategic elements allows the State to develop a vision for its entire system and identify the operational elements across the programs that support the system-wide vision. The plan requirements also require the use of economic and labor market information to ensure that the Governor's vision and the State's strategies are based on a thorough understanding of the economic opportunities and workforce needs of the State. This will align the best interests of job seekers and employers with the economic future of the State.

The proposed regulations also describe the Unified or Combined State Plan modification requirements and the deadlines for the Unified or Combined State Plan, depending on which option the State elects. Given the multi-year life of the plan, States are required to revisit regularly strategies to ensure the plan remains responsive to economic conditions and labor market needs.

State Workforce Development Boards are responsible for the development, implementation, and modification of the plan, and for convening of all relevant programs, required partners, and stakeholders. The Governor must ensure that the Unified or Combined State Plan is developed in a transparent manner and in consultation with representatives of Local Boards and chief elected officials (CEOs), businesses, representatives of labor organizations, community-based organizations (CBOs), adult and youth education and workforce development providers, institutions of higher education, disability service entities, youth-serving programs, and other stakeholders with an interest in the services provided by the six core programs and any optional program included in a Combined Plan, as well as the general public, including individuals with disabilities.

As part of the PRA process for information collections, the Unified or Combined State Plan information collection instrument and submission requirements will be published in the **Federal Register** pending completion of Office of Management and Budget (OMB) review. Additionally, DOL and ED will issue joint planning guidance to assist States in implementing the planning requirements for both the Unified and Combined State Plans. Additional guidance related to Combined State Plans may also be jointly issued in partnership with other Secretaries as necessary to clarify requirements for optional programs. Currently, the Departments issue State planning guidance separately to explain the Administration's priorities in relation to the planning requirements, explaining such requirements where necessary, submission procedures, and other matters. Jointly issued guidance would best meet the needs of State planning processes and submission requirements for WIOA.

The Departments note that titles I, II, and the Rehabilitation Act of 1973 as amended by title IV of WIOA appear to raise inconsistencies regarding the applicability of certain jointly-administered requirements as they relate to the outlying areas—American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. The apparent inconsistencies are grounded in the fact that WIOA and the Rehabilitation Act contain two differing definitions of ''State.'' Specifically, sec. 3(56) of WIOA defines ''State,'' for purposes of programs funded under title I of WIOA, as the 50 States, the District of Columbia, and Puerto Rico; the outlying areas are defined separately in sec. 3(45) as described above, and include Palau in certain circumstances. On the other hand, title IV, which amended the Rehabilitation Act of 1973, defines ''State'' at sec. 7(34) as the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands, thereby defining any of the outlying areas as a State for purposes of programs funded under title IV of WIOA. Title II of WIOA does not separately define either ''State'' or ''outlying area,'' but defines ''eligible agency'' at sec. 203(3) to mean ''the sole entity or agency in a State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area . . .'' These differences in definitions raise potential inconsistencies in the applicability of certain jointly-administered requirements for purposes of the outlying areas, such as those related to the requirements in secs. 102 and 103 of WIOA, which require States to submit a Unified or Combined State Plan to receive funding. Given the differing definitions, WIOA appears to be inconsistent across the core programs as to whether an outlying area must submit a Unified or Combined State Plan to receive funding.

WIOA sec. 102(a) requires that, in order for a State to be eligible to receive allotments for the core programs, the State must submit a Unified State Plan. Read in isolation, sec. 102(a) does not appear to require that outlying areas submit a Unified State Plan as a prerequisite to receiving funds for the core programs.

However, several other provisions in title I of WIOA create uncertainty on this point. Sections 126 (youth formula program) and 131 (adult and dislocated worker formula programs) require States to meet the requirements of secs. 102 or 103 to receive a formula allotment under title I, while those same sections require outlying areas to comply with the requirements of title I, without elaboration, to receive an allotment

under title I. The requirement in WIOA secs. 126 and 131 that outlying areas must comply with the requirements of title I implies—but is not clear—that they must submit a Unified State Plan. Between the clear language in sec. 102 and the failure of secs. 126 and 131 to reference secs. 102 and 103, WIOA title I is unclear if outlying areas are required to submit a Unified State Plan to receive funding under title I.

Under title II of WIOA, which reauthorizes AEFLA, sec. 211(b)(1) states that eligible agencies shall be awarded a grant to carry out their adult education program if they have a Unified State Plan approved under sec. 102. Section 211(c)(1) includes similar language with regard to sec. 102 of WIOA when it describes the amounts to be allotted to eligible agencies. As noted above, WIOA sec. 203 defines an eligible agency as the agency in the State or outlying area (as those terms are defined in sec. 3 of WIOA) responsible for administering the adult education program in the State or outlying area. Thus, a plain reading of secs. 211(b)(1) and 211(c)(1) is that both States and outlying areas must have an approved Unified State Plan to be eligible to receive title II funds. WIOA sec. 221(1) reinforces this reading by requiring each eligible agency to develop, implement, and monitor the relevant portions of the Unified State Plan.

However, WIOA sec. 224 only requires each State that wants funds under title II for any fiscal year to submit a Unified State Plan in accordance with sec. 102. In other words, sec. 224 does not mention eligible agencies or outlying areas, as is done in other provisions throughout title II. Of additional note is that separate from the requirements of WIOA, the Department of Education has permitted outlying areas administering AEFLA-funded programs to include AEFLA in an application for Consolidated Grants to Insular Areas (Consolidated Grant), in accordance with 48 U.S.C. 1469a. Consolidated Grant applications are submitted in lieu of any other State plan that is required under the programs included in the consolidation. Finally, sec. 101(a)(1) of the Rehabilitation Act of 1973, as amended by title IV of WIOA, requires a State—the definition of which includes outlying areas as described above—to submit a Unified State Plan in accordance with sec. 102 of WIOA in order to be eligible to receive Vocational Rehabilitation Services funds. This provision, unlike the similar provisions in WIOA titles I and II discussed above, is clear that the submission of a Unified State Plan is a prerequisite to receiving funding.

Given these differences and potential inconsistencies, there are two possible options with regard to outlying areas. The first option is to require the outlying areas to submit a Unified or Combined State Plan as a prerequisite to receiving funding for the core programs. Under this option, the outlying areas would receive their funding through the relevant statutory and regulatory processes for all core programs as would be applicable to any State. While this option is consistent with WIOA's goal of creating a more integrated, streamlined system and treats all grantees similarly, the Departments understand that the Unified or Combined State Plan requirements could pose additional burden on the outlying areas that may not exist for other States in terms of size, capacity, and resources. If the Departments were to adopt this option, the Department of Education would have, as an additional consideration, the implications of the Consolidated Grant application process as an option for the outlying areas to apply for AEFLA funds.

The second option would be not to require the outlying areas to submit a complete Unified or Combined State Plan as a prerequisite to receiving funding for the core programs. Under this option, the Departments would continue to award funds to the outlying areas under WIOA as they have in the past. For example, under this option the Department of Labor would continue to require the outlying areas to submit a plan as part of the competitive grant competition required by WIOA sec. 127(b)(1)(B). On the other hand, the Department of Education would require the outlying areas to submit a Unified or Combined State Plan, in accordance with secs. 102 and 103 of WIOA, for both the AEFLA and Vocational Rehabilitation Services programs. Under this option, outlying areas administering AEFLA would also still have the option to submit a Consolidated Grant to Insular Areas in lieu of the Unified or Combined State Plan under WIOA. While this option may be consistent with current practice for each program and most in line with the plain meaning of each of the relevant programmatic requirements under WIOA, it may not as effectively promote the collaborative, integrated purposes of WIOA among the core programs. In addition, this option imposes differing requirements for the core programs administered by the outlying areas, thereby causing potential confusion during the implementation process. Moreover, this option could result in the Vocational Rehabilitation Services program being the only component on a Unified or Combined State Plan, which would render the Unified or Combined State Plan requirements meaningless.

The Departments specifically request comments on the options proposed above, as well as any additional options, and which option the Departments should adopt.

In the section-by-section discussions of each proposed Unified and Combined State Plan provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart D (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart H (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

§ 676.100 What are the purposes of the Unified and Combined State Plans?

Proposed § 676.100 describes the principal purposes of the Unified and Combined State Plans, which communicate the State's vision for the State workforce system and serve as a vehicle for aligning and integrating the State workforce system across Federal programs.

Proposed § 676.100(a) explains that the Unified or Combined State Plan serves as the vehicle for the State to outline its vision of the workforce development system and how the State will achieve WIOA's goals.

Proposed § 676.100(b) explains that the Unified or Combined State Plan serves as a 4-year plan for how the State will align and integrate the workforce development system.

Proposed § 676.100(b)(1)–(4) explain how the strategies articulated in the Plan support the State's vision and overarching goals. The goals of the 4-year Unified and Combined State Plans are to align and integrate Federal education, employment, and training programs; guide investments to ensure that training and services are meeting the needs of employers and job seekers; apply consistent job-driven training strategies across all relevant Federal programs; and engage economic, education, and workforce partners in improving the workforce development system.

§ 676.105 What are the general requirements for the Unified State Plan?

Proposed § 676.105 describes the general requirements for the Unified State Plan that apply to all six core programs. These requirements set the foundation for WIOA implementation by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responds to the economic needs of the State, and matches employers with skilled workers. The Departments envision a plan that describes how the State will develop and implement a unified, integrated program rather than a plan that separately discusses the State's approach to operating each program individually.

Proposed § 676.105(a) explains that Unified State Plans must be submitted in accordance with § 676.130 and that the Secretaries of Labor and Education will issue joint planning guidance, as discussed above, with instructions to States on how to submit Unified State Plans.

Proposed § 676.105(b) implements WIOA's statutory requirements in sec. 102(a), and requires that the State submit the Unified State Plan to the Secretary of Labor to receive funding for the workforce development system's six core programs.

Proposed § 676.105(c) requires, in accordance with sec. 102(a) of WIOA, that the State outline its 4-year strategy for WIOA's core programs and meet the requirements of WIOA sec. 102(b). This section further explains that the Secretaries of Labor and Education will jointly issue planning guidance, which will include additional requirements with which the State's plan must comply.

Proposed § 676.105(d), which implements sec. 102(b) of WIOA, describes the content required to be included in the Unified State Plan. The proposed regulation includes major structural elements rather than repeating all the statutory State planning requirements. States still must comply with each of the statutory requirements, regardless of whether they are repeated in regulation.

Proposed §§ 676.105(d)(1)–(3) implement the key WIOA statutory requirements found in sec. 102(b)(1), (b)(1)(E), and (b)(2), respectively. The plan contains two major content areas—strategic elements and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers, and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and other requirements imposed by the Secretaries of Labor or Education. Additional explanations and clarifications of assurances and plan requirements will be contained in the subsequently issued joint planning guidance. The plan requirements also emphasize the use of economic and labor market information to ensure that the Governor's vision and State strategies are based on a thorough understanding of the economic opportunities and workforce needs of the State, to align the best interests of job seekers and employers with the economic future of the State.

Finally, proposed § 676.105(d)(3)(v), as allowed by WIOA sec. 102(b)(2)(C)(viii), requires the State Plan to include any additional operational planning elements as the Secretaries determine are necessary. These additional elements will be included in the joint planning guidance.

§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

§ 676.120 What are the program-specific requirements in the Unified State Plan for the Wagner-Peyser Act Employment Services programs as amended by title III of the Workforce Innovation and Opportunity Act?

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation Program in title IV of WIOA?

States are required to develop a unified or combined plan as described in § 676.105. While States must address general common planning requirements, States must also ensure that their planning process and plan content adhere to the legal requirements for each of the six core programs that remains unique to each program, as required by sec. 102(b)(2)(D) of WIOA.

Proposed § 676.110, implementing WIOA sec. 102(b)(2)(d)(i), describes the additional requirements to which the adult, dislocated worker, and youth programs are subject.

Proposed § 676.115 explains the additional requirements to which the AEFLA program is subject.

Proposed paragraph (a) contains three specific program requirements. First, subparagraph (1) restates the statutory requirement that the eligible agency must align its adult education content standards with its State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended, and further establishes that the eligible agency must have completed that alignment by July 1, 2016. Establishing the July 1, 2016, date will ensure that all States are positioned to work toward full implementation of rigorous standards in the first year of the Unified State Plan and promote consistency across States. Second, subparagraph (2) addresses the general requirement that States, in the Unified State Plan, describe the methods and factors the State will use to distribute funds under the core programs. The regulation clarifies and reinforces requirements in title II that the eligible agency must compete title II funds, award multi-year grants, and provide direct and equitable access to funds using the same grant or contract announcement and application procedure. Adding the provisions found in sec. 231 of WIOA to this subparagraph is intended to clarify the requirements related to the distribution of AEFLA funds that must be incorporated into the Unified State Plan. Third, subparagraph (3) addresses the requirement that the State describe how it will integrate workforce and education data on core programs, unemployment programs and education through post-secondary education. The regulation requires that for title II, a State must include in the Unified State Plan how it will ensure interoperability of data systems in the reporting of core indicators and performance reports required to be submitted by the State. This regulation is intended to support the work of eligible agencies participating in State Longitudinal Data Systems initiatives and Workforce Data Quality initiatives and otherwise support the concepts of interoperability that will allow efficient reporting of performance under WIOA.

Proposed § 676.120, consistent with sec. 102(b)(2)(D)(iv), requires States to include any information the Secretary of Labor determines is necessary to administer the Employment Services Program. This additional information will be provided in the jointly issued planning guidance.

Proposed § 676.125 explains the additional requirements to which the State Vocational Rehabilitation program is subject. Specifically, States must submit a Vocational Rehabilitation Services portion, which complies with all State plan requirements set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended by WIOA, as part of the Unified State Plan. The Commissioner of the Rehabilitation Services Administration of ED is responsible for approving the Vocational Rehabilitation Services portion of the Unified State Plan.

In addition to the specific elements required by WIOA, the Unified State Plans must include any additional program specific aspects as required by sec. 102(b)(2)(C)(viii).

§ 676.130 What is the submission and approval process of the Unified State Plan?

In order to facilitate the State strategic planning process, and concurrent review by the relevant Federal program offices, the Unified State Plan must be submitted to the Secretary of Labor, according to the procedures established in this section, and as clarified and explained through joint planning guidance. Proposed § 676.130(d), discussed below, outlines the procedures the Secretary of Labor will follow upon receipt of a Unified State Plan. Proposed § 676.130 also describes the requirements for transparency, public comment, and submission, as well as the terms for approval.

Proposed § 676.130(a) requires that the Unified State Plan be submitted in accordance with the procedures set out in the joint planning guidance, as previously discussed, issued by the Secretaries of Labor and Education and the procedures outlined in sec. 102(c) of WIOA.

Proposed §§ 676.130(b)(1) and (2) reiterate the requirement at sec. 102(c)(1) of WIOA regarding the deadlines for submitting the initial and subsequent Unified State Plans to the Secretary of Labor. The Secretary will develop a process for submission of Unified State Plans to ensure that ED receives the entire Unified State Plan submission concurrently. Based on this timeline, States are required to submit their first Unified State Plan on March 3, 2016. The Departments anticipate that the second Unified State Plans will need to be submitted 4 years after the first plan, in roughly the spring of 2020. The official submission dates for the Plans will be announced in the joint planning guidance.

Proposed paragraph (b)(3) clarifies that, consistent with current practice for many of the core programs, a PY runs from July 1 through June 30 of any year. This clarification is particularly important, in this context, for the Vocational Rehabilitation program since that program operates on a Federal fiscal year and will continue to do so, in accordance with title I of the Rehabilitation Act of 1973, despite the fact that the Vocational Rehabilitation Services portion of the Unified State Plan will align, for submission purposes, with the other partners on a PY basis.

Proposed § 676.130(c) requires that the State ensure that the Unified State Plan is developed and drafted as part of a transparent process.

Proposed § 676.130(c)(1) implements WIOA's Sunshine Provision at sec. 101(g), which the Departments have interpreted to require that the State provide an opportunity for comment by the general public and by representatives of Local Boards, CEOs, businesses, representatives of labor organizations, CBOs, adult education providers, institutions of higher education, and other stakeholders with an interest in the services provided by the six core programs, including individuals with disabilities. This opportunity for comment provides interested stakeholders with a means to participate actively and effectively in the development of the plan in a transparent manner.

Proposed § 676.130(c)(2) reiterates WIOA's Sunshine Provision's requirement at WIOA sec. 101(g) that the State Board make information regarding Unified State Planning publicly available to the public through regularly occurring open meetings. In addition, this section requires that the Unified State Plan describe the State's process and public comment period.

Proposed § 676.130(d) implements WIOA sec. 102(c)(2)(A) which requires the Secretary of Labor to provide the entire Unified State Plan to the Secretary of Education for review pursuant to the submission process described in § 676.130(b). Because content pertaining to each of the six core programs will be integrated throughout the Unified State Plan, it will be more efficient and effective to provide both Secretaries the opportunity to review the entirety of a State's plan rather than trying to break out the portions of the plan pertaining to the specific programs. This joint review process supports the purposes of the Unified State Plan in fostering program integration and alignment.

Proposed §§ 676.130(e)–(g), implementing WIOA sec. 102(c)(2)(B), pertain to the approval of the Unified State Plan.

Proposed § 676.130(e) implements WIOA's statutory requirement that the Unified State Plan is subject to the approval of the Secretary of Labor and the Secretary of Education. WIOA requires both Secretaries to approve the Unified State Plan to ensure cross-program alignment, integration, and collaboration between the programs administered by the two Departments.

Proposed § 676.130(f) implements WIOA's statutory requirement that the Commissioner of the Rehabilitation Services Administration approve the vocational rehabilitation services portion of the Unified State Plan before the Secretaries of Labor and Education approve the Unified State Plan.

Proposed § 676.130(g) implements WIOA's statutory requirement that the Unified State Plan must be reviewed and approved by the Secretaries of Labor and Education within 90 days of receipt. The Secretary of Labor will develop a process for submission of Unified State Plans to ensure that the Secretary of Education receives the entire Unified State Plan submission concurrently. The section further states that in order to disapprove a Unified State Plan either the Secretary of Labor or the Secretary of Education must find, in writing, that the Plan is inconsistent with a core program requirement, is inconsistent with Unified State Plan requirements under WIOA sec. 102, is incomplete, or that the plan does not provide sufficient information to make the findings described in proposed §§ 676.130(g)(1)–(2).

Proposed § 676.130(h) implements WIOA sec. 102(c)(2)(B), which provides that if one of the Secretaries does not affirmatively make the determination described in §§ 676.130(g)(1)–(3) within 90 days of receipt, the Unified State Plan will be considered approved.

§ 676.135 What are the requirements for modification of the Unified State Plan?

Given the multi-year life of the Unified State Plan, States must revisit regularly State Plan strategies and recalibrate these strategies to respond to the changing economic conditions and workforce needs of the State. At a minimum, a State is required to submit modifications to its Unified State Plan at the end of the first 2-year period of any 4-year plan and also under specific circumstances, examples of which have been included in this section. States may also choose to submit a State Plan modification at any time during the life of the plan. Proposed § 676.135 further describes the requirements for

submission and approval of Unified State Plan modifications, which are subject to the same public review and comment requirements and approval process as the full Unified State Plan submissions.

Proposed § 676.135(a) reiterates WIOA's statutory authority in sec. 102(c)(3)(B), which allows the Governor to submit a modification of the Unified State Plan at any time during the 4-year period of the Unified State Plan.

Proposed § 676.135(b)(1) implements the statutory requirement in WIOA sec. 102(c)(3)(A), requiring the Governor to submit a Unified State Plan modification at the end of the first 2-year period of any 4-year State Plan.

In addition to the statutory mandate to modify the Plan, proposed §§ 676.135(b)(2)–(3) require that the Governor modify the Unified State Plan when changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based or when there are substantial changes in the State's workforce investment system. In order for the plan to both effectively govern the State's implementation and operation of the core programs and effectively serve the State's workforce and employers, the plan must be consistent with relevant laws and policies.

Proposed § 676.135(c) requires that modifications to the Unified State Plan be subject to the same public review and comment requirements for submitting a Unified State Plan described at proposed § 676.130(c). This requirement ensures transparency in the process of developing the Unified State Plan modification. The Unified State Plan modification must describe the State's process and timeline for ensuring public comment.

Proposed § 676.135(d), implementing WIOA sec. 102(c)(3)(B), requires Unified State Plan modifications to be subject to the same approval process as the original Unified State Plan submission. Modifications must be approved by both the Secretary of Labor and the Secretary of Education within 90 days of receipt, in accordance with the standards described at § 676.130, which also includes the approval process for the Vocational Rehabilitation Services portion of the State plan.

§ 676.140 What are the general requirements for submitting a Combined State Plan?

States have the option to submit a Combined State Plan that goes beyond the core programs of a Unified State Plan to include at least one optional, additional Federal workforce, educational, or social service program from the programs identified in sec. 103(a)(2) of WIOA. Generally, the requirements for a Combined State Plan include the requirements for the Unified State Plan as well as the program-specific requirements for any optional programs that are included in the Combined State Plan. To expand the benefits of cross-program strategic planning, increase alignment among State programs, and improve service integration, States are strongly encouraged to submit Combined State Plans.

Proposed § 676.140, which implements sec. 103(a) and (b) of WIOA, authorizes the submission of a Combined State Plan, lists the optional programs that a State may include, and describes the requirements of the combined plan.

Proposed § 676.140(a) allows a State to submit a Combined State Plan in lieu of a Unified State Plan. Proposed § 676.140(b), implementing WIOA sec. 103(b)(2), clarifies that, if a State submits a Combined State Plan that is approved, the State is not required to submit any other plan in order to receive the funds to operate the programs covered by the combined plan. The Combined State Plan takes the place of the individual State Plans for the optional programs that are covered by the plan and replaces the Unified State Plan. In this way, the Combined State Plan is meant to reduce the burden for States and promote integrated planning across State programs. One proposed exception to this rule, for the optional program, employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*), is described below under proposed § 676.140(h).

The 4-year cycle, with a 2-year modification, for the Combined State Plan is inconsistent with the planning cycles for the plans governing the optional programs. The Departments seek comment on how to address this issue and reduce the burden of managing multiple cycles. Specifically, the Departments request comment on how to treat the plan for an optional program whose planning cycle is longer than 2 years, whose planning cycle is less than 2 years, and whose planning process includes intra-cycle modifications of the plan. Similarly, the Departments request comments on how best to treat the plan for an optional program that is reauthorized or otherwise significantly amended during the 4-year or 2-year cycle of a Combined State Plan, including a change to the optional program's planning cycle.

Proposed § 676.140(c) requires that the Combined State Plan be submitted to the appropriate Secretary for approval in accordance with the procedures described in proposed § 676.143(a).

Proposed § 676.140(d) reiterates the requirement that the Combined State Plan include all of the core programs, and at least one of the optional programs described in WIOA sec. 103(a)(2).

Proposed §§ 676.140(d)(1)–(11) identify the programs that a State may include in the Combined State Plan. These are Federal programs that offer educational, training, employment, or supportive services to populations that may overlap with those core programs serve. By expanding the State's cross-program planning beyond the core programs to include one or more of the optional programs the State will further improve strategic alignment and service integration for job seekers and employers.

Proposed §§ 676.140(e)(1)–(4) generally describe what must be included in the Combined State Plan. It is important to note that the portions of the Combined State Plan covering the core programs must include all of the required contents of the Unified State Plan, while the portions of the Combined State Plan covering optional programs must include the information for a plan or application as required by the laws authorizing and governing the optional programs, as well as common planning requirements (both strategic and operational) described in sec. 102(b) of WIOA, and as clarified and explained in the joint planning guidance for all included optional programs. This provision implements sec. 103(b)(1) of WIOA.

Proposed § 676.140(f) clarifies that although the optional programs listed in sec. 103(a)(2) of WIOA are included in the Combined State Plan, those programs are subject to the requirements of the applicable Federal law, regulations, and program-specific requirements governing those programs. A program's inclusion in the Combined State Plan does not negate a State's duty to comply with all of the relevant laws and regulations, procedures, and any other requirements imposed by the agency or organization administering or governing that program.

Proposed § 676.140(g), consistent with sec. 103(d)(2) of WIOA, explains that the term ''appropriate secretary'' when used in relation to the optional programs refers to the head of the Federal agency overseeing the program.

Proposed § 676.140(h) indicates that States that elect to include employment and training activities carried out under

the CSBG Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations. Because employment and training activities are only a subset of the broad range of anti-poverty activities and other requirements addressed in the overall CSBG plan, States would not be required to include these program-specific elements of a complete CSBG State Plan in the WIOA Combined State Plan.

§ 676.143 What is the submission and approval process of the Combined State Plan?

In order to facilitate the State's strategic planning process, and concurrent review by the relevant Federal program offices, the Combined State Plan must be submitted in accordance with jointly-issued planning guidelines issued by the Secretaries of Labor and Education and any program-specific requirements of each optional program that a State includes.

Proposed § 676.143 implements WIOA's statutory requirements for submitting a Combined State Plan. These are similar to the requirements for submitting a Unified State Plan, with added considerations for review and approval by the Federal agencies that oversee the optional Combined State Plan programs.

Proposed § 676.143(a) requires the Combined State Plan to be submitted in accordance with the requirements in § 676.143 and joint planning guidelines issued by the Secretaries of DOL and ED.

Proposed § 676.143(b) requires the State to submit, to all Secretaries whose programs are included in the Combined State Plan, in accordance with the procedures described in the joint planning guidance described in § 676.143(a), any plan documents, application, form, or similar documents that are required by the optional Combined State Plan programs or activities in order to receive Federal funding for that program. Though the Combined State Plan takes the place of the individual State Plans for the optional programs or activities included in the Combined State Plan, the State must still comply with the submission requirements for approval of Federal funding under the optional programs.

Proposed § 676.143(c) requires that the Combined State Plan be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA. This section requires that only the Secretary tasked with administering the relevant optional program review and approve that portion of the Combined State Plan. Accordingly, proposed § 676.143(c)(1) implements sec. 103(c)(3)(A) of WIOA, describing the approval process by the Secretaries of Labor and Education for those parts of the Combined State Plan that cover the core programs, while proposed § 676.143(c)(2) implements sec. 103(c)(3)(B) of WIOA, describing the approval process by the appropriate secretary for the optional programs included in the Combined State Plan.

Proposed § 676.143(d) implements WIOA's standards for the Secretaries of Labor, Education, or other appropriate secretary to determine if a Combined State Plan should be approved or disapproved, or otherwise deemed complete. These standards are similar to the standards for disapproving a Unified State Plan, with considerations for the requirements of the optional Combined State Plan programs and activities. Proposed §§ 676.143(d)(1)–(3) state that the plan may not be approved if the relevant Secretary determines, in writing, within the relevant review period that: the plan is inconsistent with the requirements of the core programs or one or more of the optional programs included; does not meet the criteria for the core programs or one or more of the optional programs included; or is considered incomplete or insufficient to make an approval determination.

Under this section, the appropriate Secretary reviewing his or her portion of the Combined State Plan is not required to take any action or make any determination to approve/disapprove a plan beyond what is required or permitted under the law governing that program. For example, if the appropriate Secretary is only authorized to determine if a plan is complete, as part of the Combined State Plan approval process that Secretary would not also be required to make the additional determinations described in § 676.143(d) in order to approve or disapprove that portion of the plan.

Proposed § 676.143(e) implements the requirement in WIOA sec. 103(c)(3) that, unless the relevant Secretary makes the determination described in § 676.143(d), the relevant portion of the plan will be deemed approved.

Proposed § 676.143(f) requires a State, with respect to the core programs, and a program under the Carl D. Perkins Career and Technical Education Act of 2006, to reach an agreement with the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance. The plan may not be approved if an agreement as to these measures is not reached and included in the plan. Performance requirements for the Carl D. Perkins Career and Technical Education Act of 2006 continue to apply.

§ 676.145 What are the requirements for modifications of the Combined State Plan?

Section 103 of WIOA provides for the modification process for parts of the Combined State Plan. Proposed § 676.145 applies to the Combined State Plans the same requirements for modifications as Unified State Plans, with added requirements for the additional Federal programs included in the Combined State Plan. For the additional program and activities that are not part of the Unified State Plan, the State may elect to modify the Combined State Plan according to WIOA sec. 102(c)(3).

Proposed § 676.145(a) requires modification of the Combined State Plan for the core programs at the end of the first 2-year period of any 4-year Combined State Plan. This proposed regulation subjects the core programs in the Combined State Plan to the modification requirements described at § 676.135 for Unified State Plans, ensuring that all State plans governing the core programs are treated equally. Additionally, this proposed regulation requires the State Workforce Development Board to review the Combined State Plan, and the Governor to submit a modification to the Combined State Plans to ensure that the Plan remains responsive to changes in labor market and economic conditions and to other factors that impact the strategies described in the Combined State Plan.

Proposed § 676.145(b), similar to the Unified State Plan provision, allows States to modify a Combined State Plan, at any time during the 4-year period of the Plan and requires modifications as described in § 676.145(a).

Proposed § 676.145(c)(1) allows the State, at its discretion, to apply the modification requirements in § 676.135 to the optional programs and activities included in the Combined State Plan.

Proposed § 676.145(c)(2) requires the State to submit, in accordance with the submission requirements described in § 676.143, any modification, amendment, or revision required by Federal law for the optional programs included in the Combined State Plan. However, the State is required to submit the modification, amendment, or revision for approval only to the

Secretary overseeing the program if the modification, amendment, or revision affects the administration of that particular program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level. In this case, the State may submit its modification, amendment, or revision in accordance with the procedures and requirements applicable to the particular program.

In addition, if the program-specific requirements change by law for an optional Combined State Plan program, the State may choose to either: (1) Modify the Combined State Plan or (2) remove the program from the Combined State Plan and submit a separate plan to the Federal agency that oversees that program, in accordance with the new Federal law authorizing the optional program and other applicable legal requirements for such program. Since Combined State Plan programs are optionally included by the State in a Plan, the State may also choose to exclude them at a later date. A State also may amend its Combined State Plan to add an optional program or activity described in § 676.140(d), provided that it meets the requirements of WIOA and the optional program or activity.

Proposed § 676.145(d) requires the modifications of Combined State Plans to be subject to public review and comment as described in proposed § 676.130(c) or in program-specific requirements of each optional program included by the State. The Combined State Plan modification process must comply with the transparency requirements for the six core programs in the Combined State Plan. The Departments seek comment on how to streamline the public review and comment process for Combined State Plan modifications; whether it is advisable to limit the comment process to significant or substantial modifications to the common planning elements; and, if so, how the Departments might define significant or substantial changes.

Proposed § 676.145(e) requires that modifications of the portions of the Combined State Plan that pertain to the core programs must be approved by the Secretaries of Labor and Education according to the approval standards described in § 676.143.

Proposed § 676.145(f) requires that modifications of the Combined State Plan for the programs or activities described in § 676.140(d) be approved by the appropriate Secretary if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

*B. Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 677; 34 CFR Part 361, Subpart E; 34 CFR Part 463, Subpart I)*

1. Introduction

Section 116 of the Workforce Innovation and Opportunity Act (WIOA) establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The core programs are defined in sec. 116(b)(3)(A)(ii) of WIOA to include the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA programs under title II; the Employment Services authorized by the Wagner-Peyser program under the Wagner-Peyser Act as amended by title III (''Employment Services''); and the Vocational Rehabilitation program under the Rehabilitation Act of 1973, as amended by title IV.

With a few exceptions, including the local accountability system under sec. 116(c) of WIOA, the performance accountability requirements apply across all of the core programs. It is instructive to note that sec. 116 is located in the statute under subtitle A, which is System Alignment. This is an historic opportunity to align definitions, streamline performance indicators, and integrate reporting for each of the core programs to the extent practicable, while implementing program-specific requirements. Through these proposed joint regulations, the Departments are laying the foundation for the establishment of a performance accountability system that serves all core programs and their targeted populations in a manner that is customer-focused and that supports an integrated service design and delivery model. In addition, WIOA requires additional programs, including Job Corps, Native American programs, the Migrant and Seasonal Farmworker programs, and the YouthBuild program, to use the same performance accountability indicators as the core programs, as provided in 29 CFR part 686 and 29 CFR part 684. This will better align both the core programs and other education and training programs across the workforce system. Further, DOL plans to include other workforce programs under its purview in this streamlining effort, including the Jobs for Veterans State Grants (JVSG) program as authorized by the Jobs for Veterans Act, other formula and applicable competitive grant programs administered by DOL.

As with the planning requirements discussed previously, the differing definitions of ''State'' raise potential inconsistencies as to the applicability of the performance accountability system requirements of sec. 116 of WIOA for purposes of the outlying areas and their administration of the core programs. Section 116, which consistently references States, establishes a common performance system to measure the effectiveness of the States and local areas in achieving positive outcomes for participants in the core programs. However, sec. 116 does not specifically reference the outlying areas. Sections 126 and 131 of WIOA require that outlying areas comply with all of the requirements of title I as a prerequisite to their receipt of title I funds, although neither section specifically references the requirements of sec. 116. The silence in sec. 116 is especially important with regard to the core programs funded under title I of WIOA, and administered by the Department of Labor, since sec. 3 defines the terms ''State'' and ''outlying area'' separately. Reading title I, and sec. 116 specifically, in isolation, suggests that the performance system does not apply to the outlying areas.

Unlike the title I programs, the Adult Education and Vocational Rehabilitation programs under titles II and IV, respectively, clearly require the outlying areas to comply with the performance accountability system requirements of sec. 116 of WIOA. Section 212 applies the performance provisions in sec. 116 to all of the programs and activities authorized in title II, which includes the adult education programs and activities administered by the eligible agencies in the outlying areas. Additionally, sec. 106 of the Rehabilitation Act, as amended by title IV of WIOA, requires that States—which includes the outlying areas—comply with the performance accountability system requirements of sec. 116 of WIOA.

Given the use of the term ''State'' in sec. 116 and the differing definitions for that term for the various core programs, ambiguity exists within WIOA as to the applicability of the performance accountability system requirements with regard to the core programs administered by the Department of Labor under title I of WIOA. Nevertheless, WIOA is clear that the core programs funded under titles II and IV are subject to these requirements. For this reason, there are two options to

resolve this potential inconsistency, thereby ensuring that the performance of the core programs in the outlying areas can be measured to ensure programmatic effectiveness.

The first option would be to subject the title I WIOA core programs administered by the outlying areas to the sec. 116 performance system, as WIOA requires of the core programs funded under titles II and IV. The second option would be not to apply the performance accountability system requirements of sec. 116 of the title I WIOA programs administered by the outlying areas, since title I is less clear in the applicability of these requirements to the outlying areas, while requiring the outlying areas administering the Adult Education and Vocational Rehabilitation Services programs, funded under titles II and IV respectively, to comply with the sec. 116 requirements since these titles clearly require such compliance. This option, while perhaps most in line with the plain meaning of the relevant statutory provisions, is contrary to the purpose of WIOA generally and the performance accountability system established in sec. 116 specifically. Moreover, this option would treat the various core programs differently, thereby causing potential confusion during implementation and could result in disparate treatment with regard to sanctions.

The Departments specifically request comments on the options proposed above, as well as any additional options, and which option the Departments should adopt.

In the section-by-section discussions of each proposed performance accountability provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart E (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart I (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurements and reporting requirements?

Proposed § 677.150 defines key performance-related terms which States must use in their reporting on performance calculations. The Departments propose these definitions to facilitate consistent reporting across the States. Under WIA, States created differing definitions of key terms for performance reporting, which resulted in inconsistent reporting and prevented the Departments from fully evaluating the effectiveness of its workforce and educational programs.

The definitions the Departments are proposing in these regulations are sufficiently broad to apply across core programs and other programs authorized by this statute, to create an integrated performance accountability system, and to support clarity and alignment of performance metrics and comparability among the programs and States.

Proposed § 677.150 defines participant, reportable individual, and exit.

Proposed § 677.150(a) proposes a definition of ''participant'' across the core programs because participants are specifically identified in the statute as included in performance calculations. The definition of participant establishes a common point of measurement at which an individual is meaningfully engaged in a core program. This measurement point takes into consideration the unique purposes and characteristics of each program and the ways in which an individual may access, and ultimately engage in, services in each of the core programs. The proposed definition does not attempt to define the activities leading up to participation in the same way across all of the core programs, but instead seeks to establish a common point in service design and delivery that an individual reaches regardless of the program in which he or she is enrolled. In each program, an individual must meet a specific programmatic threshold at which he or she begins receiving services regardless of the program. The proposed definition takes into account the unique processes of each program to meet such thresholds and, thus, participant is defined in a manner that works across the core programs. The proposal defines participant as a reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as the eligibility determination. This proposed definition establishes a common approach to establishing a minimum participation threshold that is appropriate to the services provided by each program. This approach also ensures consistent definition of participant within each program. This definition excludes self-service individuals because they have minimal interaction with the program and minimal resources are spent on their behalf. Such individuals are reportable, as defined below, because they have contact with the system but are not participants and, thus, are not included in performance calculations.

Specifically for Wagner-Peyser Employment Services, only those reportable individuals who received staff-assisted services would be included in performance calculations. For WIOA adults, reportable individuals who receive staff assisted services would be considered participants and, thus, be included in performance calculations. For WIOA dislocated workers, reportable individuals who are determined eligible and receive a staff-assisted service would be considered participants and, thus, be included in performance calculations. For WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (a staff-assisted service) would be considered participants and, thus, be included in performance calculations. For the AEFLA program, reportable individuals who have been determined eligible and who have completed at least 12 contact hours in an adult education and literacy activity under AEFLA would be considered participants and, thus, be included in performance calculations. For the Vocational Rehabilitation program, reportable individuals who have been determined eligible for services and who have an approved and signed Individualized Plan for Employment (IPE) that outlines the services that the individual will receive would be considered participants and, thus, be included in performance calculations.

Proposed § 677.150(b) defines ''reportable individual'' as an individual who meets specific core program criteria for reporting such as the provision of identifying information or a level of service receipt that is below the staff-assisted level, which will be further explained in guidance issued by DOL and ED. This approach would allow for counting self-service system utilization or those who received only informational services/activities as well as other services that may occur prior to an individual meeting all of the established benchmarks for participation.

These definitions are critical for determining who is subject to performance calculations. All individuals receiving staff-assisted services through WIOA workforce system core programs would be reported under a single count of program

participants and would be subject to performance calculations. It is important to note that this differs from ETA's current approach for the Employment Services' under WIA reporting whereby self-service individuals are included in performance calculations. In contrast, under these proposed regulations all self-service and information-only individuals would be subjected to reportable counts and other associated information, but not performance calculations for the primary indicators of performance. This proposed approach also would address the current inconsistency in reporting based on various co-enrollment strategies.

The Departments are seeking feedback regarding this proposed approach, specifically for the WIOA title I and III programs, on the appropriate point of receipt of staff-assisted services, which has not been a commonly defined point under WIA. A stronger delineation of that measurement point, which would be the same for the Wagner-Peyser Employment Services, WIOA adults, and WIOA dislocated workers, would enhance comparability across States.

Proposed § 677.150(c) defines the term ''exit'' for the purposes of a uniform performance accountability system for the core programs under WIOA, as well as applicable non-core programs as established through regulation or guidance. Several of the primary indicators of performance for performance accountability require measuring participants' progress after they have exited from the program. One consistent definition of exit would facilitate this calculation and will allow the Departments to make meaningful comparisons across the States. For the core programs, excluding Vocational Rehabilitation, the Departments propose defining ''exit'' as the last date of service. The last date of service means the individual has not received any services for 90 days and there are no future services planned. For the purpose of this definition, ''service'' does *not* include self-service, information-only activities, or follow-up services. Therefore, in order to determine whether or not an individual has exited, States will retroactively determine if 90 days have passed with no further service and no further services scheduled.

The proposed definition of ''exit'' for the Vocational Rehabilitation program is similar in that it marks the point at which the individual no longer is engaged with the program and there is no ongoing relationship between the individual and the program. However, the proposed definition takes into account specific programmatic requirements. Under the Vocational Rehabilitation program, an individual would be determined to have exited the program on the date the individual's case is closed in accordance with Vocational Rehabilitation program requirements. Even with this programmatic distinction, the calculations would be essentially the same as with the other core programs because in all instances the ''exit'' count would capture all individuals who are no longer active participants in any of the core programs. In addition, the Departments exclude from the definition of ''exit,'' for purposes of the Vocational Rehabilitation program, those individuals who have achieved a supported employment outcome at a subminimum wage. This proposed provision is necessary to implement WIOA's heightened emphasis on competitive integrated employment.

The Departments considered various approaches to defining ''exit'' across the programs. The proposed definition introduces common language that is broad enough to apply to all of the core programs, but also accommodates statutory requirements specific to the Vocational Rehabilitation program as implemented in 34 CFR 361.43 and 361.56.

The Departments seek comments on whether an individual's continued use of self-service offerings should extend the individual's exit date, or if a participant should be considered as having exited after the final staff-assisted service. The self-service component is limited to WIOA title I programs and the Wagner-Peyser Employment Services.

WIOA sec. 116(d)(2)(I) requires States to report on the number of participants who are enrolled in more than one WIOA core program. Therefore, the Departments are also considering the value of a cross-program definition of exit, sometimes called a common exit, that is based upon the last staff-assisted service from all core programs rather than a program exit. The current proposed definition of ''exit'' is program specific so if an individual was receiving services from more than one program, that individual could have multiple ''exits.'' The current proposed definition would allow programs to capture all exit-based participant outcomes in a reporting period regardless of whether the participant continued to receive services from other core programs. The Departments have considered a common exit-based definition that requires an individual to have completed all programs in order to officially exit from the system. Such a definition would emphasize the importance of an individual receiving and completing all partner program services necessary to ensure a successful attachment to the labor market. It is, however, largely dependent on the ability of States to exchange data effectively and efficiently across State agencies in order to determine outcomes for each of the programs. The Departments are seeking comments on the costs and benefits of taking a program-exit approach or a common exit approach in defining ''exit.''

2. Subpart A—State Indicators of Performance for Core Programs

§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

Proposed § 677.155 identifies the primary indicators of performance that States must include in their Unified or Combined State Plans. The primary indicators are applied in numerous places across all of the WIOA proposed regulations. Though the indicators may appear under other components of the regulations the indicators are aligned and the same and do not vary across the regulations. The Departments have considered a variety of approaches to define the primary indicators of performance, which will be applied to each of the core programs outlined in sec. 116(b)(3)(A)(ii) of WIOA. Specifically, these indicators will apply to the core programs administered by ED's Office of Career, Technical, and Adult Education, ED's Rehabilitation Services Administration, and DOL's ETA. WIOA presents new opportunities for system alignment through performance accountability. The ED and DOL envision a performance system whereby all programs' primary performance metrics share a common language that supports comparability and facilitates enhanced consumer choice and better programmatic decision-making.

Proposed § 677.155(a)(1) identifies the six primary indicators that will be applied to the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA. The DOL is also planning to leverage these indicators to streamline reporting for other DOL programs, such as the JVSG program, and other discretionary grant programs. To that end, the Departments invite comments specific to this issue.

Proposed § 677.155(a)(1)(i) implements the first statutory performance indicator in sec. 116(b)(2)(A)(i)(I) of WIOA and requires States to report on the percentage of participants in unsubsidized

employment in the second quarter after exit from the program. This statutory language requires States to measure the employment rate of participants in the second quarter after exit from the program. In contrast, WIA's first indicator of performance required States to report on an ''entered employment rate.'' The WIA indicator measured individuals who were unemployed at the time of entry into the program and after receiving services, obtained employment, thus allowing the Departments to evaluate whether the WIA services were effective in helping unemployed individuals obtain employment. The proposed WIOA indicator is different from WIA's ''entered employment rate'' indicator in two ways: (1) The time period for measurement in WIOA is the second quarter after exit instead of the first quarter; and (2) the statutory language under WIOA does not specify that the indicator is to measure entry into employment. The Departments plan to calculate both an ''employment rate'' for all participants in the program regardless of employment status at program entry and an ''entered employment rate'' for participants who were unemployed at the time of program entry. The Departments seek public comment on whether and how to collect information on the quality of employment and how WIOA's programs help employed and underemployed individuals find new or better jobs.

Proposed § 677.155(a)(1)(ii) implements WIOA's second statutory primary indicator of performance and is similar to the first, except that the time period for measurement is the fourth quarter after exit. This statutory language requires States to measure the employment rate of participants in the fourth quarter after exit from the program without regard to whether those participants were employed in the second quarter after exit from the program. Under WIA, this indicator is a retention measure that analyzes whether individuals who were employed in the first quarter after exiting from WIA services were still employed in the second and third quarters. As a retention measure such as the approach under WIA, this indicator would have counted participants who were employed in the second quarter after exit and measured of this group, who were still employed in the fourth quarter after exit from the program. The Departments seek comment on the advantages and disadvantages of collecting or reporting the employment retention rate in addition to the employer rate.

Proposed § 677.155(a)(1)(iii) implements WIOA's third statutory indicator found at sec. 116(b)(2)(A)(i)(III) and measures participants' median earnings in the second quarter after exit. This indicator measures median earnings at the same time frame as the first indicator measures the employment rate of participants. The use of a median is a shift from the use of an average under WIA and is based on the language provided in WIOA.

Proposed § 677.155(a)(1)(iv) implements WIOA's fourth statutory indicator and measures post-secondary credential attainment and high school completion of program participants during participation in the program or within 1 year after exit. The proposed regulation defines this measure with the same language as the statute and includes the statutory language limiting participants who obtain a secondary school diploma or its equivalent to be included in the percentage counted as meeting the criterion only if the participant is employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year after exit from the program. The Departments specifically seek comment on clarifications that will be necessary to implement this indicator.

Proposed § 677.155(a)(1)(v) measures the percentage of participants who, during a PY, are in education or training programs that lead to a recognized post-secondary credential or employment, and who are achieving measurable skill gains, which the Departments are defining as documented academic, technical, occupational or other forms of progress, toward the credential or employment.

The Departments are considering using this indicator to measure interim progress of participants who may be enrolled in education or training services for a specified reporting period. For example, if a participant is enrolled in a 4-year registered apprenticeship program, the indicator would track the skills the participant gains throughout the reporting period, not just at the end of the 4-year training program. For low-skilled adults, this proposed indicator provides an opportunity to track progress in reading, writing, mathematics, and English proficiency while they are participating in an adult education program prior to completing the high school credential and entering post-secondary education or training or employment. The measurable skill gains indicator will encourage local adult education programs to serve all low-skilled adults as Congress intended. Another example pertains to a participant who is training for multiple fields in the YouthBuild program. Such an individual may be pursuing certifications that require several years of experience, specific study hours, and demonstration of skills and knowledge prior to the final certification exam. The measurable skill gains indicator would capture documented progress on interim milestones leading up to the final certification. The measurable skill gains indicator is intended to capture important progressions through pathways that offer different services based on program purposes and participant needs and can help fulfill the Departments' vision of creating a workforce system that serves a diverse set of individuals with a range of services tailored to individual needs and goals.

In using this indicator as a measure of interim progress of participants, the Departments are considering how States can document progression during participation in an education or training program in a standardized way. Documented progress could include such measures as:

(1) The achievement of at least one educational functioning level of a participant in an education program that provides instruction below the post-secondary level;

(2) attainment of a high school diploma or its equivalent;

(3) a transcript or report card for either secondary or post-secondary education for 1 academic year (or 24 credit hours) that shows a participant is achieving the State unit's policies for academic standards;

(4) a satisfactory or better progress report, towards established milestones from an employer who is providing training (*e.g.,* completion of on-the-job training (OJT), completion of 1 year of an apprenticeship program);

(5) the successful completion of an exam that is required for a particular occupation, progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams; and

(6) measurable observable performance based on industry standards.

The Departments seek comments on the proposed indicator and request comments on the ways States can measure and document participants' measurable skill gains in a standardized way, including whether time intervals are required and what time intervals might be. The Departments also seek comments on whether the performance targets for this indicator should be set at the indicator (*i.e.,* measurable skill

gains) or documented progress measure (*e.g.,* attainment of high school diploma) level.

Proposed § 677.155(a)(1)(vi) implements the sixth statutory primary indicator related to effectiveness in serving employers. Under WIOA, the Departments are required to consult with stakeholders and receive public comment on proposed approaches to defining the indicator. As part of this requirement, the Departments have already sought public input on performance indicators generally and on the business indicators specifically through several avenues, including a town-hall meeting that addressed all of the primary indicators, a town-hall meeting convened with employers, numerous town-halls and webinars on WIOA across the country, and consultations with State Administrators for the AEFLA and Vocational Rehabilitation (VR) stakeholders. Because the Departments have not previously used this indicator, it is important to hear from States and stakeholders on what they consider core functions of their services to employers in order to best determine how to understand and measure the effectiveness of the services provided. Additionally, it is critical to hear from employers on the attributes of services that they find effective. In drafting the potential proposals described below, the Departments consulted with a wide range of representatives to develop the indicators of effectiveness in serving employers as required by WIOA sec. 116(b)(2)(A)(i)(VI). See WIOA sec. 116(b)(A)(2)(iv) and 116(b)(4)(B).

Based on the consultations, the Departments have established several potential approaches to measuring the effectiveness of serving employers, including potential measures that could be used. One of the Departments' principal concerns in crafting a final definition of this indicator is minimizing burden that measuring this indicator will impose on employers in order to avoid discouraging employer engagement with the workforce and education systems. The Departments value the interaction of employers with the workforce and education systems and do not want to impose any barriers to that interaction. With this in mind, the Departments' proposed approaches aim to minimize employer burden while still attempting to measure the effectiveness of how the Departments' programs serve employers.

One approach to measure this indicator is to measure employee retention rates tied to the employment they obtained after receiving WIOA services. Under this approach, States would be required to use wage records to identify whether or not a participant matched the same Federal employer identification number (FEIN) in the second and fourth quarters. This approach has the lowest burden on employers, as it requires no action from the employer. Under this approach, WIOA's services are effectively serving an employer if that employer hires a WIOA participant and the participant is still employed by that employer in the fourth quarter (up to a year) after program exit. The Departments would be interested in specific comments around the feasibility of this, and if it measures the systems' effectiveness in serving employers.

Another potential way to define this indicator would measure the repeat/retention rates for employers' use of the core programs. The Departments seek comments around this approach, including how States could capture this data, the feasibility of capturing and reporting this data, and if this indicator would measure the efficacy of the services provided to employers.

The Departments are also considering using the number or percent of employers that are using the core program services out of all employers represented in an area or State served by the system (*i.e.,* employers served) as a measure of the effectiveness of serving employers. Employer usage may reflect the effectiveness of the system's ability to reach out to employers, convey the services the core programs provide, and meet employers' needs. The Departments seek comment on the feasibility of capturing this data accurately, the validity of such an approach in measuring effectiveness of program services, and the usefulness of this approach in managing employer services.

The Departments are proposing to look at this as a shared indicator across programs, as many employers are served by multiple programs. Another approach could be to apply this measure to individual core programs. The Departments seek comment on the relative merits of each approach. The Departments also seek comment about whether a single metric for this indicator would sufficiently capture effectiveness in serving employers or if this indicator should encompass a combination of metrics, including how these metrics could most effectively be combined.

Understanding that an array of programs provide services to employers, the Departments seek public comment on additional ways to measure the core programs' effectiveness in serving employers.

Proposed § 677.155(b) applies the six indicators outlined in proposed § 677.155(a)(1) to the adult and dislocated worker programs under title I of WIOA, the AEFLA program under title II of WIOA, and the Vocational Rehabilitation program as amended by title IV of WIOA.

Proposed § 677.155(c) applies the primary indicators of performance in proposed §§ 677.155(a)(1)(i)–(iii) and (vi) that States must include in their Unified or Combined State Plans for the Employment Services as amended by WIOA title III. Those indicators of performance which apply to the Employment Services are: (1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program; (2) the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program; (3) the median earnings of program participants who are in unsubsidized employment during the second quarter after exit; and (4) the effectiveness in serving employers. The Departments also seeks comments on how to best measure the Wagner-Peyser Employment Services' effectiveness in serving employers.

Proposed § 677.155(d)(1)–(6) identifies the primary indicators of performance that States must to address in their Unified or Combined State Plans for the youth program under WIOA title I. The youth indicators apply universally to the youth workforce investment program and, therefore, apply to in-school and out-of-school youth as defined in WIOA sec. 129(a)(1)(B) and (C).

Proposed § 677.155(d)(1) implements the first statutory indicator for youth, which measures the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program. Under WIA, States report on a placement rate, which measures a youth's placement in either education or employment, after exiting from the program. The WIOA indicator differs from WIA's placement rate in three ways. First, the time period for measurement in WIOA is the second quarter after exit instead of the first quarter after exit. Second, the placement rate under WIA only allowed post-secondary education to be reported; whereas, under WIOA, any education, including secondary and post-secondary, is reported. Third, the placement measure under WIA excluded those youth who were enrolled in post-secondary education, employed, or in the military at the time

of participation; WIOA's indicators do not make these exclusions. WIA's measure provided insight into how many youth came to a program not enrolled in post-secondary education, employed, or in the military, and then after receiving services, obtained employment or were placed into post-secondary education or training program. Under WIOA, this indicator does not provide for this exclusion and the Departments' proposed indicator measures placement in the second quarter after exit of all participants.

Proposed § 677.155(d)(2) implements the second statutory indicator that applies to the WIOA youth program under title I. This indicator under sec. 116 of WIOA is similar to the first indicator in that it is the percentage of program participants who are in an education or training program or in unsubsidized employment in the fourth quarter after exit. The Departments propose that this indicator measure whether a participant is in education, training or unsubsidized employment in the fourth quarter.

Proposed § 677.155(d)(3) implements the third statutory indicator that applies to the youth program under WIOA title I. This indicator measures median earnings in the second quarter after participants exit from the program. States must report the median point for earnings for all program participants in unsubsidized employment in the second quarter after exit. This indicator measures earnings in the second quarter after exit, which is the same time frame in which the States will measure if program participants are in education or training activities or unsubsidized employment.

Proposed § 677.155(d)(4) implements the fourth statutory indicator and measures post-secondary credential attainment and high school completion of program participants who have exited from the youth program under WIOA title I. The language of the proposed regulation is the same as the indicator in § 677.155(a)(1)(iv). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(iv) and therefore, refer readers to this section for more information on this definition.

Proposed § 677.155(d)(5) implements the fifth statutory indicator and pertains to measurable skill gains. The language of the proposed regulation is the same as the indicator in § 677.155(a)(1)(v). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(v) and refers readers to this section for more information on this definition.

Proposed § 677.155(d)(6) implements the sixth statutory indicator and is the same language for the indicator in § 677.155(a)(1)(vi). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(v) and refers readers to this section for more information on this definition.

§ 677.160 What information is required for State performance reports?

Proposed § 677.160 identifies the information States are statutorily required to report in the State performance report under WIOA sec. 116(d)(2). The Departments agree that integrated performance reports would facilitate assessment of WIOA performance across programs. The proposed regulation reorganizes in a more user-friendly format the WIOA statutory requirements for the State performance reports.

Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template for each of the performance reports required in secs. 116(d)(2)–(4) of WIOA. The Departments will seek public comment on the reporting templates through the PRA process. In developing these report templates, the Departments will seek to maximize the value of the templates for workers, job seekers, employers, local elected officials, State officials, Federal policy-makers, and other key stakeholders, and seek feedback on the formats that will be most useful for each audience through the PRA process. The Departments will seek to align performance reports to the extent possible while maximizing the value of each report for its primary audience, in order to have comparable reporting elements across all core programs in keeping with the shared statutory performance requirements. Aligning the reports and performance definitions will create a performance accountability system that is easier to understand and assess the effectiveness of States in achieving positive outcomes for individuals served by these programs.

Proposed § 677.160(a) implements the reporting provisions of WIOA sec. 116(d)(2) for the State performance reports.

Proposed § 677.160(a)(1) requires States to report the number of participants served and the number of participants who exited from each of the core programs identified in WIOA sec. 116(b)(3)(A)(ii).

Proposed § 677.160(a)(1)(i)–(ii) implements WIOA's statutory requirement that the States include a count of the number of participants and exiters served that are individuals with barriers to employment, disaggregated by those barriers as defined in WIOA sec. 3(24) and that are co-enrolled in any of the programs in WIOA sec. 116(b)(3)(A)(ii) in the State performance report. Additional reporting information required under WIOA sec. 116(d)(2) in regard to participants and exiters are age, sex, and race and ethnicity. The provisions of the statute are clear in what is required and the Departments have proposed rule text to coincide with the statutory language.

Proposed § 677.160(a)(2) implements WIOA's statutory requirement that States include the levels achieved for the primary indicators of performance listed in § 677.155 in the performance report. This section also requires that the States' performance report include disaggregated levels for individuals with barriers to employment as defined in WIOA sec. 3(24), as well as age, sex, race, and ethnicity as required by sec. 116(d)(2) of WIOA.

Proposed § 677.160(a)(3)–(7) implements WIOA's statutory requirement that States report information on career and training services including: (1) Participant and exiter counts by career and training services, (2) the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services, (3) the percentage of participants who are placed into training-related employment, (4) the amount of funds spent on each type of career and training service, and (5) the average cost per participant for participants who received career and training services.

The Departments propose that these requirements are applied based on the applicable services provided by a core program. For example, the Employment Services do not provide training services and as such would not be required to report on training related information—they would only report on the applicable career services that they provide. Similarly, the AEFLA program also only provides certain career services, through the one-stop delivery system, and as such, reporting would only be required with respect to applicable career services that the program provides. Requiring programs to report on services they do not provide would create an additional and unnecessary reporting burden. This interpretation is in line with sec. 504 of WIOA, which requires the Departments to simplify and reduce reporting burdens. (Further information on the career and training services is found at 20 CFR 680.150 and 680.200.) Additionally, the Departments interpret these provisions as prospective

provisions that do not require retroactive collection of information.

Proposed § 677.160(a)(3) implements the requirement for core programs to report on the number of participants and exiters in a program who received career and training services. Other than the proposed limitation that this be reported by a program based on the applicable services it provides, the statutory language is clear in the requirement and propose to implement as stated.

Proposed § 677.160(a)(4) requires States to provide information on the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program providing services. The Departments interpret this provision to apply to the core programs only with respect to the applicable services they provide and have more fully discussed this rationale above.

Proposed § 677.160(a)(5) requires States to include the percent of participants in a WIOA title I program who obtained unsubsidized employment related to the training received. This provision implements WIOA's statutory requirement that States report on training-related employment. WIOA sec. 116(d)(2)(G) requires States to report on the participants in programs ''authorized under this subtitle.'' Section 116 is in subtitle A, which does not authorize any programs under WIOA. Therefore, the Departments interpret this provision of WIOA to mean that States must report on core programs authorized by title I.

Proposed §§ 677.160(a)(6) and (a)(7) require States to report on the amount of funds spent on each type of career and training service as well as the average cost per participant for participants receiving career and training services for the most recent program year and the 3 preceding program years. The Departments interpret this provision to apply to the core programs only with respect to the applicable services they provide as discussed above.

Proposed § 677.160(a)(8) implements WIOA's statutory requirement that States report on the percent of the State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs.

Proposed § 677.160(a)(9) implements the WIOA statutory allowance for the collection of information that facilitates comparisons of programs with programs in other States. The Departments are considering collecting a variety of supplemental information such as outcomes for Unemployment Insurance claimants, reportable individuals, and other subgroups served by the core programs, as well as additional outcomes, such as entered employment (the number of individuals who were unemployed when coming into a program and obtained employment following program exit) or employment retention (the number of people who were employed in a quarter that remained employed in subsequent quarters) and information about participants enrolled in education or training programs that do not lead to a recognized post-secondary credential as potential performance information for inclusion in the State annual report narratives. The Departments are also considering the addition of a supplemental customer service measure, which would assess the quality of services provided to American Job Center customers. This measure would not be a primary indicator of performance, but would be used as a tool for tracking the quality of the customer experience. The Departments seek comment on how to structure such a measure (*e.g.,* using the net promoter score) and whether the inclusion of such a measure would be valuable.

Proposed § 677.160(a)(10) implements WIOA's requirement that if at least one local area within a State is implementing a Pay-for-Performance contract strategy, the States' title I programs must provide a State narrative report that contains the performance reporting requirements regarding pay-for-performance contracting strategies, including the performance of service providers entering into contracts for pay-for-performance strategies and evaluation of the design of the programs and the performance strategies. Additionally, this provision requires the evaluation of program design and activities that require narrative in order to meet the requirements of the provision. The Departments interpret this provision to only apply to title I programs and only to apply to those States in which Pay-for-Performance contracting strategies are being implemented. Pay-for-performance contracting provisions are only included in the title I programs. Requiring programs to report on services and contracting mechanisms they do not provide or employ would create an additional and unnecessary reporting burden. This interpretation is in line with sec. 504 of WIOA, which requires the Departments to simplify and reduce reporting burdens.

Proposed § 677.160(b) requires States to comply with WIOA sec. 116(d)(6)(C). This section of WIOA prohibits the disaggregation of data for a category in the State performance report if the number of participants in that category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about a participant. As written, WIOA sec. 116(d)(2) requires the performance report to be subject to WIOA sec. 116(d)(5)(C). However, this section refers to Data Validation, and the Departments interpret this reference to require States to comply with sec. 116(d)(6)(C) which ensures the Departments receive statistically reliable information and protects participants' privacy. The Departments will issue guidance on these issues.

Proposed § 677.160(c) requires that the State performance report include a mechanism for electronic access to the State's local area and eligible training provider (ETP) performance reports. This provision does not require the State to submit the actual local area and ETP performance reports with their State report.

Proposed § 677.160(d) proposes that the Departments will require compliance with these requirements in sec. 116 of WIOA as explained through joint guidance. The Departments may request information on reportable individuals for the purpose of understanding the number of individuals who are accessing services, including self-services and information-only services, and for other purposes, including costs.

§ 677.165 May a State require additional indicators of performance?

Proposed § 677.165 is updated to reflect WIOA citations. The provision of additional performance indicators proposed by the State remains unchanged.

§ 677.170 How are State adjusted levels of performance for primary indicators established?

Proposed § 677.170 outlines the process that will be followed and the factors that will be considered in determining adjusted levels of performance.

Proposed § 677.170(a)(1) implements the requirement in sec. 116(b)(3)(A)(iii) that States provide expected levels of performance in the Unified or Combined State Plan for the first 2 years of the plan. Proposed § 677.170(a)(2) requires the State to submit expected levels for the third and fourth year before the start of the third PY covered by the Unified or Combined State Plan. This requirement is needed to implement the statutory requirement in WIOA sec. 116(b)(3)(A)(iv)(II) that the

State reach agreement with the Secretaries on the negotiated levels of performance before the start of the third PY.

Proposed § 677.170(b) requires that the Secretaries will reach agreement with the States on negotiated levels of performance based on the factors in sec. 116(b)(3)(A)(v) of WIOA, and proposed § 677.170(c) provides that the Secretaries will disseminate a statistical adjustment model that will be used to make the adjustments in the State adjusted levels of performance for actual economic condition and characteristics of participants including the factors required by WIOA sec. 116(b)(3)(A)(viii). The statistical adjustment model must be developed after consultation with specified stakeholder groups, including appropriate external experts. The Departments request comment on whether any additional factors beyond those in the statute should be considered in developing the model, and the best approach to updating the model as necessary.

Proposed § 677.170(d)(1) provides for the application of the model to the primary indicators for the core programs based on the availability of data to sufficiently populate the model. For example, baseline data will be required to populate the model. None of the core programs will have this data for the new indicators of performance, such as the measurable skill gains indicator, until after States have begun reporting data for the indicator.

Proposed §§ 677.170(d)(2)–(3) provide our interpretation that the model will be applied twice in the PY. Specifically, the model will generate an estimate of expected performance to serve as a framework for negotiating performance targets for the upcoming PY; the model will also be applied at the end of the PY to adjust expectations for performance levels based on actual circumstances. This interpretation is required by WIOA sec. 116(b)(3)(A)(vii), which states that the negotiated levels will be revised based on the model. This approach is similar to that utilized under WIA's predecessor, the Job Training Partnership Act (JTPA), which applied an objective statistical model in order to develop targets and then updated the model based on actual circumstances at the end of a PY. Under JTPA, models were established for each required indicator and sec. 116 of WIOA intends a similar process.

Proposed § 677.170(e) requires compliance with these requirements from sec. 116 of WIOA as explained in joint guidance issued by DOL and ED for subsequent programmatic guidance to be issued for programs concerning the model, and its application.

§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

Proposed § 677.175 implements the requirement in sec. 116(i)(2) of WIOA, that States use quarterly wage records, consistent with State law, to measure State and local progress on the performance accountability measures.

The use of quarterly wage records is essential to achieve full accountability under the WIOA performance accountability system to identify high performing States and localities, and, if necessary, to provide technical assistance to help improve performance or sanction low performing States and localities. Matching participant social security numbers against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system.

Proposed § 677.175(a) requires States to use quarterly wage record information to measure States' and local areas' progress on the adjusted levels of performance for the primary indicators of performance. WIOA sec. 116(i)(2) requires the Secretary of Labor to make arrangements, consistent with State law, to ensure that the wage records of any State are available to other States to carry out the State plan or to complete the 116(d) annual report. Proposed § 677.175(a), therefore, expressly authorizes the use of participants' social security numbers to measure participants' progress through quarterly wage records.

Section 136(f)(2) of WIA required the Secretary of Labor to make arrangements to ensure that wage records of each State are available to any other State. Under this requirement, the Secretary worked with the States to create the Wage Record Interchange System (WRIS) and WRIS2. WRIS and WRIS 2 are automated networks that allow participating States to query the wage records of other participating States for the purpose of assessing and reporting on State and local employment, training, and education program performance. WRIS 2 allows States to share information for the purposes of reporting on outcomes for employment, training, and education programs and currently has approximately 36 States participating. WRIS was narrower and only allowed for reporting on outcomes for employment and training programs; there are currently 50 States participating in WRIS. These data sharing agreements greatly increased accuracy in States' performance reporting and helped the Departments evaluate the effectiveness of educational and training programs. Given that WIOA expands the common performance measures and common reporting standards across all WIOA programs, including employment, education and training programs, the Departments intend to engage in a renegotiation of WRIS data sharing agreements with States, which will allow States to conduct interstate wage matches for all WIOA programs.

Proposed § 677.175(b) defines quarterly wage record information as the intra and interstate wages paid to an individual, the social security number of the individual, and the name, address, State, and the FEIN of the employer paying the wages to the individual. This definition clarifies that the Departments interpret WIOA's reference to quarterly wage records in sec. 116(i)(2) to mean all of the wages an individual earned in any State. In today's economy, WIOA participants may receive services in one State and have work, or have wages reported, in another State. Therefore, in defining ''quarterly wage records'' as the interstate and intrastate wages, the Departments hope to encourage States to conduct interstate wage queries to accurately report on an individual's wages after participating in a WIOA program.

3. Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

§ 677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act sec. 116?

Proposed § 677.180 outlines performance and reporting requirements that are subject to sanctions under sec. 116(f) of WIOA.

Proposed § 677.180(a) provides that only the failure to submit the State annual performance reports required under sec. 116(d)(2) of WIOA is sanctionable. Section 116(f)(1)(B) of WIOA requires the Departments to assess a sanction if ''a State fails to submit a report under subsection (d) for any PY.'' There are three reports required under sec. 116(d): the State annual performance reports, the local area performance reports, and the ETP performance reports. However, of these, only the State annual performance reports must be submitted by the State to the Secretary of Labor and the Secretary of Education.

Proposed § 677.180(b) implements the requirement in sec. 116(f)(1) of WIOA

that sanctions for performance failure be based on the primary indicators of performance at § 677.155 of this part for the core programs: the adult, dislocated worker, and youth programs under WIOA title I, the AEFLA programs under title II, the program under the Employment Services authorized by the Wagner-Peyser Act, as amended by title III, and the Vocational Rehabilitation program under the Rehabilitation Act of 1973, as amended by title IV.

§ 677.185 When are sanctions applied for failure to report?

Proposed § 677.185 outlines the circumstances under which a State may be sanctioned for failure to report under sec. 116(f)(1)(B) of WIOA.

Under proposed § 677.185(a)(1), it would be a failure to report if a State submits its annual performance reports on any date later than the date for submission set in guidance. The Departments propose to deem any late submission a failure to report because the Departments are concerned that setting the date for reporting failure at some later time would effectively extend the deadline for submission of the reports. The date for submission will be set in guidance by the Departments. In addition, under § 677.185(a)(2), the Departments propose that it would be a failure to report if the State submits a report on a timely basis, but the report is incomplete, including failure to include a mechanism to access the local area performance reports and ETP performance reports. This proposal is based on the Departments' concern that if only timeliness is required, States could not be sanctioned for submitting reports that do not meet statutory requirements for reporting elements. If a State fails to submit a State annual performance report, it will be subject to a 5 percent sanction of the Governor's Reserve allotment as discussed in § 677.195 of this part.

Proposed § 677.185(b) outlines the exceptional circumstances that would exempt a State from sanction in the case of failure to report under WIOA sec. 116(f)(1)(B). The statute provides that a failure to report can be excused by either Secretary in the case of exceptional circumstances but does not define these circumstances. This proposal provides a non-exclusive list of exceptional circumstances beyond the State's control that would be likely to cause a significant disruption in the State's ability to submit timely, accurate, and complete performance reports. Reporting challenges that are routine or predictable would not qualify, because the statute requires the exception to be based on circumstances that are exceptional.

Under proposed § 677.185(c)(1), the Departments would require States to notify the Secretary of Education or Labor of exceptional circumstances as soon as possible but no later than 30 days prior to the established deadline for the State annual reports to request an extension to the reporting deadline. This minimum 30-day period for notification would provide the Secretaries with adequate opportunity to review the extension request and assess whether the circumstances underlying the request fit within the statutory exception.

Proposed § 677.185(c)(2) deals with circumstances where an exceptional circumstance arises less than 30 days before the reporting deadline. Under this proposal, the Secretaries will review the request under guidance that the Departments will issue to deal with procedures for extension requests with less than 30 days' notice.

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

Proposed § 677.190 explains how States will be assessed for performance failure and when such failures will result in a financial sanction. Though the Departments have referenced other non-core programs in previous sections, performance success or failure will be based solely on the six core programs consistent with sec. 116(b)(2) and (f)(1) of WIOA.

Proposed § 677.190(a) explains, consistent with § 677.170, that the statistical adjustment model will be applied at the end of a PY to adjust expected levels of performance based on actual economic conditions experienced and the characteristics of participants.

Proposed § 677.190(b) clarifies that a determination that a State has failed performance will be based on the performance levels achieved after the application of the statistical adjustment model, pursuant to WIOA sec. 116(f)(1) which states that sanctions must be assessed if a State fails to meet adjusted levels of performance. In addition, this proposed section restates statutory language that requires the Secretary of Labor or Education to provide technical assistance, as appropriate, to include assistance with the development of a performance improvement plan in any year when a State fails to meet the adjusted levels of performance.

Proposed § 677.190(c) outlines the three criteria that will be used to assess a State's performance at the end of a PY: An overall State program score, an overall State indicator score, and individual indicator scores. The overall State program score would be an average score based on the percent of the State adjusted goal achieved on each of the six primary indicators for a core program. The overall State indicator score would be based on an average score of the percent of the State adjusted goal achieved across core programs on each of the six primary indicators. The individual indicator scores would be based on the percent of the State adjusted goal achieved on any single primary indicator for each of the six core programs.

Table 1 below illustrates the manner in which each State is proposed to be assessed using the overall State program score and the overall State indicator score. Under this proposal, a failing average program score for any core program, a failing average indicator score for any indicator across programs, or a failing score on any individual indicator for each of the core programs would be a performance failure under sec. 116(f)(1) of WIOA. The Departments propose this approach because it provides accountability for all programs and all measures. For example, a State that on average falls below its median earnings target threshold across all programs would be subject to sanctions even if its performance on other indicators is satisfactory. The Departments seek comment on whether to use a weighted average or a straight average for purposes of each overall indicator score.

**Table 1. State Program Score and State Indicator Scores**

| Indicator/Program | Title II Adult Education | Title IV Rehabilitative Services | Title I Adults | Title I Dislocated Workers | Title I Youth | Title III Wagner - Peyser | Average Indicator Score |
|---|---|---|---|---|---|---|---|
| Employment 2nd Quarter After Exit | | | | | | | 1 |
| Employment 4th Quarter After Exit | | | | | | | 2 |
| Median Earnings 2nd Quarter After Exit | | | | | | | 3 |
| Credential Attainment Rate | | | | | | | 4 |
| Measurable Skill Gains | | | | | | | 5 |
| Effectiveness in Serving Employers | | | | | | | 6 |
| Average Program Score | 7 | 8 | 9 | 10 | 11 | 12 | - |

As shown in Table 1, there are a total of 12 scores on which a State will be assessed for the proposed overall State indicator score and overall State program score criteria proposed. The first six averages on which a State is assessed are the average indicator scores across the core programs. The second six averages on which a State is assessed are the average program scores across each of the six indicators. The first six scores will be the average of the core programs' percent achieved against their adjusted goals on the first indicator (employment in the second quarter after exit). The second six scores are the average of the core programs' percent achieved against their adjusted goals on the second indicator (employment in the fourth quarter after exit). For the Employment Services, the Departments propose to exclude indicators four and five because WIOA exempts the Employment Services from these indicators. Therefore, the Departments propose that the program score for the Employment Services be comprised of the total average score of the percent achieved by the States' Employment Services against their targets for indicators one, two, three, and six only. In addition, the Departments propose to phase in the inclusion of the measurable skills gain and effectiveness in serving employers indicators.

Proposed § 677.190(d) establishes two thresholds for performance failure. The first threshold at proposed § 677.190(d)(1) is 90 percent for each of the overall State program scores and the overall State indicator scores. The Departments are considering potentially setting this threshold higher to emphasize the importance of performance success and would be interested in specific comments on the established levels for success/failure in assessing performance under WIOA for the core programs. The second threshold in proposed § 677.190(d)(2) establishes a minimum threshold of 50 percent for the individual indicator scores. The Departments consider this minimum threshold of performance critical for the purpose of underscoring the need to achieve and maintain successful performance with respect to each individual performance indicator, regardless of average performance across performance indicators and across core programs. The Departments seek comment on the implications of the proposed methodology, including the three criteria and associated thresholds for failure established under this proposed regulation (*i.e.,* the overall State indicator score [90 percent of adjusted goal], the overall State program score [90 percent of adjusted goal], and the individual indicator scores [50 percent of adjusted goal]).

The Departments also request comments generally on how to define ''fails to meet the State adjusted levels of performance'' and specifically on the methods described above.

The Departments seek comment on the specific timelines for reporting outcomes on the core indicators of performance as well as the timing for using the annual State report to determine success or failure against adjusted levels of performance. Under WIA's performance accountability provisions, titles I and II use the performance information reported in the State's annual reports. Under WIA, these data have a built-in time-lag. WIOA establishes an employment indicator that extends the time-lag even further. The fourth quarter employment indicator would not be available until six quarters after a participant has exited. Given the inherent lag, by statutory definition, in the indicators, the Departments seek comment on the specific operational timelines for determining which performance outcomes to use for assessing performance. Specifically, the Departments seek comment on which State report should be the first annual State report used to assess performance against the State's adjusted levels of

performance. In the event of performance failure in the first year, the Departments are seeking comment on when the performance improvement plan should be developed and, in the event there is performance failure in the second consecutive year, when the financial sanction should be applied. To the extent possible, the Departments would like to tie ultimate imposition of financial sanction with the performance improvement plan process, such that States have the chance to avoid financial sanction if they successfully execute the reforms included in their performance improvement plan. The Departments welcome comment on how best to accomplish this goal.

In addition to timelines for calculating a State's performance against its adjusted levels of performance, the Departments seek comment on the timelines for implementing the full accountability system to include determining performance failure for sanctions. Because WIOA introduces new indicators on which no historical data exist, there is a need to establish baseline benchmarks from which to establish adjusted levels of performance under WIOA. For this reason, the Departments seek comment on the transition timing of the performance accountability system as WIOA is implemented.

Proposed § 677.190(e) outlines the statutory process under which performance failure by any State for 2 consecutive years will result in a performance sanction.

§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

Proposed § 677.195 explains what will occur when a sanction is applied to the Governor's Reserve for failure to report or failure to meet adjusted levels of performance. It clarifies that the sanction will be 5 percent of the amount that could otherwise be reserved by the Governor. Section 116(f)(1)(B) of WIOA provides that ''the percentage of each amount that would . . . be reserved by the Governor under section 128(a) [Governor's Reserve fund] . . . shall be reduced by five percentage points.''

This provision is ambiguous and could be interpreted to require a percentage point reduction in the overall State allotment that could otherwise be reserved by the Governor. For example, under a percentage point-based interpretation, if the total State allotment was one million dollars, and the Governor could reserve 15 percentage points of the State allotment for a total of $150,000 reserved, the reduced amount of the Governor's Reserve after a sanction of five percentage points would be 10 percent of the State allotment (*i.e.,* $100,000).

The better reading is that the maximum amount that could otherwise be reserved would be reduced by 5 percent. For example, under this scenario, if the State allotment was one million dollars, and without a sanction the Governor could reserve $150,000, the amount of the Governor's Reserve after sanctions would be 95 percent of the amount that could otherwise be reserved (*i.e.,* $142,500), or in other words, the $150,000 reserve less the 5 percent sanction. This is a better reading because a reading that required a reduction of percentage points of the overall allotment, rather than the percentage reserved by the Governor, would be unnecessarily punitive and inconsistent with the overall intent of WIOA. The Departments are further concerned that such an extreme reduction would frustrate the State's ability to take actions to improve performance or submit timely, complete, and accurate performance reports in the future.

Proposed § 677.195(b) clarifies that if, in the same PY, a State fails under proposed § 677.195(a)(1), failure to report in any given PY, and fails under proposed § 677.190(a)(2), failure to meet adjusted levels of performance for 2 consecutive program years, then sanctions in the amount of 5 percent will be applied for each of these failures. The maximum sanction therefore that could be applied to a State in any given PY is 10 percent of the maximum available amount of the Governor's Reserve allotment—for failure to submit a performance report and for failure to meet adjusted levels of performance for 2 consecutive program years. The Departments are seeking comment on this interpretation of the language under WIOA sec. 116(f), as well as the implications of this proposed regulation. The Departments also note that the application of sanctions against the Governor's Reserve does not preclude the Departments from pursuing other avenues of enforcement as permitted under applicable laws.

Proposed § 677.195(c) clarifies the statutory requirement in sec. 116(f)(1)(B) of WIOA that a sanction be applied until such a time as the Secretaries of Education and Labor determine that performance levels have been met and the State annual performance reports have been submitted. The immediately following PY is the first point at which the Departments could reasonably determine that a State that has previously failed performance has met adjusted levels of performance because the statistical adjustment model is only applied at the beginning and the end of the year and not at the time of the quarterly reports. The Departments interpret this statutory provision to mean that the reduction continues for the entire PY with no earn-back potential. This interpretation is consistent with the imposition of a sanction. If a State could earn its full reserve allotment even if it submitted its State annual performance report 6 months after the deadline, reporting deadlines would be undermined and there would be little incentive for timely reporting. In addition, appropriations law prevents us from redistributing funds in a later PY. Finally, the proposal clarifies that the State will continue to have a sanction at the reduced amount of the total allotment of the Governor's Reserve in successive PYs if they continue to fail to meet expected levels of performance, or fail to report.

All performance reports required under sec. 116(d) of WIOA, are critically important for accountability purposes; however, as discussed above for proposed § 677.180, because the State annual performance reports are the only of these reports submitted by the State to the Departments, they are the only reports that are subject to sanctions. All required reports must be provided on a timely basis irrespective of the applicability of sanctions.

Proposed § 677.195(d) identifies that a State may request a review of any sanction DOL imposes in accordance with the provisions outlined in 20 CFR 683.800.

The Departments also request comments on the specific approach outlined above, as well as generally on (1) how to define ''fails to meet the State adjusted levels of performance,'' and (2) how to operationalize the Departments' approach to applying sanctions for both failure to submit a performance report and performance failure (*i.e.,* a maximum sanction of 10 percent), including when sanctions should be applied. The Departments are considering whether failure to submit a performance report would automatically constitute failure to meet State adjusted levels of performance, resulting in the maximum sanction of 10 percent (5 percent for failure to submit a performance report and 5 percent for failure to meet State adjusted levels of performance). In order to encourage States to submit the performance report and avoid the maximum potential sanction, the Departments are considering a definition of performance failure that would provide a final deadline for the States to submit their performance data and avoid a sanction

for failure to meet the State's adjusted levels of performance.

§ 677.200 What other administrative actions will be applied to States' performance requirements?

Proposed § 677.200 outlines the circumstances under which a State will be subject to additional administrative actions when determined to be at risk due to low performance on an individual primary indicator.

Proposed § 677.200(a) identifies the circumstances under which administrative actions would be triggered outside of the sanctions process. While States' performance on the primary indicators will be aggregated into an overall program score and overall indicator score to assess performance failure, the individual indicators will be assessed, as explained in guidance, in order to establish whether a program's performance is at risk. While sanctions are based on performance and reporting failures, the Departments want to foster a workforce system that is focused on achieving success, not just avoiding failure. Early intervention in the event of performance problems is necessary for States to achieve successful outcomes. Accordingly, to assist the States in performing well for all one-stop customers, the Departments propose alternate administrative actions for performance issues that do not rise to the level of sanctionable failure.

Under proposed § 677.200(b) if a single primary indicator for a State's programs is determined to be at risk, as explained in guidance issued by DOL or ED, the State must develop and submit a performance risk plan to outline the primary reasons for low performance and the steps they are taking to improve performance and ameliorate the risk for that indicator or indicators. This will require States to take a proactive approach to addressing performance concerns before they rise to the level of failure. The Departments propose that the levels set for administrative actions will be explained in guidance so that the Departments can adjust the levels as needed as the Departments gain programmatic experience with the new WIOA performance measures. As these levels will not be the subject of financial sanctions but are instead within the Departments' general monitoring responsibilities, the inclusion of the levels in regulation is not required.

4. Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

§ 677.205 What performance indicators apply to local areas?

Proposed §§ 677.205(a) and (b) implement sec. 116(c) of WIOA and clarify that for the core programs under title I of WIOA each local workforce area will be subject to the same primary indicators as States, although Governors may elect to apply additional performance indicators to local areas. Proposed § 677.205(c) outlines and explains that local area reports are required to be reported on the standard template that the Departments will provide under WIOA sec. 116(d)(1); be made available to the public on an annual basis, including by electronic means; and must include, at a minimum, the local areas' performance levels achieved with respect to the primary indicators under § 677.155 as well as additional information States are required to report under WIOA sec. 116(d)(3). This section largely summarizes statutory language in WIOA and establishes the proposed framework for guidelines and instructions that the Departments plan to issue later to implement and carry out the performance reporting requirements of WIOA sec. 116. In addition, proposed § 677.205(c) requires the State to provide electronic links to the local area performance report as part of its annual State performance report. The Departments propose this requirement because while WIOA sec. 116(d)(6)(B) requires the State to make the local report publicly available, sec. 116(d)(6)(D) requires the Secretaries to disseminate these reports to Congress. The proposal will enable the Departments to fulfill this statutory requirement.

Proposed §§ 677.205(d) and (e) outline the minimum required information to be provided in those reports consistent with sec. 116(d)(3) of WIOA. Under proposed § 677.205(d), the local area reports must contain information on actual performance levels achieved (consistent with § 677.175, regarding the use and aggregation of interstate and intrastate wage records) on the primary indicators as outlined in § 677.155. Under proposed § 677.205(e), States must also make available performance information for their local areas for the adult, dislocated worker, and youth programs under WIOA title I consistent with § 677.160(a). States are also required to make available information on the percentage of a local area's allotment under WIOA sec. 128(b) and 133(b) that the local areas spent on administrative costs as well as any other information that may be proposed in guidance from the Secretary of Labor to facilitate comparisons of programs, with other programs in local areas or planning regions as deemed appropriate.

Proposed § 677.205(f) reiterates that States are responsible for compliance with any associated guidance, including the use of the performance reporting template, issued by the Secretary of Labor for compliance with local area performance reporting requirements.

§ 677.210 How are local performance levels established?

Proposed § 677.210 describes the process to be utilized to establish local performance targets prior to the start of a PY and, subsequently, to establish performance levels based on actual circumstances at the conclusion of a PY. The proposed process is similar to the proposed language for establishing State performance levels, including the negotiations process, which is proposed to be developed and disseminated by the Governor and conducted with the Local Boards and CEOs.

Proposed § 677.210(a) implements the requirements of sec. 116(b)(3)(A)(viii) of WIOA to apply a statistical adjustment model in the establishment of local area adjusted levels of performance. It requires the Departments to run the model at the beginning of a PY and at the end of the PY to revise adjusted levels of performance based on actual conditions experienced and the characteristics of participants.

Proposed § 677.210(b)–(c) requires that the Governor, Local Board, and CEO reach agreement on local targets and adjusted levels of performance based on a negotiations process prior to the start of a PY. The Governor is to establish a negotiations process and disseminate it to all of the Local Boards and CEOs.

Proposed § 677.210(d) states that Local Boards have the authority to establish performance targets for service providers in a local area. Setting performance targets will help local areas in evaluating the performance of service providers, managing programs at the local level, and determining whether to maintain or change providers. This also allows locals some flexibility in the way they structure their service delivery design while taking into account the performance requirements for a local area. The Departments suggest that the local area should consider its negotiated local performance levels, the services to be provided by each provider, and populations the service provider is

intended to serve in developing these targets. Targets may vary by provider and may be different from the local area's performance measures.

5. Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

Proposed § 677.215 outlines the circumstances in which a local area is eligible for an incentive grant.

Proposed § 677.215(a) implements sec. 116(h) of WIOA and explains that the Governor is not required, but is allowed to use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in sec. 134(c)(3) and sec. 129(c)(2) of WIOA in the local areas served by the Local Boards.

Proposed § 677.215(b) maintains that pay-for-performance contract strategies must be implemented in accordance with 20 CFR 683.500 through 683.530 and § 677.160.

§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

Proposed § 677.220(a) explains the circumstances under which local areas must receive technical assistance under WIOA sec. 116(g) for failure to meet levels of performance. In accordance with WIOA, the proposed rule would require that local areas must receive technical assistance and may be subject to a performance improvement plan for failure to achieve adjusted levels of performance established with the State for primary performance indicators in the adult, dislocated worker, or youth programs authorized under title I of WIOA in any PY. The Governor, or his/her designee, or upon request of the Governor, the Secretary of Labor, must provide technical assistance, which may include assistance in the development of a performance improvement plan or a modified local or regional plan, to the local area in the first year of failure to meet levels on the required performance indicators. In requesting assistance from the Secretary of Labor, the Governor's request should include the factors that impede the provision of successful technical assistance at the State level, because the State is generally in the best position to address failure to meet the performance levels it negotiated with the local area. The Departments further clarify that a State must establish the threshold for failure for a local area to meet levels of performance prior to negotiating local area adjusted levels of performance. A local area cannot accurately negotiate adjusted levels of performance without having an understanding of what the State will consider failure.

Proposed paragraph (b), in accordance with WIOA, outlines the required corrective actions for local areas that continue to fail to meet performance indicators for 3 consecutive years. A local area that failed to meet adjusted levels of performance on required performance indicators for a third consecutive year is subject to reorganization, which would include the certification of a new Board, the exclusion of underperforming service providers or partners, and other actions the Governor deems appropriate. The Departments request comments regarding what other actions should be considered in this circumstance.

§ 677.225 Under what circumstances may local areas appeal a reorganization plan?

Proposed § 677.225 implements sec. 116(g)(2)(B) of WIOA and outlines when a local area and CEO may appeal a reorganization plan executed by the Governor.

Proposed § 677.225(a) explains that the Local Board and CEO for a local area subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise a reorganization plan no later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision 30 days after receipt of an appeal.

Proposed § 677.225(b) implements the statutory requirement that if the Local Board and CEO wish to appeal the final decision of the Governor, they must make an appeal to the Secretary of Labor no later than 30 days after receiving the final decision from the Governor. The Departments propose to require that any appeal to the Governor under proposed § 677.225(a) or the Secretary of Labor under proposed § 677.225(b) must be submitted jointly by the Local Board and the CEO. The Departments propose this interpretation because the statute uses the conjunctive ''and'' in stating that the Local Board and the CEO may appeal. In addition, this interpretation has the benefit of requiring review only in circumstances where the Local Board and CEO are in agreement that the reorganization plan should be appealed and will conserve government resources in cases where either the Local Board or CEO agrees with the Governor's decision. This approach also avoids duplication and inefficiency that would be engendered by providing an opportunity for the Local Board and the CEO to appeal separately.

Proposed §§ 677.225(c)–(d) implement statutory requirements that the Secretary must make a final decision regarding an appeal within 30 days of receipt of the appeal and that a reorganization decision made by the Governor is effective at the time it is issued and remains in effect unless and until such time that the Secretary of Labor rescinds or revises the reorganization plan on appeal.

6. Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.230 What information is required for the eligible training provider performance reports?

Proposed § 677.230 implements the requirements of sec. 116(d)(4) of WIOA, which requires annual ETP performance reports. The ETP performance reports provide critical information, including the employment, earnings, and credentials obtained by individuals in the programs of study eligible to receive funding under the adult and dislocated worker formula programs under title I–B of WIOA. This information will be of significant benefit in assisting WIOA participants and members of the general public in identifying effective training programs and providers. The information will also benefit providers by widely disseminating information about their programs and potentially as a tool to enhance their programs.

The Departments are seeking comment on how the Departments may best support ETPs in meeting the requirements of this section as well as how to make the ETP reports a useful tool for WIOA participants, ETPs, interested stakeholders, and the general public.

This proposed regulation, in conjunction with proposed § 680.400 through 680.530, establishes the minimum requirements for performance information to be provided in the ETP performance reports.

Proposed § 677.230(a) requires that States make publicly available and publish in the standard template disseminated by the Departments under ETP performance reports under WIOA sec. 116(d)(4), including by electronic means, the ETP reports for those ETPs who provide services under sec. 122 of WIOA, which is further discussed in 20 CFR 680.500.

Consistent with proposed § 680.470, and as provided below in proposed paragraph (b) of the section, States are

only required to provide performance information on registered apprenticeship programs if these programs voluntarily submit performance information. DOL is considering ways to support interested registered apprenticeship programs in the collection and dissemination of performance data. The Department seeks comment on ways to support registered apprenticeship programs that are interested in providing performance information, and what that information might look like.

Proposed § 677.230(a)(1) outlines the minimum participant performance information that is required to be made available under the statutory provisions in sec. 116(d)(4) of WIOA. ETP performance reports must include performance information on the total number of participants who receive training services under the adult and dislocated worker programs of WIOA title I for the most recent PY of performance as well as the three preceding PYs. The ETP reports must provide disaggregated counts of participants in the adult and dislocated worker programs with respect to barriers to employment, age, sex, and race and ethnicity.

Additionally, the ETP performance reports must include counts of participants disaggregated by type of training entity for the adult and dislocated worker programs for the most recent PY and three preceding PYs. The Departments interpret this requirement to be applicable only in prospective years; this would not apply retroactively and would not require ETPs to provide information for these reports in years prior to being established as an ETP in the performance reports. Any data provided for initial eligibility determinations should be done consistent with established parameters under 20 CFR part 680, subpart E.

Proposed § 677.230(a)(2) outlines the minimum exit-based performance information that is required to be made available under the statutory provisions in sec. 116(d)(4) of WIOA. At a minimum, the ETP performance reports must contain the number of participants who exit from a program of study, and the total number of participants who exited, disaggregated by type of training entity for a PY and the three preceding PYs.

Proposed § 677.230(a)(3) identifies additional requirements that the ETP performance reports contain performance information on the average cost-per-participant for participants who received training services and disaggregated by type of training entity for the PY and three preceding PYs. The Departments interpret this requirement to be applicable only in prospective years; this would not apply retroactively, and does not require ETPs to provide information for these reports in years prior to being established as an ETP. The Departments seek comment on the best way to calculate cost-per-participant. Any data provided for initial eligibility determinations should be done consistent with established parameters under 20 CFR part 680, subpart E.

Proposed § 677.230(a)(4) provides that the ETP performance reports contain information on the total number of individuals exiting from a program of study (or its equivalent). This includes all students in a program of study and is not limited to those students who are WIOA participants. Including all students provides significantly better information on the effectiveness of a program of study.

Proposed § 677.230(a)(5) reiterates the statutory requirements for outcome information on all students in a program of study with regard to the primary indicators of performance (as identified in clauses (I)–(IV), sec. 116(b)(2)(A)(i) of WIOA, and §§ 677.155(a)(1)(i)–(iv)).

Proposed § 677.230(b) is consistent with 20 CFR 680.470 and provides that registered apprenticeship programs need not submit performance information. Under this proposal, if a registered apprenticeship program voluntarily submits this information, it must be part of the report as with any other training provider.

Proposed § 677.230(c) requires the State to provide electronic access to the eligible training provide performance report as part of its annual State performance report. The Departments propose this requirement because while WIOA sec. 116(d)(6)(B) requires the State to make the ETP performance report available, sec. 116(d)(6)(D) requires the Secretaries to summarize and disseminate these reports to Congress. The proposal will enable the Departments to fulfill this statutory requirement.

Proposed § 677.230(d) requires States to follow reporting guidance to be issued that will explain and clarify procedures governing this section.

Proposed § 677.230(e) establishes that a Governor may designate one or more State agencies or appropriate State entities, such as a State education agency or State educational authority, to assist in overseeing the ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated responsible for administering the ETP list as provided for in § 680.210. The designated State agency or entity is responsible for data matching required to produce the ETP reports using quarterly wage data, creating and disseminating the reports, and coordinating the dissemination of the performance reports with the ETP list as provided in § 680.210.

Proposed § 677.230(e)(1) establishes that the designated agency would be responsible for the facilitating the data matches necessary to develop and compile the ETP performance reports. This proposed regulation seeks to provide a foundation for data matching for the purposes of these reports to allow States more opportunities to establish the necessary connections and procedures that are in compliance with the existing regulations governing education data governed by the Family Educational Rights and Privacy Act (FERPA) and the UI wage data governed by State law and UI Confidentiality Regulations found in 20 CFR part 603.

Proposed § 677.230(e)(2) establishes that the designated State agency or State entity responsible for these reports would carry the responsibility for the creation and dissemination requirements found in this subsection. The Departments recognize that the ETP performance reports are a departure from the previous reporting mechanisms related to ETPs as they existed under WIA. The Departments are seeking comment on specific aspects of this new performance reporting requirement as it relates to reporting burden for training providers under this requirement. The Departments are interested in comments on ways the Departments may reduce this burden for training providers as well as how the Departments may leverage this performance reporting requirement to be of more use to the ETPs. The Departments would like specific comments on what would facilitate the reporting process to make it easier for ETPs to report on multiple programs of study, including programs that they would like to be on the list but do not have currently any WIOA funded participants enrolled.

Proposed § 677.230(e)(3) establishes the designated State agency or State entity as responsible for coordinating the dissemination of the ETP performance reports with the dissemination of the ETP list. WIOA sec. 122 establishes the ETP list as a key resource in the State one-stop system and requires it to be available to individuals seeking information on training programs as well as participants receiving career services funded under WIOA and other programs. DOL

considers the ETP reports to also be a key component of consumer choice.

The Departments propose that the ETP performance report be disseminated in coordination with the dissemination of the ETP list and the information that is required to accompany that list under § 680.500. This coordination requirement is consistent with the statutory emphasis on consumer choice and performance accountability.

7. Subpart F—Performance Reporting Administrative Requirements

§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

Proposed § 677.235 outlines the requirements for core WIOA title I, III and IV programs for the collection and submission of individual records.

Proposed § 677.235(a) requires that States submit individual records containing demographic information, information on services received, and information on resulting outcomes for individuals served by specific programs to be submitted by programs to their appropriate Secretary on a quarterly basis. At the time of WIOA's enactment, DOL already required the submission of standardized individual records for the adult, dislocated worker and youth programs, and programs authorized under the Wagner-Peyser Act. Similarly, ED required the submission of individual-level data from case service records for the Vocational Rehabilitation program.

DOL began requiring States to submit quarterly individual records, in part, to ensure the information submitted in States' annual reports as required by WIA were accurate. These quarterly reports also helped DOL identify States that needed early intervention to provide assistance if they are not meeting their performance goals. The DOL interpreted several provisions of WIA as authorizing the collection of these reports. Specifically, WIA sec. 136 required DOL to measure States' progress, WIA sec. 172 required DOL to evaluate the activities of its programs, and WIA sec. 189 required DOL to submit an annual report to Congress on WIA title I programs. Additionally, WIA sec. 185 required States to maintain records sufficient to prepare performance reports. Considered as a whole, these statutory provisions authorized DOL to require States submit these reports.

ED has collected individual-level data regarding all individuals served by the Vocational Rehabilitation program, whose case service records were closed, in order to satisfy data collection requirements and to ensure States' compliance with programmatic requirements under WIA and the Rehabilitation Act of 1973. ED has historically collected this data, via the Case Service Report (RSA–911), for open cases as well as closed cases, annually, but proposes to start collecting this data on a quarterly basis to satisfy requirements imposed by WIOA.

Section 13 of the Rehabilitation Act requires ED to collect and report information required by WIOA sec. 101(a)(10) to Congress and to the President in the Annual Report. Section 14 of the Rehabilitation Act requires ED to conduct evaluations of the VR program. The information from this data collection is used in these evaluations. Section 106 of the Rehabilitation Act requires each State to report to ED the extent to which each State is in compliance with standards and indicators. Section 107 of the Act requires an annual review and periodic onsite monitoring of States' performance, much of which is determined on the basis of this data collection activity. RSA–911 data are also needed to satisfy the requirements of sec. 131 of the Rehabilitation Act, which requires an exchange of data between RSA, the Social Security Administration (SSA), and DOL.

Sections 116, 169, and 185 of WIOA retain similar requirements to the WIA provisions the Departments relied on to require these reports. Additionally, WIOA's increased focus on performance accountability and requirement that the Departments sanction failing States, give the Departments authority to require these reports.

Proposed § 677.235(b) requires the individual records be submitted in one record that is integrated across all core DOL programs. The proposal would require that the individual records submitted by States be standardized in terms of data elements and associated reporting specifications. Currently quarterly individual records are program-specific and not part of an integrated performance reporting system. For DOL programs, States are required to provide two separate individual records for an individual receiving services under WIA and Wagner-Peyser. This duplication increases the reporting burden on States and treats these programs separately rather than as parts of a holistic, integrated system designed to efficiently provide necessary employment and training services to an individual.

Furthermore, sec. 504 of WIOA requires DOL and ED to reduce reporting burden and simplify reporting requirements. A single integrated individual record best meets these needs. Requiring a single, integrated record will eliminate duplicative reporting of an individual's demographic information across programs.

At the time of enactment, the Workforce Investment Streamlined Performance Reporting (WISPR) system is the most integrated individual record layout utilized in workforce development programs administered by DOL. The WISPR includes programmatic and performance reporting across programs authorized under WIA (adult, dislocated worker, and youth), Wagner-Peyser, the Trade Act, and the Jobs for Veterans State Grant programs administered by DOL's Veterans' Employment and Training Service (VETS). This new regulation proposes an integrated, individual record that is similar to the WISPR approach for core programs administered by DOL, which supports system alignment, as well as reduced reporting burden as required under sec. 504 of WIOA. The Departments are working towards establishing reporting templates for the required performance reports and individual record formats that States will be required to use in order to meet these reporting requirements.

Proposed § 677.235(c) explains that associated reporting instructions are proposed to be provided through policy guidance.

§ 677.240 What are the requirements for data validation of State annual performance reports?

Proposed § 677.240 implements sec. 116(d)(5) of WIOA, which requires States to establish procedures, consistent with DOL and ED guidelines to provide that the information in the States' annual performance reports are valid and reliable. Therefore, the Departments propose to add § 677.240, which requires States to submit valid and reliable annual State performance reports and associated individual record information consistent with requirements that the Secretaries of Labor and Education will explain through guidance. To ensure States are meeting this statutory requirement, the Departments propose that if a State fails to achieve the accuracy standards, the Secretary of Labor or Education may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients. These proposed

requirements are separate from the corrective actions provided under § 677.185 and § 677.220. The Departments are committed to providing that States have the information needed to effectively validate data and propose that the Departments will provide training and technical assistance about these requirements.

*C. Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 678; 34 CFR Part 361, Subpart F; 34 CFR Part 463, Subpart J)*

1. Introduction

In the section-by-section discussions of each proposed one-stop provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart F (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart J (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

2. Subpart A—General Description of the One-Stop Delivery System

The WIOA reaffirms the role of the one-stop system, a cornerstone of the public workforce development system, and subpart A describes the one-stop delivery system. Although there are many similarities to the system established under the WIA, there are also significant changes under WIOA. This subpart, therefore, restates WIA requirements governing one-stop centers, to the extent they are still applicable under WIOA, and embodies a set of reforms that, when implemented effectively, are intended to make significant improvements to the public workforce delivery system. These proposed regulations would establish requirements of the one-stop career center system as defined under WIOA, requiring partners to collaborate to support a seamless customer-focused service delivery network. The proposed regulations would require that programs and providers collocate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and businesses alike. The ultimate goal is to increase the long-term employment outcomes for individuals seeking services, especially those with significant barriers to employment, and to improve services to employers.

Proposed subpart A describes the one-stop center system established under WIOA. It establishes the different types of one-stop career centers allowable in each local area, and addresses the use of technology to provide services through the one-stop delivery system. As discussed in §§ 678.305 and 678.310, a local area's one-stop delivery system may be made up of a combination of a comprehensive one-stop center and a network of affiliated sites. When designing the one-stop delivery system, States and Local Boards must ensure that information on the availability of career services is available at all one-stop physical locations and access points, including electronic access points, regardless of where individuals initially enter the local one-stop system.

§ 678.300 What is the one-stop delivery system?

Proposed § 678.300(a) describes the requirements of the one-stop delivery system and the purpose. The one-stop delivery system brings together a series of partner programs and entities responsible for workforce development, educational, and other human resource programs to collaborate in the creation of a seamless customer-focused service delivery network that enhances access to the programs' services. Partners, programs, and providers will collocate, coordinate, and integrate activities so that individuals seeking assistance will have access to information and services that lead to positive employment outcomes for individuals seeking services.

Proposed § 678.300(b) provides that there are responsibilities at the local, State and Federal levels relative to the establishment and maintenance of the one-stop delivery system.

Proposed § 678.300(c) retains the same requirement found under WIA at 20 CFR 662.100(c) that there be at least one physical one-stop career center in each local area.

Proposed § 678.300(d) allows for the establishment of additional affiliate locations including specialized centers serving targeted participant populations, such as youth or dislocated workers, or industry sector specific centers.

Proposed § 678.300(e) states that required one-stop partners must provide electronic access to programs, activities, and services by electronic means, in addition to providing access to the services at a comprehensive one-stop center or making the program services available at an affiliated site if the partner is participating at the affiliated site. Services provided through electronic means would need to supplement and not supplant those provided through the physical one-stop delivery system. The phrase ''electronic means'' includes Web sites, social media, internet chat features, and telephone.

Proposed § 678.300(f) requires that the description of the one-stop delivery system be included in the Memorandum of Understanding (MOU) required at proposed 20 CFR 678.500.

§ 678.305 What is a comprehensive one-stop center and what must be provided there?

Proposed § 678.305 requires that there be a comprehensive one-stop career center in each local area. Although the requirement to have at least one physical center in each local area is unchanged from the requirement under WIA, and the requirement is more fully described under these proposed regulations.

Proposed § 678.305(a) establishes that the comprehensive one-stop center is a physical location where individuals must have access to a specific set of services that must be made available to individuals seeking services. The required services are listed in proposed § 678.305(b) and the proposed rule defines ''access'' in § 678.305(d). Customers can access a specific program without that program's staff being physically present at a one-stop center. However, in order to ensure that comprehensive one-stop centers are not all virtual services, the Departments propose that WIOA title I staff be physically present in the one-stop. There may be creative ways to provide all virtual services to customers, but such an all-virtual site would not be considered a comprehensive one-stop center. This proposed physical presence requirement does not have to be met by a full-time staff person, and can be met by the physical presence of different staff trading off throughout regular business hours (*e.g.,* job-sharing or shift work).

Proposed § 678.305(c) provides that individuals must have access to the required services under § 678.305(b) on regular business days, at a minimum, at the comprehensive center. This is a more specific requirement than exists under WIA. If, for example, the comprehensive one-stop center is open Monday through Friday, customers must have access to the services listed at § 678.305(b) Monday through Friday. The Departments strongly encourage Local Boards to find creative ways to expand the hours that services are available to customers, to ensure that

services are universally accessible to people with various working hours, different access to transportation, and different family care arrangements. For example, Local Boards should consider ways to make services available to job seekers who might have childcare responsibilities or work during the normal business day. State Boards must consider service hours when evaluating effectiveness of one-stop centers, as part of the one-stop certification process described further in § 678.800(b).

Proposed § 678.305(d) defines the access to services that must be available to individuals seeking assistance at the comprehensive one-stop. This access can be provided in one of three variations of physically present staff or through technology: (1) Program staff physically present at the location; (2) staff physically present at the one-stop from any partner program appropriately trained to provide information to customers about the programs, services, and activities available through partner programs, such as the types of services that program provides and whether the services might meet the individual's needs; or (3) providing direct linkage through technology to someone who can either provide the program services, or provide information such as how to apply for the program, or how to begin receiving services. Under the proposed rule, if there is access to technological direct linkages (as defined in § 678.305(d)(1)) at a comprehensive one-stop center for a specific program, no partner program staff must be physically present.

Proposed §§ 678.305(d)(1) and (2) provide that services provided through technology must be meaningful, available in a timely manner and not simply a referral to additional services at a later date or time.

Proposed § 678.305(e) requires that all comprehensive one-stop career centers be physically and programmatically accessible to individuals with disabilities.

§ 678.310 What is an affiliated site and what must be provided there?

In addition to the proposed requirement for a physical center in each local area where required one-stop partners must provide access to their programs, services and activities, proposed § 678.310 provides that the one-stop delivery system may also provide programs, services, and activities through affiliated sites or through a network of eligible one-stop partners that provide at least one or more of the programs, services, and activities at a physical location or through an electronically or technologically linked access point, such as a library.

Proposed § 678.310(a) defines an affiliated site as a location that makes available one or more of the required or optional programs, services, and activities to individuals. The proposed rule is not intended to establish a new physical presence requirement for one-stop partner programs in affiliated sites. Physical presence at affiliated sites can be negotiated at the local level by partner programs and the Local Board, and may be under 50 percent for any individual partner program, except in those cases described in proposed § 678.315(b).

Proposed § 678.310(b) sets forth the prohibition against standalone Wagner-Peyser employment service centers, described more fully in proposed § 678.315. Section 121(e)(3) of WIOA, which requires colocation of Wagner-Peyser employment services, is effective on July 1, 2015. However, proposed § 678.310(c) recognizes that States will need a reasonable amount of time to fully integrate the delivery of employment services into the one-stop system. Real property issues, decisions on site locations, discussions with municipal or county governments, and development of agreements with partners to participate at both comprehensive and affiliated sites may require some time. Nevertheless, a State in such circumstances must be prepared to provide DOL with a plan that details the steps the State will take to achieve colocation of Wagner-Peyser employment services as described in proposed § 678.315, and a timetable showing how the State will achieve colocation of Wagner-Peyser services within a reasonable time. The Departments are aware that States may also be considering how best to integrate other partner programs and may be considering the colocation of other programs as well. In its plan for achieving Wagner-Peyser employment services colocation, the State may wish to include how it will collocate other programs too, but this is not required. DOL may request the plan for achieving Wagner-Peyser employment services colocation during monitoring and other oversight activities. DOL's ETA will provide guidance on the approach it will use to obtain the plan and timeline from States.

Proposed § 678.310(d) requires that all affiliate one-stop centers be physically and programmatically accessible to individuals with disabilities, as described in proposed § 678.800.

§ 678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?

Proposed § 678.315 sets forth the prohibition against standalone Wagner-Peyser employment services offices, to implement WIOA's amendment to the Wagner-Peyser Act that requires Wagner-Peyser employment services to be collocated with one-stop centers. Wagner-Peyser employment services cannot, by themselves, constitute an affiliated one-stop center. In those cases where Wagner-Peyser employment services are located in an affiliated site, there must be at least one other partner in that affiliated site whose staff is physically present more than 50 percent of the time the center is open. Certain partner programs cannot be considered the ''other partner'' when determining whether Wagner-Peyser employment services are stand-alone; these are: local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation (UC) staff. Local veterans' employment representatives, disabled veterans' outreach program specialists, also referred to collectively as JVSG programs, are typically provided alongside Wagner-Peyser employment services programs. When a veteran does not receive services through the disabled veterans' outreach program, that veteran is served by the Wagner-Peyser employment service. To provide individuals with the full range of employment, training, and education services available, it is important to connect both the JVSG programs and the Wagner-Peyser employment service with the rest of the one-stop system. The Departments expect that the entity that administers the Wagner-Peyser employment service, in consultation with Local Boards and one-stop partners, will need to make the changes needed to comply with the proposed rule. The proposed rule is not intended to establish a new physical presence requirement for individual one-stop partner programs in affiliated sites. The proposed rule is meant to trigger adjustments on where Wagner-Peyser employment services are delivered. The Departments are aware that some one-stop partner programs are unable to have a physical presence in every affiliated site. Partner programs and the Local Board can negotiate physical presence at affiliated sites, and this presence may be below 50 percent for any one partner program. The Departments seek feedback, particularly from workforce programs outside WIOA title I and III, on whether the proposed requirement that other partners be

present more than 50 percent of the time creates an impediment to participating in the one-stop system, and whether any other changes would facilitate colocation.

§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Proposed § 678.320 explains the requirements for the networks of one-stop partners and specialized centers named in the statute. These entities were not listed in WIA but were included as part of the one-stop system in the WIA regulations. An example of a specialized center is one targeted for youth, one geared at a specific industry sector, or one established specifically to respond to a large localized layoff. These specialized centers do not need to provide access to every required partner, but must have a way to make referrals to one-stop partners in comprehensive and affiliate centers. The specialized centers should also follow-up to make sure that services were provided after referral. A Local Board can design the specialized center to meet local needs. A specialized center must not be a standalone Wagner-Peyser employment service office. The requirements of proposed § 678.315(b) apply to specialized centers just as they apply to affiliated sites.

3. Subpart B—One-Stop Partners and the Responsibilities of Partners

The public workforce system envisioned by WIOA seeks to provide all participants with access to high-quality one-stop centers that connect them with the full range of services available in their communities, whether they are looking to find jobs, build basic educational or occupational skills, earn a post-secondary certificate or degree, get guidance on how to chart careers, or are employers seeking skilled workers. A true seamless, one-stop experience requires strong partnerships across programs that are able to streamline service delivery and align program requirements. In this subpart of the proposed rule, the Departments describe requirements relating to such one-stop partnerships. Specifically, this subpart identifies the programs that are required partners, the other entities that may serve as partners, the roles and responsibilities of required partners, and the types of services provided.

§ 678.400 Who are the required one-stop partners?

Proposed §§ 678.400(a)–(b) lists the required partners under WIOA. Beyond the partners previously required under WIA, WIOA adds the Temporary Assistance for Needy Families (TANF) program and the Ex-Offender program administered by DOL under sec. 212 of the Second Chance Act of 2007 to the list of required partners.

§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?

Proposed § 678.405(a) clarifies that TANF is a required partner. Proposed § 678.405(b) provides further clarification that the Governor may determine that TANF will not be a required partner in a local area(s) but must notify the Secretaries of Labor and Health and Human Services in writing of this determination. This implements sec. 121(b)(1)(C) of WIOA. Proposed § 678.405(c) clarifies that TANF may always partner or collaborate with the one-stop, even if the Governor has determined it is not a required partner in that State or local area.

§ 678.410 What other entities may serve as one-stop partners?

Partnerships across programs are critical to supporting the one-stop vision for service delivery. Proposed § 678.410(a) reinforces the sec. 121(b)(2)(B)(vii) of WIOA, which states that other Federal, State, local, or private sector entities that carry out workforce development programs may serve as additional one-stop partners if the Local Board and CEOs approve. Proposed § 678.410(b) provides a list of possible additional partners. In addition to the optional partners listed, Local Boards may partner with a wide range of organizations, including but not limited to CBOs, non-profit community action agencies, disability service providers, nonprofit workforce providers, and nonprofit English-as-a-second-language (ESL) providers.

In contrast to the former WIA requirement, the proposed rule does not contain an allowance for the State to require that optional partners be included as a partner in all of the local one-stop delivery systems in the State. This omission reflects the WIOA requirement that the Local Board determine partners in the one-stop and that the State cannot mandate partners other than those specifically required in WIOA. This change places greater discretion at the local level in identifying the appropriate mix of services provided and the Departments expect that such decisions will be based on local or regional labor market information and population demographics.

§ 678.415 What entity serves as the one-stop partner for a particular program in the local area?

The proposed regulation at § 678.415 provides a general definition of the ''entity'' that carries out the programs identified in §§ 678.400 and 678.410 and serves as the one-stop partner. The regulation defines the entity as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term ''entity'' does not include service providers that contract with or are sub recipients of the local entity. The proposed regulation notes that for programs that do not have local administrative entities, the responsible State agency may be the one-stop partner. In addition, the proposed regulation specifies the appropriate entity to serve as partner for the Adult Education and Vocational Rehabilitation (AEFLA) program, WIOA national programs, and the Carl D. Perkins Career and Technical Education (Perkins) program is the State eligible agency. Further, a State eligible agency for the AEFLA or Perkins programs may delegate its responsibilities to act as a local one-stop partner to one or more State agencies (for the Perkins program only), local entities, or consortia of local entities, as specified in the proposed regulation. In making such a delegation, a State eligible agency would have to meet all Federal and State requirements applicable to such delegations.

§ 678.420 What are the roles and responsibilities of the required one-stop partners?

Proposed § 678.420 describes and elaborates upon the statutory responsibilities of the one-stop partners. These responsibilities and corresponding WIOA provisions are identified and summarized in paragraphs (a) through (e). Jointly funding services is a necessary foundation for an integrated service delivery system. All partner contributions to the costs of operating and providing services within the one-stop center system must be proportionate to the benefits received and adhere to the partner program's Federal authorizing statute, and to Federal cost principles requiring that costs are reasonable, necessary and allocable. The proposed requirement in § 678.420(e), to provide representation on State and Local Workforce Development Boards, is new in WIOA and only required of core programs; WIA only required one-stop partner representation on Local Boards, and

required it for all one-stop partner programs.

§ 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

§ 678.430 What are career services?

WIOA requires one-stop partners to deliver career services applicable to their specific program. This proposed regulation clarifies that an applicable career service is a service identified in § 678.430 and is an authorized program activity. The TANF statute does not include a definition for career services. Accordingly, the TANF State grantees need to identify any employment services and related supports being provided by the TANF program (within the particular local area) that are comparable with the career services as described in proposed § 678.430. At a minimum, the TANF program partner must provide intake services at the one-stop for TANF assistance and non-assistance benefits via application processing and initial eligibility determinations. These latter services comport with proposed § 678.420. The Departments seek specific comments about our proposal regarding the identification and inclusion of TANF employment, related support services and TANF intake functions as ''career services,'' that are required to be provided locally in one-stop centers. Other program specific information about the applicability of various career services is provided where needed in subsequent sections of this proposed rule. Proposed § 678.425 repeats the WIOA prohibition on one-stop partners requiring a particular sequence of services. Seamless service delivery, which is one of the underlying principles of the one-stop system, requires that appropriate services be made available to individuals based on their needs, and that multiple services can be provided simultaneously.

Career services are identified in sec. 134(c)(2) of WIOA. In addition to replacing core and intensive services as they were described in WIA, a number of new activities are included in the definition of ''career services.'' This section organizes WIOA careers services into three categories: (1) Career services that must be made available to all participants; (2) career services that must be made available if deemed appropriate and needed for an individual to obtain or retain employment; and (3) follow-up activities. The proposed regulation respectively designates these categories as: basic career services; individualized career services; and follow-up services. The activities included under these categories are identified in §§ 678.430(a), 678.430(b), and 678.430(c), respectively.

The proposed regulation reiterates the list of services included in the statute, and elaborates on some of the career services. Section 134(c)(2)(A)(x) of WIOA requires as a career service the provision of both information and assistance to customers regarding filing an UI claim. The proposed regulation at § 678.430(a)(10) further provides that such assistance must be meaningful and provided by staff who are well trained in UC claims. This proposed paragraph reflects the Departments' interpretation that the one-stop system established by WIOA is intended to provide participants with a seamless, one-stop experience that includes a professional level of service provided in a timely manner. Specifically, the Departments have concluded that individuals directly seeking career services from the one-stop system should receive more robust or ''meaningful'' service beyond what they could obtain on their own using self-service tools, such as public Web sites and phone numbers; instead, the Departments intend for them to receive meaningful staff assisted services if needed. In the context of providing assistance with UI claims, the proposed rule defines ''meaningful assistance'' as having staff well-trained in UC claims filing and the rights and responsibility of claimants available in the one-stop centers to provide customers with assistance in filing a claim if they request it or are identified as needing the service due to barriers such as limited English proficiency or disabilities. This staff can be UI staff placed in the one-stop or Wagner-Peyser or other one-stop partner staff who have been properly cross-trained to provide this service. Alternatively, meaningful assistance can also be provided by phone or by means of other technology, including computer access, as long as the assistance is provided by specifically identified staff and within a reasonable time. This means that if the customer is referred to a phone for UI claims assistance, it must be a phone line dedicated to serving one-stop customers. It cannot be simply placing the customer into the general State UI agency contact center's phone queue. If the assistance is provided remotely using technology, it must be a technology that enables trained staff to provide the assistance. Examples of technology that enables remote assistance include live Web chat applications, video conference applications, or other similar technology. In addition to UI program funding, adult and dislocated worker funds may be used for these services as allowed in WIOA sec. 134(c)(2)(A)(x); Wagner-Peyser funds may be used for the provision of these services as allowed sec. 7(a)(3)(F) of the Wagner-Peyser Act; or some combination of these three funding sources. It is important to acknowledge that the vast majority of UI claims filing will continue to be done remotely through self-service options. This proposed regulation does not require that States actively promote in-person claims filing through the one-stop centers. It does mean that assistance must be made available to customers who come to the one-stop for assistance in filing a UI claim and to customers that have been identified as having barriers to filing a UI claim without assistance.

§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?

The one-stop system is intended to serve both job seekers and businesses. Similar to job seekers, businesses should have access to a truly one-stop experience in which high quality and professional services are provided across partner programs in a seamless manner. Labor markets are typically regional, but programs often design service delivery strategies around State and local geographic boundaries. Effective business services must be developed in a manner that supports engagement of employers of all sizes in the context of both regional and local economies, but should avoid burdening employers, for example with multiple uncoordinated points of contact. Proposed § 678.435(a) lists required business services. Proposed § 678.435(b) States that local areas have flexibility to provide services that meet the needs of area businesses and must carry out these activities in accordance with relevant statutory provisions.

Section 134(d)(1)(A)(ix)(I) of WIOA provides additional flexibility to allow business-focused activities to be carried out by business intermediaries working in conjunction with the Local Board. Such activities can also be carried out through the use of economic development, philanthropic, and other public and private resources in a manner determined by the Local Board and in cooperation with the State. Proposed § 678.435(b) reiterates this flexibility.

Proposed § 678.435(c) provides a non-exhaustive list of allowable business activities. In addition to traditional

employer services, such as customized screening and referral of candidates, this list includes activities specifically identified in sec. 134(d)(1)(A) of WIOA that demonstrate WIOA's emphasis on innovative and regional strategies, such as regional labor market information, sector strategies, and development of career pathways. This list reflects activities specifically identified in WIOA and activities the Department had previously identified in administrative guidance under WIA. Proposed § 678.435(d) states that business services and strategies must be reflected in the local plan.

§ 678.440 When may a fee be charged for the business services in 20 CFR 678.435?

Section 134(d)(1)(A)(ii) of WIOA allows customized employer-related services to be provided on a fee-for-service basis. Proposed § 678.440 clarifies that there is no requirement that a fee-for-service be charged to employers. However, the Local Workforce Development Boards should examine available resources and assets to determine an appropriate cost structure. They may also provide such services for no fee.

WIOA seeks to create a seamless service delivery system by linking and aligning one-stop partners. However, as described in § 678.425(a), eligibility and other requirements of one-stop partner programs continue to apply. Proposed § 678.425(b) clarifies that resources of each partner may only be used to provide authorized services to eligible individuals. It also clarifies that seamless service delivery can still be provided through joint funding of shared services based on the relative benefit received by each program. For example, one-stop staff conducting intake for all programs could be a shared cost. Joint funding must be in compliance with Federal cost principles.

4. Subpart C—Memorandum of Understanding for the One-Stop Delivery System

This subpart describes the requirements for the MOU between the Local Board, CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. The Local Board acts as the convener of MOU negotiations and shaper of how local one-stop services are delivered.

§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

Proposed § 678.500 describes what must be included in the MOU executed between the Local Board, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. Proposed § 678.500(a) establishes that two or more local areas in a region may develop a single joint MOU when the areas submit a regional plan. The Departments encourage regional planning, and allowing joint MOUs to support regional planning, particularly where local areas have the same one-stop operator, are providing business services at a regional level, or have planned other joint activities typically discussed in an MOU.

The MOU must include the provisions described in paragraphs (b) through (e) of the section, consistent with WIOA sec. 121(c)(2). As stated in proposed § 678.500(b), the MOU must include the final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the one-stop system will be funded. Shared operating costs may include shared costs of the Local Board, as stated in proposed § 678.760. The MOU must also contain all of the information about infrastructure costs listed in proposed § 678.755. When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the CEO(s), and the period in which the agreement is effective, and the MOU must be periodically updated to reflect any changes in the signatories or one-stop infrastructure funding. Signatures to the MOU indicate that the MOU has been executed. A lack of signatures for the MOU means that the Local Board has not established an MOU.

§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

Proposed § 678.505 establishes that a Local Board and one-stop partners may develop a single ''umbrella'' MOU that applies to all partners, or develop separate agreements between the Local Board and each partner or groups of partners. Under either approach, the MOU requirements described in § 678.500 apply. The Departments encourage States and local areas to use ''umbrella'' MOUs to facilitate transparent, flexible agreements that are not burdensome, so that partners may focus upon service delivery.

§ 678.510 How should the Memorandum of Understanding be negotiated?

Proposed § 678.510 describes the collaborative and good-faith approach Local Boards and partners are expected to use to negotiate MOUs. ''Good faith'' may include fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. Proposed § 678.510(a) allows Local Boards, CEOs, and partners to request assistance from a State agency responsible for the program, the Governor, State Board, or other appropriate parties when negotiating the MOU. Proposed § 678.510(b) describes options for including the infrastructure cost plans in the MOU; the MOU may include an interim infrastructure funding plan in the MOU, as described in proposed § 678.715(c). This may be particularly needed if the local area uses the State infrastructure cost funding mechanism, as described in proposed § 678.730, to enable the local area to move forward with implementing one-stop service delivery in areas where there is agreement. The MOU must be amended once a final infrastructure cost plan is determined. Proposed § 678.510(c) describes how to address MOU impasses. Consistent with WIA regulations, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants and these sanctions are in addition to, not in lieu of, any other remedies that may be applicable to the Local Board or to each partner for failure to comply with any statutory requirements.

5. Subpart D—One-Stop Operators

This proposed subpart addresses the role and selection of one-stop operators. Unlike the other subparts in this proposed rule, this subpart is administered primarily by DOL. The DOL and ED agreed that the subpart should remain in this part of the Joint Rule, so that all of the subparts having to do with one-stop requirements are together. However, unlike the rest of this proposed part, this portion of the preamble refers mainly to DOL.

Under WIA, one-stop operators could be designated or certified through a competitive process, or they could be ''grandfathered'' in from JTPA. Section 121(d)(2)(A) of WIOA only allows for selection of a one-stop operator through a competitive process. This proposed regulation uses the term ''selection'' of one-stop operator through a competitive process, rather than ''designation'' or ''certification'' to avoid confusion. The

competitive process established by this proposed subpart requires States to follow the same policies and procedures they use for procurement from non-Federal funds. All other non-Federal entities, including subrecipients of a State (such as local areas), are required to use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318–200.326.

Unlike under WIA, there is no ''designation'' or ''certification'' of an entity as a one-stop operator, including a Local Board. Section 107(g)(2) of WIOA states that a Local Board may be designated or certified as a one-stop operator only with the agreement of the CEO in the local area and the Governor. The DOL interprets this provision to create an additional check for situations where a Local Board is selected to be one-stop operator through the competitive process as required under WIOA sec. 121(d)(2)(A) and as described in this proposed subpart at § 678.605(d). In these situations, it is appropriate to require that the Governor and chief local official to approve the selection.

The DOL received many comments during consultations regarding the impact of competition on local services. This proposed subpart seeks to clarify and address those concerns. For example, some States shared concerns that the outcome of such a competition may result in the layoff of State merit staff. Proposed § 678.635 clarifies that merit staff may continue to work in the one-stop so long as a system for management of merit staff in accordance with State policies and procedures is established. This is consistent with how some local non-governmental one-stop operators manage merit staff currently under WIA. Local government staff may also work in the one-stop regardless of who the operator is, if they are responsible for delivering a one-stop partner program's services.

Additionally, Stakeholders have voiced concerns about the cost and burden associated with running a competition, as well as situations where there are a limited number of, or only one, possible provider(s). While procurement can take time, Local Boards are encouraged to perform extensive market research and prepare a thorough cost and price analysis to best identify the type of procurement most appropriate to minimize cost and burden of the competitive process. A Local Board has the flexibility to identify and implement the options set forth in proposed § 678.605(d). This may include a limited competition where a smaller number of providers, identified in market research, Requests of Information (ROI), and/or the cost price analysis, are identified and invited to apply. Sole source awards are allowable in only very limited circumstances. For example, concern about the time associated with competition or failure to plan sufficient time for a competition does not constitute an ''unusual and compelling urgency'' as defined in § 678.605(d). Thus, Local Boards retain flexibility to reduce burden while remaining consistent with the provisions of WIOA. WIOA describes a more robust role for Local Boards and partners to jointly develop local plans and one-stop MOUs, and the DOL and ED strongly recommend that Local Boards align these activities with the one-stop operator function and competitive process. Similarly, the competitive process can and should provide for a transition time that minimizes or eliminates disruption in services to participants. This can be achieved in a variety of ways, including provisions in the competition to ensure some staff continuity, transition time between operators, and requiring robust standard operating procedures to be developed by one-stop operators.

Finally, numerous States and local agencies have inquired as to their eligibility to be a one-stop operator. There is nothing in the statute or in these proposed regulations that would prevent a State workforce agency or local agency from competing for and being selected as a one-stop operator. Because Local Board structures vary across State and local areas, in order to ensure there is no real or apparent conflict of interest, Local Boards (or State Boards in the case of single State areas) will need to have robust conflict of interest policies, as well as firewalls in place to ensure that development and conduct of the Board competition is kept separate and apart from the State or local agency, particularly if that entity is the current one-stop operator. Additionally, the firewalls and conflict of interest policy must ensure that, if selected as operator, there are internal controls to ensure that the agency, as operator, has oversight and management from a source other than itself. Use of internal controls and firewalls to avoid conflicts of interest are also addressed in proposed § 679.430.

In sum, this proposed regulation represents the most flexibility that could be offered to Local Boards within the confines of the statutory requirement that one-stop operators be selected through a competitive process.

§ 678.600 Who may operate one-stop centers?

Proposed §§ 678.600(a)–(d) describe who may operate a one-stop center. As stated in paragraph (a), WIOA allows a one-stop operator to be a single eligible entity or a consortium of one-stop partners. Consortia, like single entities, must be selected through a competitive process. Proposed paragraph (c) lists the types of entities what may be selected to be the one-stop operator. These repeat the eligible entities from sec. 121(d)(2)(B) of the statute, and also clarify that a Local Board, with the approval of the chief local elected official and the Governor, may serve as a one-stop operator, as stated in proposed paragraph (c)(6), and that another interested organization which is capable of carrying out the duties of one-stop operator may serve as the operator, as stated in proposed paragraph (c)(7). Proposed § 678.600(d) repeats the requirement in sec. 121(d)(3) of WIOA that elementary schools and secondary schools are not eligible to be one-stop operators; however, nontraditional public secondary schools such as night schools, adult schools, or area career and technical education schools are eligible to be operators.

§ 678.605 How is the one-stop operator selected?

Proposed § 678.605 requires the one-stop operator to be selected through a competitive process conducted not less than every 4 years. As discussed above, the Departments interpret sec. 121(d)(2)(A) of WIOA to require a competition for selection of a one-stop operator. Competition provides the best method of providing that Local Boards examine operator effectiveness. Additionally, regular competition allows Local Boards to make adjustments based on findings of the one-stop certification process described in proposed subpart F of this part, particularly to the role of the operator and other specifics that may shift as one-stop partners and the Local Board update their MOUs. The DOL received feedback that the burden of a competition every year would be large, and the Departments preliminarily concur. In looking at options, the Departments were concerned that a period of 3 years might also be too short because if a Local Board were to conduct a full competition with a Request for Proposals (RFP), it could take as long as 18 months and would result in a Board preparing for the next RFP before the current operator had an opportunity to demonstrate performance. Durations of 5 years or

more presents a risk of having an ineffective operator in place for an extended period. Therefore, proposed § 678.605 settled on a time period of 4 years to ensure that there is a solid period of performance in which to evaluate effectiveness of the operator, including the results of the one-stop certification. This proposed section also provides flexibility to both States and to local areas to require or implement competitions more frequently than every 4 years. The Departments seeks comments regarding the length of time required between competitions for operators.

Proposed §§ 678.605(a), (b), and (c) require the one-stop operator competition to be done through a competitive process. In most cases, the entity conducting the competition to procure a one-stop operator will be the Local Board, pursuant to its responsibility under sec. 107(d)(10)(A) of WIOA to select the one-stop operators. However, in some cases, such as when the one-stop is in a single State local area, a State entity might conduct the competition. If a State conducts the competition, the State must follow applicable State procurement laws. Other entities, including subrecipients of a State (such as local areas) must conduct the competition following the principles of competitive procurement in the Uniform Administrative Guidance at chapter II of 2 CFR.

This should simplify implementation for Local Boards. The requirements of the competitive process identified in WIOA should be consistent with the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR parts 200 and 2900. However, while the competitive process described in this proposed subpart is consistent with the principles of competitive procurement in the Uniform Administrative Guidance, not every particular requirement or process of that Guidance is applicable. This proposed subpart seeks to establish a particular competitive process that fulfills the requirements of sec. 121(d)(2)(A) of WIOA for a competitive process, while remaining consistent with the principles set forth in the Uniform Administrative Guidance. The Departments want to make clear that the specific requirements of the Uniform Guidance are only applicable where the subpart specifically refers to it. This approach provides sufficient flexibility to enable a range of operators, including current one-stop operators, State agencies, or consortia of required partners to compete for and be selected as one-stop operator. The Departments seek comments regarding the nature and extent of the competitive process outlined in the proposed regulations.

Proposed § 678.605(d) states that non-Federal entities, including subrecipients of a State (such as local areas) must first determine the nature of the competitive process to be used. The different processes that may be used are procurement by sealed bids or procurement by competitive proposals. Procurement by sole-source is permitted only under limited conditions. Because of the potential for abuse of the sole source selection method, DOL intends to set a high bar for justifying that there is only one possible operator. Local Boards cannot use their past experience with an entity being the one-stop operator or one response to Requests for Information (RFI) alone as justification. Robust market research, combined with other methods, including but not limited to an RFI and a detailed cost and price analysis, will help a Local Board meet the burden of demonstrating they meet the requirement of proposed § 678.605(d)(3)(i) for utilizing sole source selection. Additionally, the Local Board must comply with its own procurement policies regarding sole source procurements.

There are two scenarios listed in proposed paragraph (d)(3)(i) that justify the use of sole-source procurement, and as discussed the Departments envision limited use of these options. These two scenarios are consistent with the circumstances that justify sole source selection under the Uniform Administrative Guidance at 2 CFR 200.320(f), with the important exception of 2 CFR 200.320(f)(3). Governors may not approve a written request for sole source selection of a Local Board unless it complies with § 678.605(d)(3).

Proposed § 678.605(e) requires maintenance records, which are crucial to demonstrate compliance with the requirements of this subpart.

§ 678.610 How is sole source selection of one-stop operators accomplished?

Proposed § 678.610 explains how sole-source selection of one-stop operators is accomplished. It includes requirements about maintaining written documentation and developing appropriate conflict of interest policies. It states that a Local Board can be selected as one-stop operator through sole-source procurement only with the agreement of the CEO in the local area and the Governor. The Governor must approve the conflict of interest policies the Local Board has in place when also serving as one-stop operator. This is consistent with DOL's interpretation of sec. 107(g)(2) of WIOA—the section adds an additional check in the situations where a Local Board is selected to be operator.

§ 678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

Proposed § 678.615(a) states that Local Boards may compete to be selected as a one-stop operator only if appropriate firewalls and conflict of interest policies and procedures are in place. The Departments seek comments on whether and how a sufficient firewall could be established in such a competition, whether alternate entities could conduct the competition, and who those entities might be.

Proposed § 678.615(b) allows State or local agencies to compete for, and be selected as, one-stop operators. However, the proposed paragraph recognizes that there would need to be strong firewalls, internal controls, and conflict of interest policies and procedures in place. There is precedent for State agencies applying and being selected as one-stop operators under WIA. For example, in one multi-county local area, the Local Board issued an RFP on a per county basis. In one county, a community action program was selected as the operator. In another county, the State workforce agency was selected as the operator. In this scenario, State workforce agency staff provides both WIA and Employment Services in the county where the agency was selected as one-stop operator. In a second example under WIA, from a single area State: the State Board (which also serves as the Local Board) issued an RFP for the entire State for adult and dislocated workers and a separate RFP for youth services. A non-profit entity was selected as the operator for adult and dislocated worker services. That non-profit then subcontracted with other non-profits to serve the different geographic regions of the State. The staff of the State workforce agency continues to provide the labor exchange services in the one-stop career centers. A State agency was selected as the youth provider. Additional sub-awards were made by that State agency to ensure that all ten youth program elements were available.

However, in the above two scenarios and any scenario where the State agency is competing to be the one-stop operator, there is a high risk for conflict of interest, particularly in the case of single State areas. Therefore, proposed § 678.615(b) and (c) require robust conflict of interest policies as well as internal firewalls within the State agency to address the real and perceived conflicts of interest that could arise for

a State or local agency applying to a competition run by a Local Board.

The DOL notes that this proposed section is relevant to the first competitions that are conducted after these regulations are promulgated for one-stop operators. With appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process, entities serving as one-stop operators at the time these regulations are promulgated, including Local Boards and other current one-stop operators, may compete and be selected as operator under the competition requirements in this proposed subpart. However, like the entities specifically mentioned in this proposed section, appropriate firewalls must be in place to provide that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest.

§ 678.620 What is the one-stop operator's role?

Proposed § 678.620(a) describes the role of the one-stop operator without prescribing a specific and uniform role across the system. The proposed minimum role that an operator must perform is coordination across one-stop partners and service providers. Additionally, the proposed paragraph (b) prohibits one-stop operators from assuming functions that are inherently the responsibility of the Local Board under proposed § 679.370. The DOL seeks comments as to whether all of the functions listed in proposed paragraph (b) are accurately described as inherent to the responsibility of a Local Board. As the one-stop system evolved under WIA, some of the Local Board responsibilities may have changed or been devolved to the operator or fiscal agent as well.

§ 678.625 Can a one-stop operator also be a service provider?

Proposed § 678.625 allows a one-stop operator to also be a service provider. However, the section clarifies that there must be firewalls in place to ensure that the operator is not conducting oversight of itself as service provider. There also must be proper internal controls and firewalls in place to ensure that the entity, in its role as operator, does not conflict with its role of service provider. This is consistent with the firewall and internal control provisions in proposed § 679.430.

§ 678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?

Proposed § 678.630 addresses the concern about whether State merit staff can continue to work in a one-stop where the operator is an entity other than the State. State merit staff support numerous programs at the one-stop career center, including Wagner-Peyser, Vocational Rehabilitation, UI, and the JVSG program. Some States have shared concerns that competition may result in the layoff of State merit staff. Proposed § 678.630 clarifies that State merit staff may continue to work in the one-stop so long as a system for management of merit staff in accordance with State policies and procedures is established. This is consistent with how some local non-governmental one-stop operators manage merit staff currently under WIA. Local government staff may also work in the one-stop regardless of who the operator is, if they are responsible for delivering a one-stop partner program's services. Nothing prohibits this from occurring, and there are numerous examples under WIA where this is currently occurring, including the above scenario of a single area State where the State Board (which also serves as the Local Board) issued an RFP for the entire State for adult and dislocated workers and a separate RFP for youth services. A non-profit entity was selected as the operator for adult and dislocated worker services. That non-profit then subcontracted with other non-profits to serve the different geographic regions of the State. The staff of the State workforce agency continues to provide the labor exchange services in the one-stops due to the merit staffing requirements. In another multi-county local area, the Local Board issued an RFP for a single operator throughout the entire local area. A large-scale non-profit was selected as the operator. Under the arrangement, State merit staff still provided labor exchange services because of the merit staffing requirement but under the operational direction of the one-stop operator.

Similar to State merit staff, nothing would prevent local government staff from being employees in the one-stop center, although the Department recognizes that local government employees are not equivalent to the State merit staff, because State merit staff are governed by the requirements attached to specific programs that must be in the one-stop regardless of operator.

§ 678.635 What is the effective date of the provisions of this subpart?

To ensure an orderly transition, as authorized under sec. 503 of WIOA, proposed § 678.635(a) states that one-stop operators selected through the competitive process described in this subpart need to be in place no later than July 1, 2017. This lengthy transition period serves several goals: (1) It allows sufficient time for State and local areas to prepare to transition to a competitive process, including conducting market research, RFIs, cost and price analysis, and competitions; (2) it reduces or eliminates the likelihood of disruption in services to participants as Local Boards have time to plan for and incorporate into the competition a plan for transition to a new provider; and (3) it allows State and local areas to have the WIOA Final Rule to use to guide the implementation of a competitive process. It is important for Local Boards to begin planning for competition immediately, and therefore proposed § 678.635(b) states that Local Boards must engage in and be able to demonstrate they are planning for a competition for one-stop operator in PY 2015 (July 1, 2015–June 30, 2016).

6. Subpart E—One-Stop Operating Costs

One-stop partner funding of infrastructure costs is intended to:

(1) Maintain the one-stop delivery system to meet the needs of the local areas;

(2) Reduce duplication by improving program effectiveness through the sharing of services, resources and technologies among partners;

(3) Reduce overhead by streamlining and sharing financial, procurement, and facilities costs;

(4) Encourage efficient use of information technology to include where possible the use of machine readable forms and shared management systems; and

(5) Ensure that costs are appropriately shared by one-stop partners by basing contributions on proportionate share of use, and requiring that all funds are spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including the Federal cost principles; and

(6) Ensure that services provided by the one-stop partners to reduce duplication or to increase financial efficiency at the one-stop centers are allowable under the partner's program.

§ 678.700 What are one-stop infrastructure costs?

Proposed § 678.700 provides the definition for infrastructure costs based

on sec. 121(h)(4) of WIOA. In addition to those items, the section adds common one-stop delivery system identifier costs. These costs are those associated with signage and other expenses related to the one-stop common identifier as required by sec. 121(e)(4) of WIOA. The Departments seek comments as to other common identifier costs, or other types of costs, to include in the definition of infrastructure costs.

Jointly funding services is a necessary foundation for an integrated service delivery system. Proposed § 678.700(c) reiterates that all partner contributions to the costs of operating and providing services within the one-stop center system must adhere to the partner program's Federal authorizing statute, and to all other applicable legal requirements, including the Federal cost principles that require costs that are allowable, reasonable, necessary and allocable. There are a variety of methods to allocate costs, for instance: Based on proportion of a partner program's customers of all customers coming to the one-stop, proportion of partner program's staff among all staff at the one-stop, or based on a partner program's use of a particular expense item such as certain equipment. The DOL's previous Financial Management Technical Assistance Guide published for WIA remains useful for cost allocation explanations. See *http://www.doleta.gov/grants/pdf/TAG_PartI.pdf* and *http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf*. The DOL and ED jointly will update this guide and provide technical assistance on cost allocation.

§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

Proposed § 678.705 addresses the requirement in sec. 121(h)(1)(B) of WIOA for the Governor to issue guidelines to State programs and guidance to local areas regarding infrastructure funding. The Departments have interpreted the statute also to require that the local areas follow these guidelines, and to allow the State grantee to monitor local areas for compliance with the Governor's guidance. The proposed section includes certain requirements for the Governor's guidance, including establishing roles, defining equitable and efficient methods for negotiating around infrastructure costs, and establishing timelines for local areas. These requirements are essential to ensuring a consistent general approach to the Governors' guidance across States, and appropriate timeframes which then allow for one-stop certification, competition of one-stop operator, and inclusion of funding agreement terms into the local State plan. The proposed rule allows for different methods of reaching consensus, and different ways for the Governor to interact with a local area during the consensus-building process. The Departments seek comments about the types of information or requirements local areas would like to see included in guidance issued by the Governor.

§ 678.710 How are infrastructure costs funded?

Proposed § 678.710 indicates that sec. 121(h)(1) of WIOA establishes two methods for funding the infrastructure costs of one-stop centers: A local one-stop funding mechanism and a State one-stop funding mechanism. Both methods utilize the funds provided to one-stop partners by their authorizing legislations. There is no separate funding source for one-stop infrastructure costs.

§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?

Proposed § 678.715 addresses the local funding mechanism. Local Boards, in consultation with CEOs, should engage one-stop partners early in discussions about one-stop center locations and other services, so that decisions about physical locations and services are cooperatively made, and can be financially supported by the partners within the workforce system. Under the local mechanism, local partners can contribute amounts in excess of the limitations contained under the State funded infrastructure mechanism at sec. 121(h)(2)(D)(ii) of WIOA, if the parties agree that is the proportionate share of their use for reasonable one-stop infrastructure costs and it is consistent with the Federal authorizing statute and other applicable legal requirements, including Federal cost principles Under this proposed paragraph, agreement is achieved when all of the one-stop partners sign the MOU with the Local Board, which includes a final agreement regarding funding of infrastructure that includes the elements listed in proposed § 678.755, or an interim funding agreement that includes as many of these elements as possible.

§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

Proposed § 678.720 explains the funding that one-stop partners can use to pay for infrastructure cost contributions. Partner programs can determine the funds they will use, but these funds must still meet the requirements of the program's relevant statutes and regulations. Further, all one-stop partners must work together to administer the partner programs and the one-stop and other activities of the core programs under WIOA as efficiently and effectively as possible. This will ensure that, as recipients and stewards of Federal funds for all of these programs, the partners and their subrecipients administer these programs and activities to meet all applicable legal requirements and goals. Different Federal statutes and regulations define administrative costs slightly differently. Some programs' statutes and regulations define all of the infrastructure costs listed in § 678.700 as administrative costs, some programs' statutes and regulations define some of the infrastructure costs as administrative costs, and some as program costs. Under this proposed paragraph, one-stop partner programs must adhere to the administrative and program cost limitations of their program's statutes and regulations.

Proposed § 678.720(a) would give State agencies responsible for title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act) great flexibility in determining how to pay for infrastructure costs under the local one-stop funding mechanism. It would permit a State eligible agency under title II of WIOA to use Federal funds that were available for State administration of title II of WIOA. Similarly, proposed § 678.720 would permit a State eligible agency under the Perkins Act to use Federal funds that were available for State administration of post-secondary level programs or activities. Additionally, proposed § 678.720 would permit a State eligible agency under title II of WIOA or the Perkins Act to use non-Federal funds that these State agencies contribute to meet these programs' matching or maintenance of effort requirements in lieu of the State's administrative funds from its Federal grants. Further, if a State eligible agency were to delegate to a local entity or a consortium of local entities the authority to serve as the local one-stop partner pursuant to proposed § 678.415(b) and (e), the entity or consortium could contribute local administrative funds for title II of WIOA or the Perkins Act, respectively, to the infrastructure costs in lieu of a contribution from the State's administrative funds from its Federal grants. The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for

paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act. The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?

Proposed § 678.725 states that failure to sign the MOU containing the final infrastructure funding agreement or interim agreement by the beginning of each PY would trigger the State one-stop infrastructure funding mechanism. The proposed section states that Local Boards must notify the State if they cannot reach consensus. This notification policy must be included in the Governor's guidance, as required by proposed § 678.705(b)(3). The State monitors the local areas to address violations of State guidance. The Governor's guidance might establish an earlier date for notification to the State of milestones or decision points in the negotiation process.

§ 678.730 What is the State one-stop infrastructure funding mechanism?

Proposed § 678.730 discusses the State infrastructure funding mechanism. In establishing a State-funded alternative to the local one-stop infrastructure funding mechanism, the statute ensures infrastructure costs will still be funded if one-stop partners cannot agree on their contribution amounts to fund the infrastructure of the one-stop center. An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportionate share to the funding of one-stop infrastructure costs, consistent with the Federal cost principles. This is in alignment with the requirements in the new Uniform Requirements, cost principles and audit requirements issued on December 26, 2014 (2 CFR part 200). In the State infrastructure funding mechanism, the Governor determines how much each partner will contribute, as described in proposed §§ 678.735 and 678.740. The State Board determines how the contributed funds will be allocated out to local areas, as described in proposed § 678.745.

§ 678.735 How are partner contributions determined in the State one-stop funding mechanism?

In the State-funded option proposed in §§ 678.735(a)–(b), the Governor, after consultation with State and Local Boards and CEOs, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner and other factors stated in proposed § 678.735(a). Proposed § 678.735(b) clarifies that because Native American Program grantees under part 684 of this proposed rule have a government-to-government relationship, the Governor does not determine the contribution amounts for infrastructure grants from these grantees. The Native American Programs, as required one-stop partners, must contribute to infrastructure funding, and must negotiate with the Local Board on that contribution amount. The Local Board and Native American Program grantee can ask for assistance from the State in negotiating the MOU and infrastructure cost funding, and can also consult with DOL to resolve any impasse.

Proposed § 678.735(c) includes the limitation for one-stop partners' contributions, based on a percentage of their funding allocation, from sec. 121(h)(2)(D)(ii) of WIOA. These limitations do not apply to the local one-stop funding mechanism. However, the use of a program partner's funds must meet the requirements of the program's authorizing statute, all other applicable legal requirements, and the requirements in this subpart. Proposed § 678.735(c)(1) states that the cap on WIOA formula and Wagner-Peyser required contributions will not exceed 3 percent of the amount of funds provided to carry out that program for a PY. Although WIOA sec. 121(h)(2)(D)(ii)(I) refers to a fiscal year, WIOA and Wagner-Peyser funds are provided on a PY basis (which is from July 1 through June 30 of the following year). Therefore, calculating on a fiscal year basis would cause numerous administrative difficulties, because the WIOA and Wagner-Peyser formula programs receive their appropriations at two different times during the fiscal year. This interpretation is consistent with the statute because under WIOA sec. 121(h)(1)(A)(ii) the determination of whether the State infrastructure funding mechanism will apply occurs on July 1, at the beginning of each PY.

Proposed § 678.735(c)(2) includes a clarification that the 1.5 percent cap on contribution applies to the relevant education program and employment and training program of a required one-stop partner. For instance, States receive a large block grant for delivering TANF services. The 1.5 percent cap on contributions applies to the employment and training activities under that grant, not the entire TANF grant. Proposed § 678.735(c)(3) states that the entities administering the Vocational Rehabilitation program must not be required to contribute more than a specific cap each year. In States where there are two Vocational Rehabilitation agencies (a general agency and a blind agency), the combined contribution from these programs cannot exceed the cap in the proposed rule, which is based on the total allotment to the State.

Because there is a chance that the funding amount limitations would prevent the allocation from being fully funded, proposed § 678.735(d) allows the Governor to direct the local partners to reenter negotiations to resolve the shortage in a manner that is consistent with each partner's program's authorizing laws and regulations and all other applicable legal requirements, including the Federal cost principles, or to identify alternate infrastructure funding. When local partners reenter negotiations in this situation, the new negotiations should be conducted according to the same procedure as negotiations are conducted under the local funding mechanism, as discussed in proposed § 678.715. The limitations for one-stop partners' contributions discussed in proposed § 678.735(c) do not apply to the local funding mechanism. If an agreement is still not reached, the Governor will reduce the allocation for total one-stop infrastructure funding for that local area to match the amount of available partner contributions under the cap. In implementing a one-stop infrastructure allocation by the Governor, although sec. 121(h)(3)(B) of WIOA refers to the Governor allocating out to local areas the funds provided under sec. 121(h)(1) of WIOA, which is the local funding allocation mechanism, that section as enacted would also require the Governor to allocate those funds to only the local areas that are not using the local funding mechanism. This incongruity seems a clear scrivener's error—sec. 121(h)(3)(B) was meant to instruct the Governor to apply the allocation formula developed by the State Boards only to the local areas that are not subject to an agreement under the local funding mechanism. Proposed §§ 678.730 through 678.745 reflect this interpretation.

§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

Proposed § 678.740 describes the funds that one-stop partners can use to pay for infrastructure costs. For some

partner programs, some infrastructure costs are classified as program costs under the partners' authorizing statute or implementing regulations, while other infrastructure costs are classified as administrative costs. In other partner programs, all infrastructure costs are classified as administrative costs. One-stop partner programs must follow their own program's rules in classifying costs as program or administrative costs, and must adhere to their program's administrative cost limit.

Like proposed § 678.720(a), proposed §§ 678.740(c) and (d) would give State eligible agencies responsible for title II of WIOA and the Perkins Act great flexibility in determining how to pay for infrastructure costs under the State one-stop funding mechanism. It would enable these State agencies to use Federal funds that were available for State administration of title II of WIOA or for the administration of post-secondary level programs and activities under the Perkins Act, as well as non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. Further, as with § 678.720(a), if a State eligible agency were to delegate to a local entity or a consortium of local entities authority to serve as the local one-stop partner pursuant to proposed §§ 678.415(b) and (e), the entity or consortium could contribute local administrative funds for title II of WIOA or the Perkins Act, respectively, to the infrastructure costs in lieu of a contribution from the State's administrative funds from its Federal grants to be contributed to the one-stop infrastructure costs.

The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act. The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?

Proposed § 678.745 states that the State Board must establish an allocation formula, taking into account several requirements from WIOA 121(h)(3)(B), and the Governor will use the allocation formula to distribute funds to local areas that are opting to use the State infrastructure cost funding mechanism, so long as the distribution is consistent with the Federal cost principles for each affected partner program.

§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

Proposed § 678.750 requires an appeals process, as outlined in WIOA sec. 121(h)(2)(E), to be established by the Governor and proposes similar principles regarding timely resolution as those seen under other appeals processes, such as the WIA regulations at 20 CFR 661.280. The Departments seek comments regarding the proposed State infrastructure funding mechanism, and in how local areas with existing successful infrastructure cost agreements have funded these costs and what factors contributed to local areas' success.

§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

Proposed § 678.755 explains what information the local areas must include about operating costs in the one-stop MOU, described in proposed § 678.500. Under the State one-stop infrastructure funding mechanism, the partner contributions will be required to be included in the MOU. Once the State infrastructure funding mechanism is triggered, and the Governor determines each partner's required funding contribution, the partners must include these in, and sign, the MOU.

§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

In addition to infrastructure, WIOA sec. 121(i)(1) requires that one-stop partners must contribute jointly to fund the cost of career services, and allows one-stop partners to jointly fund other shared services, such as intake, assessment, skill appraisals, identification of appropriate services, referrals, accommodations and other services, including business services. Shared operating costs may also include shared costs of the Local Board's functions. Under proposed § 678.760, these costs must be determined as part of the MOU described in proposed § 678.500 and be comprised of cash and noncash resources. Non-cash, or in-kind, contributions may be such resources as space, equipment, staff to deliver shared services, and other examples. The Departments expect one-stop partners to engage early with each other and the Local Board to identify services that benefit multiple populations and programs and could be jointly funded through the MOU. Such agreements improve the efficiency and effectiveness of the one-stop system, and benefit the system's customers. WIOA neither requires programs to examine if other funds are available before using program funds to pay for a service, nor does it establish requirements that any program can only be a ''payer of last resort.'' One-stop partners may jointly fund services in a manner of their choosing that meets the requirements of this part, meets the Federal cost principles, and meets the requirements of the programs' authorizing statutes and regulations.

The DOL published Financial Management Technical Assistance Guides for use under WIA that are still useful in determining reasonable cost allocation methodologies, and how to jointly fund shared activities and services. See *http://www.doleta.gov/grants/pdf/TAG_PartI.pdf* and *http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf*. The DOL will provide further technical assistance on this topic.

7. Subpart F—One-Stop Certification

Proposed part 678, subpart F implements the requirements in sec. 121(g) of WIOA that the Local Board certify the one-stop center every 3 years. The certification process is important to setting a minimum level of quality and consistency of services in one-stop centers across a State. The certification criteria allow States to set standard expectations for customer-focused seamless services from a network of employment, training, and related services that help individuals overcome barriers to becoming and staying employed. The Departments seek comments on how local areas can best measure the customer satisfaction of individuals who utilize American Job Centers as an aspect of effectiveness.

§ 678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

Proposed § 678.800(a) requires that State Boards establish criteria and procedures for certification, and allows Local Boards to use additional certification factors in order to respond to labor market, economic, and demographic conditions and trends in the local area. The criteria must assess the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop

centers and the one-stop delivery systems.

Proposed § 678.800(b) sets requirements for evaluations of effectiveness, including those mandated by sec. 121(g)(2)(B)(ii) and (iii) of WIOA. States may establish further effectiveness factors, and set specific standards for program coordination or integration. Program coordination standards might include customer-focused standards such as: front desk and intake staff are trained to complete an initial assessment of a participant's needs and inform participants of the services available to them; intake forms and basic assessment tools and processes are harmonized across programs to minimize customers filling out multiple forms; and staff work in functional rather than program teams. Program coordination standards might also include operational standards such as: integrated resource teams such as those piloted in the Disability Employment Initiative or other methods are used to jointly fund services to meet the specific needs of individuals; resource rooms include high-quality up-to-date information about the services and supportive services available to individuals; Web sites and materials for the one-stop provide information about the services and supports of all partner programs; and business services teams include representatives or otherwise integrate with key partner programs and represent the center as a whole. This paragraph also emphasizes the importance of maximizing access to services to all customers, particularly outside regular business hours. Access to services can be through a physical one-stop location, but can also be through online or phone access as discussed in the § 678.300(e) definition of ''direct linkage,'' as long as services are equally available to all customers, including those with disabilities. The Departments seek input on other important factors in making one-stop centers operate more efficiently and effectively, both for consideration as one-stop certification criteria and for general program implementation and management.

Proposed paragraph § 678.800(c) describes evaluations of continuous improvement, including those mandated by sec. 121(g)(2)(B)(i) of WIOA. Continuous improvement requires local areas and one-stop centers to collect, analyze and use several types of data, from customer satisfaction and feedback to program and performance data. Professional development is a key feature of any continuous improvement loop, in order to ensure that staff are aware of the implications of recent evidence-based research, and can implement the latest policies and procedures established at the local, State and Federal levels.

Proposed § 678.800(d) describes how Local Boards apply the certification criteria, including that Local Boards must assess the one-stop centers at least once every 3 years. This section also requires that any additional local criteria be reviewed and updated as part of the biennial review and modification process for updating local plans. This provision also explains that this certification must be completed for one-stop centers to be eligible to receive infrastructure funds in the State infrastructure funding mechanism, as required by sec. 121(g)(4) of WIOA.

Proposed § 678.800(e) emphasizes that all one-stops must be physically and programmatically accessible. The requirements related to accessibility are set forth in the regulations implementing WIOA sec. 188, at 29 CFR part 37.

In addition to complying with the applicable architectural and programmatic accessibility requirements of the proposed regulations, one-stop centers and Boards may wish to consider the use of ''universal design,'' which designs inclusive space and materials to be available to individuals regardless of their range of abilities, mobility, age, language, learning style, intelligence, or educational level. Improved availability, a welcoming atmosphere, inclusive settings, and high quality customer service benefit all customers. Extensive technical assistance is available at *www.ada.gov*, and *www.lep.gov*. The Departments recommend that State Boards and Local Boards engage early with relevant Equal Opportunity officers in establishing the criteria for determining compliance with accessibility standards and other requirements related to providing equal opportunity, particularly for persons with disabilities.

8. Subpart G—Common Identifier

The proposed regulation in subpart G promotes increased public identification of the one-stop delivery system through use of a common identifier across the nation, consistent with sec. 121(e)(4) of WIOA.

§ 678.900 What is the common identifier to be used by each one-stop delivery system?

Proposed § 678.900(a) designates the name ''American Job Center'' as the common identifier for the one-stop delivery system. This designation was made by the Secretaries after consulting with the heads of other appropriate departments and agencies, representatives of State Boards and Local Boards, and other stakeholders in the one-stop delivery system. As part of this consultation process, DOL engaged in a series of town hall meetings with State workforce agencies, and State and Local Workforce Boards, conducted in September and October 2014, in various cities across the country. In addition, two webinars were conducted on November 14 and December 9 with various stakeholders, including State agencies, State and Local Workforce Boards, and one-stop partners, and were open to the public. The topic of the webinar was dedicated solely to the topic of the common identifier for the one-stop delivery system. The DOL has also consulted with other departments and agencies, specifically ED and the Department of Health and Human Services (HHS). The Departments also specifically request that the public or any interested stakeholder provide feedback and input as comments on the proposed ''American Job Center'' common identifier designation.

''American Job Center'' is the common identifier that is currently being used by several one-stop delivery systems; furthermore, it has been promoted by the DOL and used by other Federal agencies since the issuance of Training and Employment Guidance Letter (TEGL) No. 36–11 on June 14, 2012. Continued use of the identifier ''American Job Center'' will avoid the confusion of implementing a new common identifier; and several State and Local Boards have already begun incorporating the identifier in their products, materials, Web sites, and facilities. The Departments continue to seek feedback on the name and associated logo as part of the proposed rulemaking process.

Proposed § 678.900(b) requires the use of ''American Job Center'' or the tagline ''a proud partner of the American Job Center network'' on all one-stop delivery system products, programs, activities, services, facilities, and related property and materials to help inform system users that the products, programs, activities, services, facilities, and related property and materials are provided by and through the publically funded one-stop delivery system. The Departments will issue templates and designs of a logo, phrase, or other material for the one-stop delivery system to use to associate this common identifier with the system. Local Boards should immediately start the process of incorporating the identifier on products, programs, activities, services, and related and materials. Incorporating the identifier on facilities and related

property may take time. Local Boards may start the process of incorporating the identifier on facilities and property anytime, but must start this process at the time these regulations are published as a final rule, and fully implement the requirements listed in the final rule within PY 2016.

Proposed paragraph § 678.900(c) allows the use of additional identifiers, per sec. 121(e)(4) of WIOA.

## V. Rulemaking Analyses and Notices

### *A. Executive Orders 12866 and 13563: Regulatory Planning and Review*

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying present and future benefits and costs; directs that regulations be adopted with public participation; and, where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits are to include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. OMB determines whether a regulatory action is significant and, therefore, subject to review.

Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as any action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

*Summary of the analysis.* The Departments provide the following summary of the regulatory impact analysis:

(1) The proposed joint rule is a ''significant regulatory action'' under section 3(f)(4) of E.O. 12866 and accordingly, OMB has reviewed the proposed rule.

(2) The proposed joint rule would have no cost impact on small entities.

(3) The proposed joint rule would not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Departments estimate that this joint NPRM would have an average annual cost of $147,128,434 and a total 10-year cost of $1,154,622,032 (with 7-percent discounting). The largest contributor to the cost is the requirement related to evaluation of State programs, followed by the development of strategies to align technology and data systems across one-stop partner programs.

The Departments were unable to quantify estimates of several important benefits to society due to data limitations or lack of existing data or evaluation findings on particular items. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Departments), the Departments identified a variety of societal benefits: (1) Training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the Board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Departments identified several channels through which these benefits might be achieved, including: (1) Better information about training providers will enable workers to make better-informed choices about programs to pursue; and (2) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

The Departments request comment on the costs and benefits of this NPRM with the goal of ensuring a thorough consideration and discussion at the final rule stage.

#### 1. Need for Regulation

Section 503(f)(1) of WIOA requires publication of proposed implementation regulations. Implementing regulations are necessary in order for WIOA to be efficiently and effectively operated and such regulations will provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

#### 2. Alternatives in Light of the Required Publication of Proposed Regulations

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. While WIOA provides little regulatory discretion, the Departments assessed, to the extent feasible, alternatives to the proposed regulations.

In this NPRM, the Departments considered significant alternatives to accomplish the stated objectives of WIOA while also attempting to minimize any significant economic impact of the proposed rule on small entities. This analysis considered the extent to which WIOA's prescriptive language presented any regulatory options that also would allow for achieving the statute's articulated programmatic goals. In many instances, the Departments have reiterated WIOA's language in the regulatory text and expansions are offered for clarification and guidance to the regulated community. The additional regulatory guidance should create more efficient administration of the program by reducing ambiguities and subsequent State and local revisions as a result of unclear statutory language.

In addition, the Departments considered and, where feasible, proposed to issue sub-regulatory guidance in lieu of additional regulatory requirements. This policy option has two primary benefits to small entities. First, guidance will be issued following publication of the rules, thereby allowing States, local areas, and small entities additional time to prepare their compliance efforts. Second, this level of guidance is more flexible in nature allowing for faster modifications and any subsequent issuances, as necessary.

The Departments considered three possible alternatives:

(1) To implement the legislative changes prescribed in WIOA, as noted in this NPRM, thereby satisfying the legislative mandate; or

(2) To take no action, that is, to attempt to implement WIOA utilizing existing Workforce Investment Act (WIA) regulations; or

(3) To not publish any regulation and rescind existing WIA regulations, thereby ignoring the WIOA statutory requirement to publish implementing regulations and, thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Departments considered these three options in accordance with the provisions of E.O. 12866 and chose to publish the WIOA NPRM, *i.e.,* the first alternative. The Departments considered the second alternative, *i.e.,* retain existing WIA regulations as the guide for WIOA implementation, but WIOA has changed WIA's requirements substantially enough that new implementing regulations are necessary in order for the workforce system to achieve compliance. The Departments considered the third alternative, *i.e.,* to not publish an implementing regulation and rescind existing WIA regulations, but rejected it because this option, in and of itself, does not provide sufficient detailed guidance to effectively implement the statutory requirements. Thus, regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Departments also considered whether certain aspects of WIOA could be phased-in over a prescribed period of time (different compliance dates), thereby allowing States and localities additional time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible, the Departments have recognized and made allowances for different schedules of implementation. However, upon further discussion and in order to begin to achieve the intended legislative benefits of WIOA, additional implementation delays beyond those noted in this NPRM may create potentially more issues than the benefit of alternative starting dates. Specifically, many critical WIOA elements follow upon the implementation of other provisions and, therefore, discussions around delaying aspects became quite complicated. The interrelatedness of WIOA's requirements suggested that the alternative of delaying aspects was not operationally feasible.

Furthermore, the data necessary to fully review this option does not yet exist and will not until Local Workforce Development Boards (WDBs) conduct procurements and announce awards. Similarly, performance standards will be negotiated at a future time and based on a variety of factors including State and local economic conditions, resources, and priorities. Establishing proposed standards in advance of this statutorily-defined process may not be an efficient or effective action. The enforcement methods described in the proposed joint rule are a reflection of prescribed WIOA requirements and entity size should not in and of itself create alternative methods for compliance or different time periods for achieving compliance. Although the Departments have not determined sufficiently valid reasons for altering compliance timeframes in addition to those described in the proposed rule for small entities, we seek comment on this issue.

The Departments' initial impact analysis has concluded that by virtue of WIOA's prescriptive language, particularly the requirement to publish implementing regulations within 180 days, there are no viable regulatory alternatives available other than those discussed above.

The Departments request comment on these or other alternatives, including alternatives on the specific proposed provisions contained in this NPRM, with the goal of ensuring a thorough consideration and discussion at the final rule stage.

3. Analysis Considerations

The Departments derived their estimates by comparing the existing baseline, *i.e.,* the benefits and costs associated with current practices, which at a minimum, must comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000), against the additional benefits and costs associated with implementation of the provisions contained in this WIOA-required joint NPRM.

For a proper evaluation of the additional benefits and costs of this NPRM, the Departments explain how the required actions of States, WDBs, employers and training entities, government agencies, and other related entities are linked to the expected benefits and estimated costs. The Departments also considered, when appropriate, the unintended consequences of the proposed regulations introduced by this NPRM. The Departments make every effort, when feasible, to quantify and monetize the benefits and costs of the joint NPRM. The Departments were unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the proposed rule or WIOA in general. Therefore, the Departments describe the benefits qualitatively. The Departments followed the same approach when we were unable to quantify the costs.

Throughout the benefit-cost analysis, the Departments made every effort to identify and quantify all potential incremental costs associated with the implementation of WIOA as distinct from what already exists under WIA, WIOA's predecessor statute. Despite our best estimation efforts, however, the Departments might be double-counting some activities that are already happening under WIA. Thus, the costs itemized below represent an upper bound of the potential cost of implementing the statute. The Departments request comment on our cost estimates, specifically in terms of whether we have accurately captured the additional costs associated with implementation of WIOA.

In addition to this joint NPRM, the Departments plan to propose separate NPRMs to implement program-specific requirements of WIOA that fall under each Department's purview; see the Executive Summary section of this NPRM for details. While the Departments acknowledge that these proposed rules and their associated impacts are not wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, this analysis does not capture the correlated impacts of the benefits and costs of this proposed joint rule and those associated with the other NPRMs. The Departments have made an effort to ensure there are no duplication of costs and benefits between this and the other NPRMs. We request comments from the public about the appropriateness of this assumption.

In accordance with the regulatory analysis guidance contained in OMB Circular A–4 and consistent with the Departments' practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to citizens and residents of the United States) of this WIOA-required NPRM. The analysis covers 10 years (2015 through 2024) to ensure it captures major additional benefits and costs that accrue over time. The Departments express all quantifiable impacts in 2013 dollars and use 3-percent and 7-percent discounting following OMB Circular A–4.

Exhibit 1 presents the estimated number of entities expected to

[1] Based on internal Department of Education data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and Palau.

[2] Based on internal Department of Labor data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

[3] Pursuant to sec. 7(34) of the Rehabilitation Act of 1973, as amended, this figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico,

Continued

experience an increase in level of effort (workload) due to the proposed regulations contained in this joint NPRM. These estimates are provided by the Departments and are used extensively throughout this analysis to calculate the estimated cost of each proposed provision.

EXHIBIT 1—NUMBER OF AFFECTED ENTITIES BY TYPE

| Entity type | Number of entities |
|---|---|
| States impacted by Adult Education and Family Literacy Act (AEFLA) program requirements | [1] 57 |
| States impacted by DOL program requirements | [2] 56 |
| States impacted by Vocational Rehabilitation (VR) program requirements | [3] 56 |
| States that need to develop and disseminate best practices | 40 |
| States that need low effort to implement software/IT systems | 20 |
| States that need high effort to implement software/IT systems | 15 |
| Workforce Development Boards | 580 |

Transfer Payments

The Departments provide an assessment of transfer payments associated with transitioning the nation's public workforce system from the requirements of WIA to new requirements imposed by WIOA. In accordance with OMB Circular A–4, the Departments consider transfer payments as payments from one group to another that do not affect total resources available to society. For example, under both WIA and WIOA, financial transfers via formula grants will be made from the Federal government to the States and from the States to Local WDBs, as appropriate. In accordance with the State allotment provisions required by WIOA sec. 127, the interstate funding formula methodology is not significantly different than that utilized for the distribution of funds under WIA.[4] Final program year grant allocations will reflect WIOA requirements and are under development.

One example of where impacts are discussed qualitatively, rather than quantified, concerns the expectation that available U.S. workers trained and hired who were previously unemployed will no longer need to seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Departments expect State unemployment insurance expenditures to decline because of the hiring of U.S. workers following WIOA implementation. The Departments, however, cannot quantify these transfer payments due to a lack of adequate data.

In the subject-by-subject analysis, the Departments present the additional labor and other costs associated with the implementation of each of the proposed provisions in this NPRM. Exhibit 2 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the proposed rule. The Departments used wage rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for private and State and local employees.[5] The Departments also used wage rates from the Office of Personnel Management's Salary Table for the 2013 General Schedule for Federal employees.[6] The Departments adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For the State and local sectors, the Departments used a loaded wage factor of 1.55, which represents the ratio of total compensation [7] to wages.[8] For Federal employees, we used a loaded wage factor of 1.69 based on internal data from DOL. The Departments then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Departments invite comments regarding the assumptions used to estimate the level of additional effort required for the various proposed new activities, as well as data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis.

The Departments use the hourly compensation rates presented in Exhibit 2 throughout this analysis to estimate additional labor costs for each proposed provision.

and the Virgin Islands. Twenty-four States have two designated State agencies for the VR program; therefore, there are a total of 80 VR agencies. The Departments note particularly that we have sought to avoid duplication of costs, given the fact that some States have two VR agencies.

[4] States may elect to change the distribution of funds at the local level and appropriately document such changes in the State plans. However, as small entities are fully funded by the States, which are not small entities, the Departments do not anticipate any significant impact on small entities.

[5] Bureau of Labor Statistics, May 2013, National Occupational Employment and Wage Estimates, retrieved from: *http://www.bls.gov/oes/current/oes_nat.htm*.

[6] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2013, Salary Table for the 2013 General Schedule, retrieved from: *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/gs_h.pdf*).

[7] BLS Employment Cost Index, 2013 Average Series ID CMU3010000000000D, CMU3010000000000P (source: Bureau of Labor Statistics, 2013 Employer Costs for Employee Compensation, retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm*).

[8] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Departments used the State and local-sector loaded wage factor (1.55) instead of the private-sector wage factor (1.42) for all non-Federal employees to avoid underestimating the costs.

EXHIBIT 2—CALCULATION OF HOURLY COMPENSATION RATES

| Position | Grade level | Average hourly wage<br>a | Loaded wage factor<br>B | Hourly compensation rate<br>c = a × b |
|---|---|---|---|---|
| **State and Local Employees** | | | | |
| Administrative staff [9] | N/A | $17.96 | 1.55 | $27.84 |
| Board staff [10] | ..... | 45.32 | 1.55 | 70.25 |
| Legal counsel/staff [11] | ..... | 40.68 | 1.55 | 63.05 |
| Local stakeholders [12] | ..... | 44.52 | 1.55 | 69.01 |
| Managers [11] | ..... | 45.32 | 1.55 | 70.25 |
| Technical staff [13] | ..... | 43.38 | 1.55 | 67.24 |
| **Federal Employees** | | | | |
| Federal positions | GS–13 | 38.92 | 1.69 | 65.77 |

The section-by-section analysis presents the total incremental cost of the proposed joint rule relative to the baseline, *i.e.,* the current practice under WIA. At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities may already be in compliance with aspects of the proposed joint rule. This analysis estimates the incremental cost that would be incurred by affected entities that are not yet in compliance with the proposed rule. The equation below shows the method by which the Departments calculated the incremental total cost for each provision over the 10-year analysis period.

$$\text{Total Cost} = \sum_{T=1}^{10}\left(A_l \sum_{i=1}^{n}(\mathrm{N_i} \text{ x } \mathrm{H_i} \text{ x } \mathrm{W}_i \text{ x } \mathrm{L}_i) + \sum_{j=1}^{m} \mathrm{A_j} \text{ x } \mathrm{C_j}\right)$$

Where,

$A_l$ = Number of affected entities that would incur labor costs,
$N_i$ = Number of staff of labor type *i,*
$H_i$ = Hours required per staff of labor type *i,*
$W_i$ = Mean hourly wage of staff of labor type *i,*
$L_i$ = Loaded wage factor of staff of labor type *i,*
$A_j$ = Number of affected entities incurring non-labor costs of type *j,*
$C_j$ = Non-labor cost of type *j,*
*i* = Staff type,
*n* = Number of staff types,
*j* = Non-labor cost type,
*m* = Number of non-labor cost types,
*T* = Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 3 for a summary of the 10-year cost of the proposed joint rule by provision). The total labor cost is the sum of the labor costs for each labor type *i* (*e.g.,* administrative staff, counsel staff, and managers) multiplied by the number of affected entities that will incur labor costs, $A_l$. The labor cost for each labor type *i* is calculated by multiplying the number of staff required to perform the proposed activity, $N_i$; the hours required per staff member to perform the proposed activity, $H_i$; the mean hourly wage of staff of labor type *i,* $W_i$; and the loaded wage factor of staff of labor type i, $L_i$. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (*e.g.,* consulting costs) multiplied by the number of affected entities that will incur non-labor costs, $A_j$.

4. Subject-by-Subject Benefit-Cost Analysis

The Departments' analysis below covers the expected impacts of the following proposed provisions of the WIOA joint NPRM against the baseline of the current practice under WIA: (a) Time to Review the New Rule; (b) New Elements to State and Local Plans; (c) Development and Updating of State Performance Accountability Measures; (d) Identification and Dissemination of Best Practices; (e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies; (f) Unified or Combined State Plan; (g) Local Plan Revisions; (h) State Performance Accountability Measures; (i) Performance Reports; and (j) Evaluation of State Programs.

The Departments emphasize that many of the proposed provisions in this WIOA-required joint NPRM are also existing requirements under WIA. For example, the requirement that States ''prepare performance reports'' is a current requirement under WIA that States routinely undertake. Accordingly, our regulatory analysis focuses on ''new'' benefits and costs that can be attributed exclusively to new requirements under WIOA, as addressed in this joint NPRM. Much of WIA's infrastructure and operations are carried

[9] BLS OES, May 2013, 44–0000 Office and Administrative Support Occupations (*http://www.bls.gov/oes/current/999201.htm#43-0000*).

[10] BLS OES, May 2013, 11–1021 General and Operations Managers (*http://www.bls.gov/oes/current/999201.htm#11-0000*).

[11] BLS OES, May 2013, 23–10111 Lawyers (*http://www.bls.gov/oes/current/999201.htm#23-0000*).

[12] BLS OES, May 2013, 11–0000 Management Occupations (*http://www.bls.gov/oes/current/999201.htm#11-0000*).

[13] BLS OES, May 2013, average for the following occupational categories weighted by the number of employees in State government: 15–1131 Computer Programmers (*http://www.bls.gov/oes/current/999201.htm#15-0000*); 15–1132 Software Developers, Applications (*http://www.bls.gov/oes/current/999201.htm#15-0000*); 15–1133 Software Developers, Systems Software (*http://www.bls.gov/oes/current/999201.htm#15-0000*); and 15–1134 Web Developers (*http://www.bls.gov/oes/current/999201.htm#15-0000*).

forward under WIOA and, therefore, are not considered ''new'' cost burdens under this NPRM.

a. Time To Review the New Rule

Upon publication of this joint NPRM, the regulated community would need to learn about the new WIOA requirements, including the proposed regulations, and plan for compliance.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (2) by the time required to read and review the new rule (20 hours), and then by the applicable hourly compensation rate. We multiplied this product ($8,189) by the number of States (56) to estimate this one-time cost of $458,582.[14]

At the State level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (5) by the time required to read and review the new rule (40 hours) and then by the applicable hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 legal counsel for 40 hours), technical staff (2 staff for 40 hours), and administrative staff (5 staff for 40 hours). We summed the labor cost for all four categories ($27,518) and multiplied the result by the number of States (57) to estimate this one-time cost of $1,568,531.

At the local level for the AEFLA program, the Departments multiplied the estimated average number of managers for all local entities within a State (40) by the time required to read and review the new rule (40 hours) and then by the hourly compensation rate. We repeated the calculation for the technical (40 staff for 40 hours) and administrative staff (40 staff for 40 hours). We did not estimate legal counsel hours for local level AEFLA programs as our experience indicates that this labor category is typically engaged only at the State level. We summed the labor cost for all three categories of personnel ($264,517) and multiplied the result by the number of States (57). This calculation yields a total of $15,077,458 in labor costs in the first year of the rule.

For State VR agencies, the Departments multiplied the estimated number of managers per VR agency (3) by the time required to read and review the new rule (20 hours) and then by the hourly compensation rate. We performed the same calculation for the counsel (1 staff for 40 hours) and technical staff (1 staff for 20 hours). We summed the labor cost for all three categories ($6,821) and multiplied the result by the number of VR agencies (80). The one-time cost is estimated to be $545,650.

The sum of these costs yields a total one-time cost of $17,650,220 for individuals from State-level DOL programs, State and local level AEFLA programs, and State VR agencies to read and review the proposed new rule. Over the 10-year period of analysis these one-time costs result in an average annual cost of $1,765,022.

b. New Elements to State and Local Plans

WIOA sec. 102(b) establishes new major content areas of the Unified or Combined State Plan, which include strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, and formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor or Education, or other Secretaries, as appropriate. WIOA sec. 108(b) establishes strategic planning and operational elements for local plans. These requirements set the foundation for WIOA principles by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to the economic needs of the local workforce development area, and matching employers with skilled workers.

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (5) by the time required to develop, review, and revise the State Plan (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 20 hours), technical staff (2 staff for 40 hours), and administrative staff (5 staff for 20 hours). We summed the labor cost for all four categories ($23,473) and multiplied the result by the number of States (57) to estimate this biennial cost of $1,337,972. Over the 10-year period, this calculation yields an average annual cost of $668,986.

The Departments estimated the consultant costs for the State-level AEFLA program by multiplying the consultant costs per State ($25,000) by the number of States (57). This calculation yields a biennial cost of $1,425,000. Over the 10-year period, this results in an average annual cost of $712,500.

At the local level for the AEFLA program, the Departments estimated this cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop, review, and revise the local plan (40 hours) and the hourly compensation rate. We repeated the calculation for the administrative staff (40 staff for 20 hours). We did not estimate any legal counsel or technical staff hours for local level AEFLA programs as our experience indicates that these labor categories are typically engaged only at the State level. We summed the labor cost for the two occupational categories ($134,664) and multiplied the result by the number of States (57). The biennial cost at the local level for the AEFLA program is estimated to be $7,675,848, which would result in an average annual cost of $3,837,924 over the 10-year period.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to review and revise the State Plan (5 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff for 5 hours). Summing the labor cost for both categories ($687) and multiplying the result by the number of VR agencies (80) results in a biennial cost of $54,994 for State VR agencies. Over the 10-year period, this calculation yields an average annual cost of $27,497.

For State Boards, DOL estimates that there will be costs associated with State planning attributed to the extra effort to coordinate and develop a plan between the six core programs administered by the Departments of Education and Labor, respectively, which is a new requirement under WIOA. The Departments estimate the costs for this new requirement to coordinate among the six core programs in the State plan under (f) Unified or Combined State Plan and (g) Local Plan Revisions. WIOA requires more substantial labor market information (LMI) data be included in the State Plan than was required under WIA. This is a cost that

[14] The cost estimates in this analysis could be a little bit off due to rounding.

DOL estimates will impact the State level DOL core programs because the State typically provides the LMI data to local areas for the formulation of the local plan. Furthermore, WIOA will allow States to use existing data for their initial State Plan, so the additional cost will be offset substantially for the first State Plan required. For the required modification of State Plans and any subsequent State Plan under WIOA, the State will incur this cost to include substantial LMI data.

For State-level DOL programs, the Departments estimated this cost by first multiplying the estimated number of technical staff per State (2) by the time required to review and revise the State Plan (16 hours) and the hourly compensation rate. We performed the same calculation for administrative staff (1 staff for 16 hours). Summing the labor cost for both categories ($2,597) and multiplying the result by the number of States (56) results in an annual cost of $145,435.

The sum of these costs yields a total 10-year cost of $53,923,423, or an average annual cost of $5,392,342, for individuals from the State and local level for all core programs to review and revise State and local plans to ensure they include the new elements.

c. Development and Updating of State Performance Accountability Measures

WIOA sec. 116 establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The core programs are defined in WIOA sec. 116(b)(3)(A)(ii) to include the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under WIOA title II, the Wagner-Peyser program under the Wagner-Peyser Act as amended by WIOA title III, and the VR program under the Rehabilitation Act of 1973 as amended by WIOA title IV. With a few exceptions, including the local accountability system under WIOA sec. 116(c), the performance accountability requirements apply across all the core programs.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to develop and update metrics and other accountability measures (32 hours) and the hourly compensation rate. We performed the same calculation for the technical (3 staff for 80 hours) and administrative staff (1 staff for 32 hours). We summed the labor cost for all three categories ($19,276) and multiplied the result by the number of States to estimate this annual cost of $1,079,459, or a total cost of $10,794,587 over the 10-year period.

The Departments estimated the software and IT system cost for State-level DOL programs by multiplying the software and IT system cost ($100,000) by the number of States. This calculation yields an annual cost of $5,600,000 or a total cost of $56,000,000 over the 10-year period.

The Departments estimated the licensing fee costs for State-level DOL programs by multiplying the licensing fee costs ($50,000) by the number of States. This calculation yields an annual cost of $2,800,000 or a total cost of $28,000,000 over the 10-year period.

The Departments estimated the consultant cost for State-level DOL programs by multiplying the consultant cost ($75,000) by the number of States. This calculation yields a one-time cost of $4,200,000, representing an average annual cost of $420,000 over the 10-year period.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop and update metrics and other accountability measures (80 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (2 staff for 80 hours) and administrative staff (5 staff for 80 hours). We summed the labor cost for all three categories ($49,992) and multiplied the result by the number of States to estimate this one-time cost of $2,849,535. Over the 10-year period, this calculation yields an average annual cost of $284,954.

The Departments estimated the consultant cost for the State-level AEFLA program by multiplying the consulting costs per State ($25,000) by the number of States. This calculation yields a one-time cost of $1,425,000. Over the 10-year period, this calculation yields an average annual cost of $142,500.

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to provide input for the development and updating of metrics and other accountability measures (80 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 80 hours). We summed the labor cost for the two occupational categories ($439,952) and multiplied the result by the number of States to estimate this one-time cost of $25,077,264. Over the 10-year period, this calculation yields an average annual cost of $2,507,726.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (6) by the time required to develop and update metrics and other accountability measures (10 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (4 staff for 10 hours). We summed the labor cost for both categories ($6,904) and multiplied the result by the number of VR agencies to estimate this one-time cost as $552,346.

The sum of these calculations yields a total first year costs of $43,583,603 and a subsequent annual cost of $9,479,459 for individuals from the State and local level for all core programs to develop and update metrics and other accountability measures to assess the effectiveness of the core programs in the State. The estimated total 10-year cost of developing and updating State performance accountability measures is $128,898,731, resulting in average annual cost of $12,889,873.

d. Identification and Dissemination of Best Practices

Under WIOA sec. 101(d)(5), State Boards must assist Governors in the identification and dissemination of best practices, including practices for the effective operation of one-stop centers; the development of effective Local Boards; and the development of effective training programs that respond to real-time labor market analysis and support efficient placement of individuals into employment or career pathways.

Costs

The Departments estimated the labor cost for State WDB staff by multiplying the estimated average number of managers per State (1) by the time required to identify and disseminate information (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours) and administrative staff (1 staff for 20 hours). We summed the labor cost for all three categories ($7,341) and multiplied the result by the number of States that need to develop and disseminate best practices (40) to estimate an average annual cost of $293,632.

This cost is likely a lower bound estimate because we did not include the

effort required for the entities that receive the best practices to implement them. The Departments did not have adequate data to estimate this implementation cost and invites the public to submit data sources or estimates for consideration during the final rule stage.

e. Development of Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs To Enhance Service Delivery and Improve Efficiencies

Under WIOA sec. 101(d)(8), State Boards must assist Governors in the development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs.

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop strategies (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 120 hours) and administrative staff (5 staff for 40 hours). We summed the labor cost for all three categories ($35,754) and multiplied the result by the number of States to estimate a recurring annual cost of $2,037,987.

The Departments estimated the software and IT systems cost for the State-level AEFLA program by multiplying the software and IT systems costs per State ($150,000) by the number of States. This calculation yields an estimated recurring annual cost of $8,550,000.[15]

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop strategies (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 120 hours). We summed the labor cost for the two occupational categories ($435,141) and multiplied the result by the number of States to estimate a recurring annual cost of $24,803,026.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to develop strategies (8 hours) and the hourly compensation rate. We repeated the calculation for the legal staff (1 staff for 4 hours) and technical staff (1 staff for 16 hours). We summed the labor cost for the two categories ($1,890) and multiplied the result by the number of VR agencies to estimate a recurring annual cost of $151,201.

The Departments estimated the labor cost that State WDBs would incur by multiplying the estimated average number of WDB staff per State (1) by the time required to develop strategies (80 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (2 staff for 120 hours). We summed the labor cost for both categories ($21,757) and multiplied the result by the number of States to estimate this one-time cost of $1,218,394.

The sum of these calculations yields a first year cost of $36,760,608 with subsequent annual costs of $35,542,213 for individuals from the State and local level for all core programs to develop strategies for aligning technology and data systems across one-stop partner programs. The estimated total 10-year cost of developing and updating State performance accountability measures is $356,640,528, resulting in average annual cost of $35,664,053.

f. Unified or Combined State Plan

WIOA sec. 102 requires the Governor of each State to submit a Unified or Combined State Plan to the Secretary of the Department of Labor that outlines a 4-year strategy for the State's workforce development system. States must have approved State Plans in place to receive funding for the six core programs under WIOA—the adult, dislocated worker, and youth programs (title I of WIOA); the AEFLA program (title II of WIOA); the Wagner-Peyser Employment Service (Wagner-Peyser Act as amended by title III of WIOA); and the VR program under title I of the Rehabilitation Act of 1973 (as amended by title IV of WIOA). At a minimum, States must submit a Unified State Plan, which encompasses these six core programs. Although each of the core programs was required to submit State Plans under WIA and, thus, the submission of the plans does not represent an added cost under WIOA, some programs may experience additional costs related to the planning requirements unique to becoming part of a Unified or Combined State Plan under WIOA.

As stated above, WIOA sec. 102 requires, at a minimum, States to submit a Unified State Plan, which encompasses the six core programs under WIOA. Under WIOA sec. 103, States may submit, in the alternative, a Combined State Plan, which includes the six core programs of the Unified State Plan, plus one or more of the optional Combined State Plan programs described in WIOA sec. 103(a)(2).

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise the State Plan (24 hours) and the hourly compensation rate. We repeated the calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (2 staff for 24 hours), and administrative staff (5 staff for 16 hours). We summed the labor cost for all four categories ($14,388) and multiplied the result by the number of States to estimate this one-time cost of $820,142.

The Departments estimated the consultant costs for the State-level AEFLA program by multiplying the consultant costs per State ($25,000) by the number of States. This calculation yields a one-time cost of $1,425,000.

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise a Unified or Combined State plan (24 hours) and the hourly compensation rate. We repeated the calculation for the following occupational categories: counsel staff (3 staff for 8 hours), technical staff (40 staff for 24 hours), administrative staff (40 staff for 16 hours), and local stakeholders (100 stakeholders for 8 hours). We summed the labor cost for the five occupational categories ($217,221) and multiplied the result by the number of States to estimate this one-time cost of $12,381,609.

For DOL's State-level program costs associated with State WDBs, the Departments estimated this labor cost by first multiplying the estimated average

[15] The Departments estimated the annual software and IT systems cost of this provision at the State level for the AEFLA program by multiplying the software and IT systems cost per State by the number of States ($150,000 × 57). This yields an average annual cost of $8,550,000.

number of managers per State (2) by the time required to submit a Unified and Combined State Plan (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (4 staff for 20 hours), and administrative staff (1 staff for 8 hours). We summed the labor cost for all four categories ($8,916) and multiplied the result by the number of States to estimate this cost of $499,301 that occurs in 2016 and 2020.

For State VR agencies, the Departments estimated this cost by multiplying the estimated number of managers per VR agency (2) by the time required to engage in the planning process for Unified or Combined State Plans (7 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 7 hours). We summed the labor cost for the two categories ($1,925) and multiplied the result by the number of VR agencies to estimate a recurring annual cost of $153,983.

There is no additional cost to DOL State or local programs associated with this provision because these programs currently submit Unified or Combined State Plans under WIA.

The sum of these calculations yields first year costs of $14,780,735 for individuals from the State and local level for all core programs to comply with this provision, subsequent annual costs of $153,983 for VR State agencies, and a total cost of $998,603 associated with State WDBs for years 2016 and 2020. The estimated total 10-year cost of activities related to the submission of the States Unified or Combined State Plan is $17,165,187, resulting in average annual cost of $1,716,519.

g. Local Plan Revisions

WIOA sec. 108(b) establishes strategic planning and operational elements for local plans. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to the economic needs of the local workforce development area, and matching employers with skilled workers. The previously developed local plans under WIA will have to be revised to address new issues and submitted every 4 years.

Costs

For DOL's local-level program costs associated with local WDBs, the Departments estimated this cost by first multiplying the estimated average number of managers per local WDB (2) by the time required to revise and submit an updated local plan (20) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (4 staff for 20 hours), and administrative staff (1 staff for 8 hours). We summed the labor cost for all four categories ($8,916) and multiplied the result by the number of local WDBs (580) to estimate this cost of $5,171,336, which occurs twice during the analysis period (2016 and 2020).

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop, review, revise, and submit an updated local plan (24 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: technical staff (40 staff for 24 hours), administrative staff (40 staff for 16 hours), and local stakeholders (100 stakeholders for 8 hours). We summed the labor cost for all four categories ($215,708) and multiplied the result by the number of States to estimate this one-time cost as $12,295,351.

These particular projected costs pertain solely to locally-administered programs and do not impact the core programs at the State level.

The sum of these calculations yields a total 10-year cost of $22,638,023, which results in an average annual cost of $2,263,802 for individuals from the local WDBs and the local AEFLA programs to revise and submit updated local plans.

h. State Performance Accountability Measures

WIOA sec. 116(b) establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. Under that provision, States must include primary indicators of performance in their Unified or Combined State Plans, and may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to comply with increased data collection and processing requirements (32 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (3 staff for 80 hours) and administrative staff (1 staff for 32 hours). We summed the labor cost for all three categories ($19,276) and multiplied the result by the number of States to estimate this annual cost of $96,380.

The Departments estimated the software and IT system cost for State-level DOL programs by multiplying the software and IT system cost ($100,000) by the number of States expected to submit data (5). This calculation yields an annual cost of $500,000.

The Departments estimated the licensing fee costs for State-level DOL programs by multiplying the licensing fee costs ($50,000) by the number of States expected to submit data (5). This calculation yields an annual cost of $250,000.

The Departments estimated the consultant cost for State-level DOL programs by multiplying the consultant cost ($75,000) by the number of States expected to submit data. This calculation yields a one-time cost of $375,000.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to obtain these data (7 hours) and the hourly compensation rate. We performed the same calculation for technical staff (2 staff for 7 hours) and administrative staff (5 staff for 7 hours). We summed the labor cost for all three categories ($4,374) and multiplied the result by the number of States expected to submit additional data to estimate this one-time cost as $21,871.

For State VR agencies, the Departments estimated the cost to obtain quarterly State unemployment insurance wage data by first multiplying the estimated number of managers per VR agency (2) by the time required to obtain these data (20 hours) and the hourly compensation rate. We performed the same calculation for the counsel staff (1 staff for 20 hours) and technical staff (2 staff for 20 hours). We summed the labor cost for all three categories ($6,760) and multiplied the result by the number of VR agencies expected to provide additional information (7) to estimate this one-time cost as $47,323.

For State VR agencies, the Departments estimated the cost to obtain additional information for new data fields by multiplying the estimated number of technical staff per VR agency (60) by the time required to obtain these data (9 hours) and the hourly compensation rate. We multiplied the

result ($36,309) by the number of VR agencies expected to provide additional information to estimate this annual cost as $254,163.

The Departments estimated the software and IT costs for State VR agencies to obtain additional information for new data fields by multiplying the software and IT costs ($5,000) by the number of VR agencies expected to provide additional information. This calculation yields a one-time cost of $35,000.

At the local level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to obtain additional information (7 hours) and the hourly compensation rate. We performed the same calculation for technical staff (40 staff for 7 hours). We summed the labor cost for these categories ($38,496) and multiplied the number of States expected to provide additional information (5) to estimate this one-time cost of $192,479.

The sum of these calculations yields a total 10-year cost of $11,677,110, which results in an average annual cost of $1,167,711 for individuals from the State and local levels for core programs to comply with increased data collection and processing requirements.

i. Performance Reports

Under WIOA sec. 116(d), States must make available performance reports for local areas and for ETPs under title I of the WIOA. WIOA also requires that States cooperate in evaluations of State programs overseen by the Departments of Labor and Education. Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template for the performance reports required in WIOA secs. 116(d)(2)–(4).

Costs

At the Federal level, the Departments estimated this labor cost by first multiplying the estimated average number of GS–13 Step 5 managers (1) by the time required to develop the reporting template (60 hours) and the hourly compensation rate. We performed the same calculation for the Federal staff labor category (10 staff for 120 hours). We summed the labor cost of these two categories to estimate this one-time cost of $82,870.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop the reporting template (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours) and administrative staff (5 staff for 40 hours). We summed the labor cost for all three categories ($24,996) and multiplied the result by the number of States to estimate this one-time cost of $1,399,772.

The Departments estimated the software and IT system cost for the State-level AEFLA programs by multiplying the software and IT system cost ($1,750,000) by the number of States. This calculation yields a one-time cost of $99,750,000, resulting in an average annual cost of $9,975,000 over a 10-year period.

The Departments estimated the licensing fees for the State-level AEFLA programs by multiplying the per-State licensing fees ($25,000) by the number of States. This calculation yields a recurring annual cost of $1,425,000.

At the local level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise the reporting template (40 hours) and the hourly compensation rate. We multiplied the product by the number of States to estimate this one-time cost of $6,406,435.

The sum of these calculations yields a total one-time cost of $107,639,077 for individuals from the Federal, State, and local levels to develop the reporting templates and an annual cost of $1,425,000 for licensing fees. The 10-year total costs result in an average annualized cost of $12,188,908.

j. Evaluation of State Programs

WIOA sec. 116(e)(1) requires States to conduct ongoing evaluations of activities carried out in the State under the core programs. To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); secs. 12(a)(5), 14, and sec. 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)).

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to evaluate ongoing program activities (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 20 hours) and administrative staff (1 staff for 10 hours). We summed the labor cost for all three categories ($4,373) and multiplied the result by the number of States to estimate this annual cost of $244,880.

At the State level for DOL programs, the Departments estimated the software, IT system, and consultant costs for both ''low-effort'' States, those with either smaller populations or more robust existing IT system infrastructure, and for ''high-effort'' States with larger populations or limited IT system infrastructure. We first multiplied the software, IT system, and consultant costs for low-effort States ($200,000) by the number of low-effort States (20). We performed the same calculation for high-effort States (15 States at $1,000,000 each). We summed these costs for both State categories to estimate an annual cost of $19,000,000.[16] This estimate represents the cost associated with the proposed joint rule beyond the IT expenditures currently incurred by State workforce agencies.

At the State level for the AEFLA program, the Departments estimated the labor cost by first multiplying the estimated average number of managers per State (5) by the time required to evaluate ongoing program activities (120 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 80 hours) and administrative staff (5 staff for 80 hours). We summed the labor cost for all three categories ($64,041) and multiplied the result by the number of States to estimate an annual cost of $3,650,339.

At the State level for the AEFLA program, the Departments estimated the software and IT system costs by

[16] To estimate the software, IT, and consultant cost of this provision at the State-level for DOL programs, the Departments first estimated the software, IT, and consultant cost for low-effort States by multiplying the non-labor cost per low-effort State by the number of low-effort States ($200,000 × 20 = $4,000,000). We estimated the software, IT, and consultant program cost for high-effort States by multiplying the non-labor cost per high-effort State by the number of high-effort States ($1,000,000 × 15 = $15,000,000). We summed these non-labor costs for low- and high-effort States ($4,000,000 + $15,000,000), yielding an estimated annual software, IT, and consultant cost of $19,000,000.

multiplying the software and IT system costs ($250,000) by the number of States. This calculation yields an annual cost of $14,250,000.[17]

At the local level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time estimated to collect, review, and revise data provided for the evaluation of ongoing program activities (120 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 80 hours) and administrative staff (40 staff for 80 hours). We summed the labor cost for all three categories ($641,427) and multiplied the result by the number of States to estimate an annual cost of $36,561,350.

For State VR agencies, the Departments estimated this labor cost by first multiplying the estimated average number of managers per VR agency (1) by the time estimated to evaluate ongoing program activities (1 hour) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff for 13 hours) and administrative staff (1 staff for 2 hours). We summed the labor cost for all three categories ($1,000) and multiplied the result by the number of VR agencies to estimate an annual cost of $80,002.

The sum of these calculations yields a total annual cost of $73,786,572, resulting in a total cost over the 10-year period of $737,865,722, for individuals from the State and local levels for all core programs to evaluate ongoing program activities.

5. Summary of Analysis

Exhibit 3 summarizes the annual and total costs of the proposed joint rule. The exhibit provides the total 10-year costs and the average annualized costs for each provision of the proposed joint rule. The exhibit also presents a high-level description of the benefits resulting from full WIOA implementation for each rule provision. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The Departments estimate the average annual cost of the proposed joint rule over the 10-year period of analysis at $147.1 million. The largest contributor to this cost is the provision related to the evaluation of State programs, which is estimated at $73.8 million per year. The next largest cost results from the development of strategies for aligning technology and data systems across one-stop partner programs at an estimated $35.7 million per year, followed by the average cost of developing and updating State performance accountability measures at an estimated $12.9 million per year.

EXHIBIT 3—COST OF THE PROPOSED DEPARTMENTS OF EDUCATION AND LABOR JOINT RULE BY PROVISION

| | Total 10-year cost (undiscounted) | Average annual cost (undiscounted) | Percent of total cost | Qualitative benefit highlights |
|---|---|---|---|---|
| (a) Time to Review the New Rule | $17,650,220 | $1,765,022 | 1.20 | General requirement. |
| (b) New Elements to State and Local Plans | 53,923,423 | 5,392,342 | 3.67 | Enhanced data for management decision-making and policy integration. |
| (c) Development and Updating of State Performance Accountability Measures. | 128,898,731 | 12,889,873 | 8.76 | Clear articulation of expectations and outcomes for evaluation and accountability purposes. |
| (d) Identification and Dissemination of Best Practices. | 2,936,320 | 293,632 | 0.20 | Mission clarification and system building. |
| (e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies. | 356,640,528 | 35,664,053 | 24.24 | More efficient use of public resources; enhanced customer service; improved program management based on actual client data. |
| (f) Unified or Combined State Plan | 17,165,187 | 1,716,519 | 1.17 | Avoided program service duplication; enhanced internal State planning; avoided "silos" and service duplications; more efficient use of public resources. |
| (g) Local Plan Revisions | 22,638,023 | 2,263,802 | 1.54 | Continued accountability and linkage to outcomes and customer service. |
| (h) State Performance Accountability Measures. | 11,677,110 | 1,167,711 | 0.79 | Improved policy and management decision-making from measure data. |
| (i) Performance Reports | 121,889,077 | 12,188,908 | 8.28 | Better management and policy decisions using outcome data; improved service and placements; more accountability. |
| (j) Evaluation of State Programs | 737,865,722 | 73,786,572 | 50.15 | Improved service delivery and customer service; enhanced policy-making and system building; more accountability. |
| Total | 1,471,284,341 | 147,128,434 | 100.00 | |

**Note:** Totals might not sum due to rounding.

Exhibit 4 summarizes the first-year cost for each provision of the proposed joint rule. The Departments estimate the total first-year cost of the proposed joint rule at $320.6 million. The largest contributor to the first-year cost is the provision related to performance report development at $109.1 million. The next largest first-year cost results from evaluating State programs, amounting to $73.8 million, followed by the cost of developing and updating State performance accountability measures at $43.6 million.

[17] To estimate the software and IT system cost of this provision at the State-level for the AEFLA program, the Departments multiplied the software and IT system cost per State by the number of States ($250,000 × 57). This yields an annual software and IT system cost of $14,250,000.

EXHIBIT 4—FIRST-YEAR COST OF THE PROPOSED JOINT RULE BY PROVISION

| | Total first-year cost | Percent of total first-year cost |
|---|---|---|
| (a) Time to Review the New Rule | $17,650,220 | 5.50 |
| (b) New Elements to State and Local Plans | 10,639,250 | 3.32 |
| (c) Development and Updating of State Performance Accountability Measures | 43,583,603 | 13.59 |
| (d) Identification and Dissemination of Best Practices | 293,632 | 0.09 |
| (e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies | 36,760,608 | 11.47 |
| (f) Unified or Combined State Plan | 14,780,735 | 4.61 |
| (g) Local Plan Revisions | 12,295,351 | 3.83 |
| (h) State Performance Accountability Measures | 1,772,217 | 0.55 |
| (i) Performance Reports | 109,064,077 | 34.02 |
| (j) Evaluation of State Programs | 73,786,572 | 23.01 |
| Total | 320,626,265 | 100.00 |

**Note:** Totals might not sum due to rounding.

Exhibit 5 summarizes the annual and total costs of the proposed joint Departments of Labor and Education rule. The total (undiscounted) cost of the rule sums to $1.5 billion over the 10-year analysis period, which amounts to an average annual cost of $147.1 million per year. In total, the 10-year discounted costs of the proposed rule range from $1.2 billion to $1.3 billion (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the proposed joint rule, the average annual budget for WIA implementation over the past three years for the Departments of Labor and Education combined was $6.4 billion. Thus, the annual additional cost of implementing this proposed rule is between *2.6 percent* and *2.7 percent* of the current WIA budget (with *3 percent and 7 percent discounting, respectively*).

EXHIBIT 5—MONETIZED COSTS OF DEPARTMENTS OF LABOR AND EDUCATION PROPOSED JOINT RULE (2013 DOLLARS)

| Year | Total costs |
|---|---|
| 2015 | $320,626,265 |
| 2016 | 127,597,475 |
| 2017 | 132,420,653 |
| 2018 | 121,926,838 |
| 2019 | 132,420,653 |
| 2020 | 127,597,475 |
| 2021 | 132,420,653 |
| 2022 | 121,926,838 |
| 2023 | 132,420,653 |
| 2024 | 121,926,838 |
| Undiscounted 10-year Total | 1,471,284,341 |
| 10-year Total with 3% Discounting | 1,316,646,285 |
| 10-year Total with 7% Discounting | 1,154,622,032 |
| 10-year Average | 147,128,434 |
| Annualized with 3% Discounting | 154,351,111 |
| Annualized with 7% Discounting | 164,392,201 |

**Note:** Totals might not sum due to rounding.

Benefits

The Departments were unable to quantify the benefits associated with the proposed joint rule because of data limitations and a lack of operational (WIOA) data or evaluation findings on the provisions of the proposed joint rule. Thus, the Departments cannot provide monetary estimates of several important benefits to society, including the increased employment opportunities for unemployed or under-employed U.S. workers, enhanced ETP process, and evaluation of State programs. In support of a State's strategic plan and goals, State-conducted evaluation and research of programs would enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness and, thus, potentially lead to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective could also lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt and use to improve participant results, lower unit costs, or increase the number served.

The Departments invite comments regarding possible data sources or methodologies for estimating these benefits. In addition, the Departments invite comments regarding other benefits that might arise from the proposed joint rule and how these benefits could be estimated.

The Departments provide a qualitative description of the anticipated WIOA benefits below. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. Although these studies are largely based on programs and their existing requirements under WIA, they capture the essence of the societal benefits that can be expected from this proposed joint rule.

*Training's impact on placement.* A recent study found that flexible and innovative training that is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[18] However, the study noted that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[19] The WIA youth program remains largely untested.[20] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[21] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[22]

[18] Department of Labor et. al. ''What Works In Job Training: A Synthesis of the Evidence.'' July 2014.

[19] *Ibid.*

[20] Decker, Paul T. and Jillian A. Berk. 2011. ''Ten Years of the Workforce Investment Act (WIA): Interpreting the Research on WIA and Related Programs.'' Journal of Policy Analysis and Management 30 (4): 906–926.

[21] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2367&mp=y&start=81&sort=7.*

[22] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act

Participants in occupational training had a ''5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage points.'' [23] However, the study found that training did not correspond to higher employment retention or earnings.[24] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[25] DOL-sponsored research found that participants who received core services (often funded by Employment Services) and other services in American Job Centers were more likely to enter and retain employment.[26]

*Training's impact on wages.* Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[27] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[28] WIA adult program participants who received core services (*e.g.,* skill assessment, labor market information) or intensive services (*e.g.,* specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants. Participants who received training services in addition to core and intensive services initially earned less but caught up within 10 quarters with the earnings of participants who only received core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the labor exchange only.[29] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[30] However, WIA participants who did not receive training earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[31]

Another DOL program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[32]

Another publication also noted that on average, adults experienced a $743 quarterly post-exit earnings boost.[33]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[34] Participation in WIA training also had a distinct positive, but smaller, impact on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than comparison group members.

National and international studies provided strong evidence for the need for and economic value of adult basic skills. One study shows that not only do individuals who participate in adult basic skills training programs have higher future earnings, but income premiums are higher with more intensive participation. At 100 hours or more, the average treatment effect corresponded to $9,621 in 2013 dollars.[35]

*Vocational and adult literacy's education impact.* Vocational managers indicate that closely aligning service offerings with labor market reports improves the likelihood that participants will learn applicable skills. The lengthy and involved process of implementing changes to existing programs and developing new programs, however, might delay the benefits derived from improved labor market data.[36]

Studies examining the impact of participation on literacy proficiency determined that individuals who participated in adult basic skills programs tended to have higher levels of future literacy proficiency.[37] Additional studies examined the impact of participation in adult basic skills training on General Education Development credential attainment and concluded that rates were elevated by 0.20 and 0.32 by adult basic skills program participation.[38] Another study found a robust impact of adult basic skills program participation on engagement in post-secondary education. The findings show that the programs increase adult basic skills students' success in the early stages of post-secondary engagement and serve as

Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009.

[23] Park, Jooyoun. ''Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching.'' Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.

[24] *Ibid.*

[25] Jackson, Russell H., Jamie Diamandopoulos, Carol Pistorino, Paul Zador, John Lopdell, Juanita Lucas-McLean, and Lee Bruno. ''Youth Opportunity Grant Initiative (YO).'' Houston, TX: Decision Information Resources, Inc., 2008. Available at *http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20Synthesis%20Report.pdf.*

[26] Office of Policy Development and Research, U.S. Department of Labor. ''Five-Year Research and Evaluation Strategic Plan Program Years 2012–2017.'' May 2013. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2516&mp=y.*

[27] Barnow, Burt, and Daniel Gubits. ''Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act.'' Baltimore, MD: Johns Hopkins University, 2003. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2365&mp=y&start=81&sort=7.*

[28] *Ibid.*

[29] Earnings Progression among Workforce Development Participants: Evidence from Washington State.'' Eugene, OR: University of Oregon, 2011. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2468&mp=y&start=1&sort=7.*

[30] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009.

[31] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009. Available at *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[32] Gritz, Mark, and Terry Johnson. ''National Job Corps Study: Assessing Program Effects on Earnings for Students Achieving Key Program Milestones.'' Seattle, WA: Battelle Memorial Institute, 2001. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2257&mp=y&start=141&sort=7.*

[33] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[34] Needels, Karen, Jeanne Bellotti, Mina Dadgar, and Walter Nicholson. ''Evaluation of the Military Base National Emergency Grants: Final Report.'' Princeton, NJ: Mathematica Policy Research, 2006.

[35] Reder, Stephen. Portland State University. 2013. Briefs available at *http://LINCS.ed.gov.*

[36] Johnson, Terry, Mark Gritz, Russell Jackson, John Burghardt, Carol Boussy, Jan Leonard, and Carlyn Orians. ''National Job Corps Study: Report on the Process Analysis.'' Princeton, NJ: Mathematica Policy Research, 1999. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2213&mp=y&start=201&sort=7.*

[37] Reder, Stephen. Portland State University. 2013. Briefs available at *http://LINCS.ed.gov.*

[38] *Ibid.*

effective tools for nontraditional student populations.[39]

The following are channels through which these benefits might be achieved:

*Better information for workers.* The accountability measures would provide workers with higher-quality information about potential training program providers and enable them to make better-informed choices about which programs to pursue. The information analyzed and published by the WDBs about local labor markets also would help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest economic return.[40] Given these information gaps and financial pressures, it is important that displaced workers learn of the economic returns to various training plans.[41] Still, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is ''modestly positive'' due to the limited sample of States on which the research was based.[42]

*State performance accountability measures.* This requirement would include significant data collection for Local Boards to address performance measures for the core programs in their jurisdictions. This data collection would permit the State WDBs to assess performance across each State. Training providers would be required to provide data to Local Boards, which would represent a cost in the form of increased data collection and processing. Employers and employees also would have to provide information to the training providers, which would take time. This provision, in combination with the Board membership provision requiring employer/business representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[43]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[44] The study found that value added net of social cost is one objective that is too difficult to measure on a regular basis. With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[45] In addition, the study noted evidence that the performance-standards can be ''gamed'' in an attempt to maximize their centers' measured performance.[46]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[47]

The following subsections present additional channels by which economic benefits may be associated with various aspects of the proposed joint rule.

*Dislocated workers.* A study found that for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings by $951.[48] However, another study found that training in the WIA dislocated worker program had a net benefit close to zero or even negative.[49]

*Self-employed individuals.* Job seekers who received self-employment services started businesses sooner and had longer lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants.[50]

*Workers with disabilities.* A study of individuals with disabilities enrolled in training for a broad array of occupations (including wastewater treatment, auto body repair, meat cutter/wrapper, clerical support staff, surgical tools technician, and veterinary assistant) found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this NPRM, the Departments have determined that the societal benefits justify the anticipated costs.

Transfers

The Reemployment and Eligibility Assessment program was effective in assisting claimants to exit the unemployment insurance program and avoid exhausting regular unemployment insurance benefits in Florida, Idaho, and Nevada. By avoiding unemployment insurance benefit exhaustion, the program led to reductions in the likelihood of receiving Extended Unemployment Compensation benefits. There exists notable evidence that the Reemployment and Eligibility Assessment program is cost-effective.[51]

[39] *Ibid.*

[40] Greenstone, Michael, and Adam Looney. ''Building America's Job Skills with Effective Workforce Programs: A Training Strategy to Raise Wages and Increase Work Opportunities.'' Washington, DC: Brookings Institution, 2011.

[41] Jacobson, Louis, Robert LaLonde, and Daniel Sullivan. ''Policies to reduce high-tenured displaced workers' earnings losses through retraining.'' Discussion Paper 2011–11, The Hamilton Project, Brookings Institution, Washington, DC, 2011.

[42] Heinrich, Carolyn J., Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, Daver C. Kahvecioglu. 2009 (November). ''New Estimates of Public Employment and Training Program Net Impacts: A Nonexperimental Evaluation of the Workforce Investment Act Program.'' Discussion Paper 4569, Institute for the Study of Labor (IZA), Bonn, Germany.

[43] Courty, Pascal, and Gerald Marschke. ''Making Government Accountable: Lessons from a Federal Job Training Program.'' *Public Administration Review* 67.5 (2007): 904–916.

[44] Heckman, James J., Carolyn Heinrich, and Jeffrey A. Smith. 1997. ''Assessing the Performance of Performance Standards in Public Bureaucracies.'' *American Economic Review* 87(2): 389–95.

[45] *Ibid.*

[46] *Ibid.*

[47] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. ''Evaluation of the WIA Performance Measurement System: Survey Report.'' Oakland, CA: SPR Associates, 2005. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.*

[48] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[49] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2419&mp=y&start=41&sort=7.*

[50] Kosanovich, William, Heather Fleck, Berwood Yost, Wendy Armon, and Sandra Siliezar. ''Comprehensive Assessment of Self-Employment Assistance Programs.'' Arlington, VA: DTI Associates, 2002. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2293&mp=y&start=121&sort=7.*

[51] Poe-Yamagata, Eileen, Jacob Benus, Nicholas Bill, Hugh Carrington, Marios Michaelides, and Ted

The program reduced unemployment insurance payments and increased tax revenue resulting from increased worker earnings.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Departments have adopted the SBA definition for purposes of this certification.

The Departments have notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and proposes to certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in very large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this NPRM.

Affected Small Entities

The proposed rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) An institution of higher education; (2) an employment service State agency established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local Board, with the approval of the chief local elected official and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

The proposed joint rule can also be expected to impact a variety of AEFLA local providers: (1) Local education agencies; (2) community-based organizations; (3) faith-based organizations; (4) libraries; community, junior, and technical colleges; (5) 4-year colleges and universities; (6) correctional institutions; and (7) other institutions, such as medical and special institutions not designed for criminal offenders.[52]

Impact on Small Entities

The Departments indicate that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. The Departments have highlighted costs that are new to WIOA implementation and this NPRM. Therefore, the Departments expect that the WIOA joint NPRM will have no cost impact on small entities.

*C. Small Business Regulatory Enforcement Fairness Act of 1996*

The Departments have determined that this proposed joint rulemaking does not impose a significant economic impact on a substantial number of small entities under the RFA; therefore, the Departments are not required to produce any Compliance Guides for Small Entities, as mandated by the SBREFA.

*D. Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of continuing efforts to reduce paperwork and respondent burden, the Departments conduct preclearance consultation activities to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that: (1) The public understands the collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) respondents clearly understand the collection instruments; and (5) the Departments can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must also be submitted to the OMB for approval.

The Departments note that a Federal agency may not conduct or sponsor a collection of information unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB Control Number (44 U.S.C. 3512).

The information collections in this joint NPRM are summarized in the section-by-section discussion of this NPRM, Section IV. The table below captures the current and proposed burden hours associated with the information collections.

Shen. ''Impact of the Reemployment and Eligibility Assessment (REA) Initiative.'' IMPAQ International, 2011. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2487&mp=y&start=21&sort=7.*

[52] In terms of VR grantees, they are State government entities and, by definition, are not small entities.

CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

| OMB Approval No. | Annual burden hours currently approved | Annual burden hours proposed for new requirements under WIOA | Change |
|---|---|---|---|
| 1205–0420—WIOA Common Performance Management and Information and Reporting for Core Programs | 0 | 2,351,905 | * 2,351,905 |
| 1205–4NEW—Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act | 0 | 3,279 | ** 3,279 |
| Total | 0 | 2,355,184 | 2,355,184 |

* OMB 1205–0420 will be the information collection for the common performance accountability data collected under sec. 116 of WIOA. Hours associated with this information collection represent the burden associated with reporting the new common performance data elements by the core programs. Burden hours associated with program-specific reporting for each of the core programs, which are currently approved and will continue in addition to the common performance reporting, will be reported and summarized in other NPRMs published elsewhere in this **Federal Register**. The currently-approved program-specific data reporting that will continue, as applicable, for the core programs include:

- Control Number 1205–0420, Workforce Investment Act Management Information and Reporting System, with an annual burden of 508,589;
- Control Number 1205–0240, Labor Exchange Reporting System, with an annual burden of 568,192;
- Control Number 1830–0027, Measures and Methods for the National Reporting System for Adult Education, with an annual burden of 5,700; and
- Control Number 1820–0508, RSA–911 Case Service Report, with an annual burden of 6,500.

The Departments anticipate that the above collections may be phased out or modified, as appropriate, as the WIOA performance measures are fully implemented.

The above-described currently-approved reporting burdens are presented here in order to provide respondents full transparency of the complete reporting burden that is imposed by WIOA, both in terms of the new common performance data elements as well as program-specific reporting requirements. However, to be clear, the net new burden as listed in the table above only reflects the additional burden imposed by the new common performance reporting requirements, set forth at sec. 116 of WIOA, that are applicable to all core programs.

** OMB 1205–4NEW is the information collection for the submission of the Unified or Combined State Plan under secs. 102 and 103 of WIOA, which will replace the following currently-approved State Plan collections for the core programs:

- Control Number 1205–0398, Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act and Wagner-Peyser Act, with an annual burden of 2,280;
- Control Number 1830–0026, Adult Education and Family Literacy Act State Plan, with an annual burden of 2,565; and
- Control Number 1820–0500, 1820–0500, State Plan for the Vocational Rehabilitation Services Program and Supplement for the Supported Employment Services Program (now referred under WIOA as the VR services portion of the Unified or Combined State Plan), with an annual burden of 2,000.

In an effort to give full meaning to the requirement that States submit a Unified or Combined State Plan, the Departments propose to consolidate all currently-approved program-specific State Plan submissions for each of the core programs into one information collection instrument. To that end, the total burden hours associated with this proposed new consolidated information collection is the sum of the additional burden required to satisfy the integrated strategic and operational planning requirements (see table above) plus the currently-approved requirements (see bullets above). However, to be clear, the net additional burden to respondents is only that associated with the new planning requirements.

*Agency:* DOL–ETA.

*Title of Collection:* WIOA Common Performance Management and Information and Reporting for Core Programs

*OMB Control Number:* 1205–0420.

*Description:* This new information collection will collect common performance data required under sec. 116 of WIOA from all core programs, including WIOA adult and dislocated workers, youth, Wagner-Peyser, Adult Education and Literacy, Eligible Training Providers, and Vocational Rehabilitation Services programs. The Departments of Education and Labor will use a common approach to standardize the quarterly, as appropriate, and annual reporting of common data elements for all core programs and Eligible Training Providers. These data are in addition to other performance data reported by each of the core programs under current and proposed regulations discussed in program-specific NPRMs available elsewhere in this **Federal Register**.

*Affected Public:* State, local and tribal governments, private sector.

*Obligation to Respond:* Required to obtain or retain benefits (WIOA sec. 116).

*Total Estimated Number of Respondents Annually:* 53 for DOL programs, 80 for RSA, 57 for OCTAE (no additional respondents resulting from this proposed rulemaking).

*Total Estimated Number of Annual Responses:* 722—each DOL and RSA respondent reports 5 times per year (quarterly plus annually); and each OCTAE respondent reports only annually (no additional responses resulting from this proposed rulemaking).

*Total Estimated Annual Time Burden:* 2,351,905 hours. This includes hours estimated for both collecting the information and reporting.

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this proposed rulemaking).

*Proposed Regulations Containing Information Collections Approved Under this Control Number:* 20 CFR part 680 (Adult, Dislocated Workers, and Eligible Training Providers); 20 CFR part 681 (Youth); 20 CFR part 652 (Wagner-Peyser); 34 CFR parts 462 and 463 (Office of Career, Technical, and Adult Education); and 34 CFR part 361 (Rehabilitation Services Administration).

*Title of Collection:* Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act: Wagner-Peyser and WIOA Title I programs (Department of Labor) and Vocational Rehabilitation and Adult Education programs (Department of Education).

*OMB Control Number:* 1205–4NEW.

*Description:* The proposed rule would require each State (which includes applicable outlying areas) to submit a Unified or Combined State Plan that fosters strategic alignment of the core programs, which include the title I adult, dislocated worker, and youth

programs; title II adult education and literacy programs; the Wagner-Peyser program as amended by title III of WIOA; and the title IV Vocational Rehabilitation program. The Unified or Combined State Plan requirements improve service integration and ensure that the workforce system is industry-relevant and responds to the economic needs of the State and matches employers with skilled workers. The Unified or Combined State Plan would describe how the State will develop and implement a unified, integrated service delivery system rather than separately discuss the State's approach to operating each core program individually. This consolidated information collection implements secs. 102 and 103 of WIOA. The Unified or Combined State Plan would replace the planning requirements collected under the currently-approved program-specific State Plan information collections.

While each State, at a minimum, must submit a Unified State Plan covering all core programs, sec. 103 of WIOA permits a State to submit a Combined State Plan that would include the core programs plus one or more additional Federal programs listed in sec. 103(b). If the State chooses to include these programs, the Combined Plan will include all of the common planning elements included in the Unified State Plan, and an additional element describing how the State will coordinate the additional programs with the core programs (WIOA sec. 103(b)(3)).

As with the Unified State Plan collection for the core programs described above, the total burden associated with the Combined State Plan would represent the total burden for the new (additional) WIOA planning requirements (as described in the table above), plus an additional 0.25 hours per Combined State Plan to account for the one additional new question that will be included in Combined State Plans. The burden required for fulfilling the program-specific State Plan requirements (for the non-core additional programs that may be included in the Combined State Plan) will continue to be separately accounted for under the non-core programs' existing, approved Information Collections. Those existing Information Collections are described in the table below for reference:

| Additional program control No. | Approved burden hours |
|---|---|
| Control Number 1830–0029, Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide | 2,240 |
| Control Number 0970–0145, Temporary Assistance for Needy Families (TANF) State Plan Guidance | 594 |
| Control Number 0584–0083, Supplemental Nutrition Assistance Program Operating Guidelines, Forms, and Waivers, Program and Budget Summary Statement | 1431 |
| Control Number 1225–0086, Grant Application Requirements for the Jobs for Veteran State Grants Program | 1620 |
| Control Number 1205–0132, Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines | 1530 |
| Control Number 1205–0040, Senior Community Service Employment Program Performance Measurement System | 406 |
| Control Number 0970–0382, Community Services Block Grant (CSBG) Program Model Plan Applications | 112 |

The table does not include the additional programs that may be part of a Combined State Plan but do not have currently-approved planning requirements of their own, such as the Housing and Urban Development Employment and Training Programs and the Trade Adjustment Assistance Program. Because these programs do not have currently-approved planning collections, the additional burden hours would be the total additional burden associated with the new unified planning requirements set forth in the table above that would be true for any program included in the Unified or Combined State Plan.

*Affected Public:* State, local and tribal governments.

*Obligation to Respond:* Required to obtain or maintain benefits (WIOA, secs. 102 and 103).

*Total Estimated Number of Respondents Annually:* 38. (This is the annualized number of respondents.) Fifty-seven jurisdictions submit a plan the first year and all 57 are required to submit an update in the third year of the planning cycle. No submissions are required the second year. This is the same as the current planning documents. (No additional respondents resulting from this proposed rulemaking.)

*Total Estimated Number of Annual Responses:* 38 (Annualized as described above; no additional responses resulting from this proposed rulemaking).

*Total Estimated Annual Time Burden:* 3,279. This number includes the hours for all the jurisdictions to submit a Unified State Plan, plus an additional 0.25 hours for each respondent submitting a Combined State Plan. We estimate that 10 respondents will submit a Combined State Plan. It also includes the estimate that all respondents will submit an update in the third planning year, which is estimated to require a third of the hours compared to submitting the initial plan. Then the number has been annualized over 3 years.

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this proposed rulemaking).

*Proposed Regulations Containing Information Collections Approved Under this Control Number:* DOL programs—20 CFR 652.211, 653.107(d), 653.109(d), 676.105, 676.110, 676.115, 676.120, 676.135, 676,140, 676.145, 677.230, 678.310, 678.405, 678.750(a), 681.400(a)(1), 681.410(b)(2), 682.100, 683.115. Department of Education programs—34 CFR parts 361, 462 and 463.

Interested parties may obtain a copy free of charge of one or more of the information collection requests submitted to the OMB on the reginfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain*. From the *Information Collection Review* tab, select *Information Collection Review.* Then select the applicable Department (*e.g.,* Department of Education or Department of Labor) from the *Currently Under Review* dropdown menu, and lookup the Control Number. A free copy of the requests may also be obtained by contacting the person named in the **ADDRESSES** section of this preamble.

As noted in the **ADDRESSES** section of this joint NPRM, interested parties may send comments about the information collections to the applicable Department throughout the 60-day comment period and/or to the OMB within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention the applicable OMB Control Number(s). The Departments and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Departments, including whether the information will have practical utility;

- Evaluate the accuracy of the Departments' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Departments note that in order to meet WIOA requirements, the information collections mentioned in this NPRM need to be in place prior to the final rule taking effect. The Departments will follow PRA requirements in clearing the collections (emergency procedures, as appropriate), including providing appropriate public engagement and taking into account the comments received as part of this rulemaking.

*E. Executive Order 13132 (Federalism)*

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Departments have reviewed the WIOA joint NPRM in light of these requirements and have determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been fully reviewed and its requirement satisfied.

Accordingly, the Departments have reviewed this WIOA-required joint NPRM and have determined that the proposed rulemaking has no Federalism implications. The proposed joint rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Departments have determined that this proposed rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

*F. Unfunded Mandates Reform Act of 1995*

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary.

WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds and are accordingly not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal government under WIOA and will be reimbursed (grant funding) for the resources required to perform those activities. The same process and grant relationship exists between States and Local WDBs under the WIA program and must continue under the WIOA program as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and also contains clear State information collection requirements for training entities (*e.g.,* submission of appropriate, accurate, and timely information). A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and, therefore, information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

The Departments following consideration of these factors have determined that this proposed joint rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.''

*G. Plain Language*

The Departments drafted this joint NPRM in plain language.

*H. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Departments have assessed this proposed joint rule in light of this requirement and determined that the joint NPRM would not have a negative effect on families.

*I. Executive Order 13175 (Indian Tribal Governments)*

The Departments reviewed this proposed joint rule under the terms of E.O. 13175 and have determined it would have no tribal implications in addition to those created through the reimbursement of WIA and future WIOA program expenses via Federally disbursed formula grant funds. However, the proposed joint rule would have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. As a result, a tribal summary impact statement has been prepared.

Prior to developing the proposed joint rule, the Department of Labor held three events to talk with the tribal institutions about their concerns about the current state of Indian and Native American Programs (INAP) as well as what concerns they see in the future. These three events consisted of a consultation webinar and two in-person town hall meetings. The consultation webinar, entitled ''Listening session on Indian and Native American Programs,'' occurred on September 15, 2014. Two other consultations were held, including an October 21, 2014, town hall meeting with Indian and Native American (INA) leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives, and a formal consultation December 17, 2014, with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.

The Department of Labor received feedback from the INA community and the public that established several areas

of interest concerning the Department of Labor's relationship with INA Tribes and tribal governments. These areas of interest are summarized below.

Services Received in American Job Centers

Specifically, the INA community expressed interest in learning how American Job Centers will account for the use of their INA funding dollars and how to ensure that the funds intended for the INA population will be dedicated to that population. In addition, several individuals expressed concerns that INA individuals that enter an American Job Center may not get the general assistance that is intended for all people that seek assistance. In other words, several commenters wanted to ensure that INA individuals should receive assistance intended for other populations for which they may qualify when seeking service. Finally, several commenters were interested in learning more about how INA programs may be required to contribute to American Job Center infrastructure funding and how American Job Centers will account for INA members served to ensure that the American Job Center network is responding to the relevant INA population needs.

Funding per Participant was Low for INA Programs Especially When Compared to Other Job Training Programs

Many commenters expressed concern that the funds made available on a per-participant basis for INA programs were not sufficient to meet the needs of the populations being served. Specifically, many commenters stated that funds available for INA youth are inadequate to fully meet their needs. In addition, commenters felt that more funds were needed for INA job training programs to ensure that career pathway training could be carried out. Several commenters compared the cost per participant funding for other programs, such as Job Corps, as evidence of the lack of funding for INA programs. The commenters went on to request a comparison of other WIA-funded programs and the INA programs. Finally, one commenter felt that because of the lack of funds, INA youth were being served instead of INA adults.

The majority of comments focused on the use of new funding streams and the requirements attached to those funds. Commenters expressed concern about the issue of using and transferring WIOA funding to support activities under Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended (Pub. L. 102–477). Specifically, commenters talked about the importance of flexibility in adherence to the requirements because Pub. L. 102–477 programs are tribal programs, may be located in rural areas, and have been effectively and efficiently reporting through existing processes, including a single reporting feature in the annual report. Additionally, commenters suggested that vocational rehabilitation, adult education reentry, and other applicable job/education-related program funding also should be allowed to support Pub. L. 102–477 programs. Clarity around which funding streams are allowable also was suggested. Commenters also expressed hope that the Department of Education will integrate Carl D. Perkins funding under Pub. L. 102–477 which allows Federally-recognized Tribes and Alaska Native entities to combine formula-funded Federal grant funds administered by the Department of Interior, which are employment and training-related into a single plan with a single budget and a single reporting system. Commenters noted that the Native American Career and Technical Education Program (NACTEP) is a required partner and that NACTEP has limited the partner funds available to fund supportive services and work experiences. One commenter asked if statutory language regarding key investments in vulnerable populations would result in an increase in funding for Division of Indian and Native American Programs (DINAP) programs. Lastly, it was suggested that the 166 Advisory Council continue, and DINAP programs continue to be staffed with Native Americans and Native American Chiefs.

Concerns About the Effects of the New Performance Reporting Requirements Established in WIOA on the INA Community

Many commenters expressed concern that INA programs would not be able to meet the performance reporting requirements established by WIOA for several reasons, including limited funds to train individuals for the new performance standards and the need to purchase new technology and equipment to meet the reporting requirements. In addition, several commenters said that INA programs will have to be more selective in determining eligibility for training programs because of insufficient funding and the increased focus on performance outcomes.

Lack of Funding To Hire and Effectively Train Staff and Ensuring Policy is Responsive to INA Community Needs

Commenters stated concerns that INA programs will not be able to achieve expected performance levels because they lacked funding to adequately staff programs. Several commenters stated concerns about the limited number of staff, increased training needs for staff, and the need to ensure that technical assistance is made available to staff. Specifically, commenters are concerned that INA programs may transition slower than States to the new WIOA requirements because of funding and staff needs. In addition, they stated that INA programs need more funds to implement new administrative tasks as well as provide services to the INA community.

Working With States and Other Programs

Commenters expressed concerns about States' accountability to the INA community and how to make other training programs administered by the State work comprehensively with INA programs. Others encouraged flexibility and freedom in funding in working with these same entities and lauded this flexibility as a way to get more out of funds. Furthermore, the commenters emphasized how important it is for INA leaders to have a voice in the policy and guidance formulation process so that policy is directly responsive to the needs and funding has to go hand in hand with the needs identified. Some commenters suggested an ongoing dialogue between INA leaders, Workforce Investment Boards, local and State agencies, and the American Job Centers to discuss training and education that leads to jobs. Some commenters asserted that State-run programs need to be more accountable for how they interact with INA populations. Other commenters expressed frustration that some State programs do not see a need to work with INA programs because the States think that the INA programs get money from other sources, such as casinos. Many of the commenters said that they wanted better collaboration with State-run programs and increased networking among INA programs and State agencies. Finally, one commenter stated that collaboration between INA programs and the State-run training systems would make services to individuals more efficient because it would prevent ''double-dipping'' in programs. The Department invites public comment about what can be done to address the areas summarized above.

*J. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)*

The Departments have determined that this joint NPRM is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

*K. Executive Order 12988 (Civil Justice Reform)*

This WIOA joint NPRM was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Departments have determined that the proposed rule will not unduly burden the Federal court system. The proposed WIOA regulations were written to minimize litigation and to the extent feasible, provide a clear legal standard for affected conduct, and have been reviewed carefully to eliminate drafting errors and ambiguities.

*L. Executive Order 13211 (Energy Supply)*

This joint NPRM was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Departments have determined the joint NPRM will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

**List of Subjects**

*20 CFR Parts 676, 677, and 678*

Employment, Grant programs—labor.

*34 CFR Part 361*

Administrative practice and procedure, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 463*

Adult education, Grant programs—education, Reporting and recordkeeping requirements.

**Department of Labor**

*Employment and Training Administration*

20 CFR Chapter V

For the reasons stated in the preamble, ETA proposes to amend 20 CFR chapter V as follows:

■ 1. Add part 676 to read as follows:

## PART 676—UNIFIED AND COMBINED STATE PLANS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

676.100 What is the purpose of the Unified and Combined State Plans?
676.105 What are the general requirements for the Unified State Plan?
676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?
676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Literacy Program in Workforce Innovation and Opportunity Act title II?
676.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?
676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
676.130 What is the submission and approval process of the Unified State Plan?
676.135 What are the requirements for modification of the Unified State Plan?
676.140 What are the general requirements for submitting a Combined State Plan?
676.143 What is the submission and approval process of the Combined State Plan?
676.145 What are the requirements for modifications of the Combined State Plan?

**Authority:** Secs. 503, 102, 103, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

### § 676.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 676.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 676.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

### § 676.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 676.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 676.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

**§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?**

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

**§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?**

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

**§ 676.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?**

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

**§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?**

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

**§ 676.130 What is the submission and approval process of the Unified State Plan?**

(a) The Unified State Plan described in § 676.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the ''Sunshine Provision'' of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational

rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

**§ 676.135 What are the requirements for modification of the Unified State Plan?**

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 676.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 676.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

**§ 676.140 What are the general requirements for submitting a Combined State Plan?**

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 676.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 676.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 676.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 676.140 through 676.145 the term ''appropriate Secretary'' means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under

the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

**§ 676.143 What is the submission and approval process of the Combined State Plan?**

(a) For purposes of § 676.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 676.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 676.140(d), including the criteria for approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) *Special rule.* In paragraphs (d)(1) and (3) of this section, the term ''criteria for approval of a plan or application,'' with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

**§ 676.145 What are the requirements for modifications of the Combined State Plan?**

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 676.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 676.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 676.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 676.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 676.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 676.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 676.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the

Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 676.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 676.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

■ 2. Add part 677 to read as follows:

## PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

**Subpart A—State Indicators of Performance for Core Programs**

677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
677.160 What information is required for State performance reports?
677.165 May a State require additional indicators of performance?
677.170 How are State adjusted levels of performance for primary indicators established?
677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

**Subpart B—Sanctions for State Performance and the Provision of Technical Assistance**

677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?
677.185 When are sanctions applied for failure to report?
677.190 When are sanctions applied for failure to achieve adjusted levels of performance?
677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
677.200 What other administrative actions will be applied to States' performance requirements?

**Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs**

677.205 What performance indicators apply to local areas?
677.210 How are local performance levels established?

**Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs**

677.215 Under what circumstances are local areas eligible for State Incentive Grants?
677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
677.225 Under what circumstances may local areas appeal a reorganization plan?

**Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs**

677.230 What information is required for the eligible training provider performance reports?

**Subpart F—Performance Reporting Administrative Requirements**

677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?
677.240 What are the requirements for data validation of State annual performance reports?

**Authority:** Secs. 503, 116, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

### § 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

(a) *Participant.* A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with 34 CFR 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with 34 CFR 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

## Subpart A—State Indicators of Performance for Core Programs

### § 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 676.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

**§ 677.160 What information is required for State performance reports?**

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 677.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs identified in § 677.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I–B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

**§ 677.165 May a State require additional indicators of performance?**

States may identify additional indicators of performance for the six

core programs. These indicators must be included in the Unified or Combined State Plan.

**§ 677.170 How are State adjusted levels of performance for primary indicators established?**

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 676.135 and 676.145 of this chapter.

(b) The State must reach agreement on levels of performance with the Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

**§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?**

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 677.155 and local performance indicators identified in § 677.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) ''Quarterly wage record information'' means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches; and

(2) Data quality reliability, protection against disaggregation that would violate privacy.

## Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

**§ 677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?**

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

**§ 677.185 When are sanctions applied for failure to report?**

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

**§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 677.170 to account for actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 677.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

**§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?**

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 677.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) or § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

**§ 677.200 What other administrative actions will be applied to States' performance requirements?**

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

## Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

**§ 677.205 What performance indicators apply to local areas?**

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 677.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 677.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 677.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 677.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 677.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

**§ 677.210 How are local performance levels established?**

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 677.170 must be:

(1) Used to establish local performance targets for the upcoming program year; and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

## Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

### § 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 677.160.

### § 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 677.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 677.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

### § 677.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

## Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

### § 677.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 677.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in §§ 677.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

## Subpart F—Performance Reporting Administrative Requirements

### § 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

### § 677.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

■ 3. Add part 678 to read as follows:

# PART 678—DESCRIPTION OF THE ONE–STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

## Subpart A—General Description of the One-Stop Delivery System

Sec.

678.300 What is the one-stop delivery system?
678.305 What is a comprehensive one-stop center and what must be provided there?
678.310 What is an affiliated site and what must be provided there?
678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?
678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

## Subpart B—One-Stop Partners and the Responsibilities of Partners

678.400 Who are the required one-stop partners?
678.405 Is Temporary Assistance for Needy Families a required one-stop partner?
678.410 What other entities may serve as one-stop partners?
678.415 What entity serves as the one-stop partner for a particular program in the local area?
678.420 What are the roles and responsibilities of the required one-stop partners?
678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
678.430 What are career services?
678.435 What are the business services provided through the one-stop delivery system, and how are they provided?
678.440 When may a fee be charged for the business services in this subpart?

## Subpart C—Memorandum of Understanding for the One-Stop Delivery System

678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?
678.510 How should the Memorandum of Understanding be negotiated?

## Subpart D—One-Stop Operators

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678.605 How is the one-stop operator selected?
678.610 How is sole source selection of one-stop operators accomplished?
678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
678.620 What is the one-stop operator's role?
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678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?
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## Subpart E—One-Stop Operating Costs

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678.710 How are infrastructure costs funded?
678.715 How are one-stop infrastructure costs funded in the local funding mechanism?
678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
678.730 What is the State one-stop infrastructure funding mechanism?
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678.750 When and how can a one-stop partner appeal a one-stop infrastructure

amount designated by the State under the State infrastructure funding mechanism?
678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

**Subpart F—One-Stop Certification**

678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

**Subpart G—Common Identifier**

678.900 What is the common identifier to be used by each one-stop delivery system?

**Authority:** Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—General Description of the One-Stop Delivery System

### § 678.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 678.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 678.310;

(2) A network of eligible one-stop partners, as described in §§ 678.400 through 678.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 678.500.

### § 678.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 678.430;

(2) Access to training services described in § 680.200 of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 678.400 through 678.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 678.800(b).

(d) ''Access'' to programs and services means having either: Program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A ''direct linkage'' means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A ''direct linkage'' does not include providing a phone number or computer Web site that can be used at an individual's home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 678.800.

### § 678.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 678.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 678.800.

**§ 678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?**

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

**§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?**

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 678.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

## Subpart B—One-Stop Partners and the Responsibilities of Partners

**§ 678.400 Who are the required one-stop partners?**

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 678.405(b).

**§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?**

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

**§ 678.410 What other entities may serve as one-stop partners?**

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

**§ 678.415 What entity serves as the one-stop partner for a particular program in the local area?**

(a) The entity that carries out the program and activities listed in § 678.400 or § 678.405, and therefore

serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 678.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

**§ 678.420 What are the roles and responsibilities of the required one-stop partners?**

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 2900 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 678.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 678.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)); and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

**§ 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?**

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 678.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

**§ 678.430 What are career services?**

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and

languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) ''Meaningful assistance'' means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in § 680.180 of this chapter);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in § 680.170 of this chapter);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

**§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?**

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in §§ 678.430(a)(4)(ii) and 678.430(a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv).) Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v).)

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of

firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

**§ 678.440 When may a fee be charged for the business services in this subpart?**

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 678.435(a).

(c) A fee may be charged for services provided under §§ 678.435(b) and (c). Services provided under § 678.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

## Subpart C—Memorandum of Understanding for the One-Stop Delivery System

**§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?**

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 678.700 through 678.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 678.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 678.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

**§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?**

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 678.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

**§ 678.510 How should the Memorandum of Understanding be negotiated?**

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 678.715(c). Once the final infrastructure cost plan is approved, the Local Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 678.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local Board in resolving the

impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

## Subpart D—One-Stop Operators

### § 678.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in § 679.430 of this chapter);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at § 683.295 of this chapter, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

### § 678.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

### § 678.610 How is sole source selection of one-stop operators accomplished?

(a) As set forth in § 678.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 678.605(d)(3), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

### § 678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

### § 678.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a

one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

**§ 678.625 Can a one-stop operator also be a service provider?**

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

**§ 678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?**

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

**§ 678.635 What is the effective date of the provisions of this subpart?**

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

## Subpart E—One-Stop Operating Costs

**§ 678.700 What are one-stop infrastructure costs?**

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 678.400 through 678.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

**§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?**

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 678.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

**§ 678.710 How are infrastructure costs funded?**

Infrastructure costs are funded either through the local funding mechanism described in § 678.715 or through the State funding mechanism described in § 678.730.

**§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?**

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 678.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 678.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6 months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 678.725.

**§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?**

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by § 678.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

**§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?**

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 678.730. (WIOA sec. 121(h)(2))

**§ 678.730 What is the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 678.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 678.745.

**§ 678.735 How are partner contributions determined in the State one-stop funding mechanism?**

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in 20 CFR part 684. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 678.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education activities, or vocational rehabilitation services, the chief officer

of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) *Limitations.* Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) *WIOA formula programs and employment service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a program year.

(2) *Other one-stop partners.* The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) *Vocational rehabilitation.* Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 678.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 678.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be required to pay an amount that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 678.735(c).

**§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 678.400 through 678.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 678.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 678.415(e).

**§ 678.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?**

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA sec. 121(h)(3)(B).)

(b) Using the funds contributed by the one-stop partners described in § 678.735, the Governor will then use this formula to allocate funds to the local areas that did not use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

**§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?**

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 678.400 through 678.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop

infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 678.735(a), the cost contribution limitations in § 678.735(b), or the cost contribution caps in § 678.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of § 683.630 of this chapter.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 678.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

**§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?**

The MOU, fully described in § 678.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

**§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?**

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 678.400 through 678.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs' Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

## Subpart F—One-Stop Certification

**§ 678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?**

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 676.135 of this chapter.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 678.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in § 679.410 of this chapter, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and 20 CFR part 677. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 676.580 of this chapter. Local Boards must certify one-stop centers in order to be eligible to receive infrastructure funds in the State infrastructure funding mechanism described in § 678.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth in 29 CFR part 37.

## Subpart G—Common Identifier

### § 678.900 What is the common identifier to be used by each one-stop delivery system?

(a) The common one-stop delivery system identifier is ''American Job Center.''

(b) As of July 1, 2016, each one-stop delivery system must include the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

**Department of Education**

*34 CFR Chapters III and IV*

For the reasons stated in the preamble, the Department of Education proposes to amend 34 CFR chapters III and IV as follows:

## PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

■ 4. The authority citation for part 361 continues to read as follows:

**Authority:** 29 U.S.C. 709(c), unless otherwise noted.

■ 5. Add subpart D of part 361 to read as follows:

### Subpart D—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.100 What is the purpose of the Unified and Combined State Plans?
361.105 What are the general requirements for the Unified State Plan?
361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?
361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?
361.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?
361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
361.130 What is the submission and approval process of the Unified State Plan?
361.135 What are the requirements for modification of the Unified State Plan?
361.140 What are the general requirements for submitting a Combined State Plan?
361.143 What is the submission and approval process of the Combined State Plan?
361.145 What are the requirements for modifications of the Combined State Plan?

## Subpart D—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

### § 361.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 361.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 361.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

### § 361.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 361.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 361.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

**§ 361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?**

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

**§ 361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?**

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

**§ 361.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?**

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

**§ 361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?**

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

**§ 361.130 What is the submission and approval process of the Unified State Plan?**

(a) The Unified State Plan described in § 361.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the ''Sunshine Provision'' of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational

rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

**§ 361.135 What are the requirements for modification of the Unified State Plan?**

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 361.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 361.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

**§ 361.140 What are the general requirements for submitting a Combined State Plan?**

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 361.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 361.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38, United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 361.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 361.140 through 361.145 the term ''appropriate Secretary'' means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under

the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

**§ 361.143 What is the submission and approval process of the Combined State Plan?**

(a) For purposes of § 361.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 361.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 361.140(d), including the criteria for approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) *Special rule.* In paragraphs (d)(1) and (3) of this section, the term ''criteria for approval of a plan or application,'' with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

**§ 361.145 What are the requirements for modifications of the Combined State Plan?**

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 361.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 361.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 361.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 361.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 361.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 361.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 361.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the

Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 361.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 361.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

■ 6. Revise subpart E of part 361 to read as follows:

## Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?
361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
361.160 What information is required for State performance reports?
361.165 May a State require additional indicators of performance?
361.170 How are State adjusted levels of performance for primary indicators established?
361.175 What responsibility do States have to use quarterly wage record information for performance accountability?
361.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?
361.185 When are sanctions applied for failure to report?
361.190 When are sanctions applied for failure to achieve adjusted levels of performance?
361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
361.200 What other administrative actions will be applied to States' performance requirements?
361.205 What performance indicators apply to local areas?
361.210 How are local performance levels established?
361.215 Under what circumstances are local areas eligible for State Incentive Grants?
361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
361.225 Under what circumstances may local areas appeal a reorganization plan?
361.230 What information is required for the eligible training provider performance reports?
361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?
361.240 What are the requirements for data validation of State annual performance reports?

## Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

### § 361.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

(a) *Participant.* A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with § 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with § 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

### § 361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 361.130 and 361.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the

participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

**§ 361.160 What information is required for State performance reports?**

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 361.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs identified in § 361.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 361.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I–B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

**§ 361.165 May a State require additional indicators of performance?**

States may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

**§ 361.170 How are State adjusted levels of performance for primary indicators established?**

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 361.135 and 361.145.

(b) The State must reach agreement on levels of performance with the

Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

**§ 361.175 What responsibility do States have to use quarterly wage record information for performance accountability?**

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 361.155 and local performance indicators identified in § 361.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) ''Quarterly wage record information'' means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability, protection against disaggregation that would violate privacy.

**§ 361.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?**

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

**§ 361.185 When are sanctions applied for failure to report?**

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

**§ 361.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 361.170 to account for actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 361.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the

percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

**§ 361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?**

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 361.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 361.190(d)(1) or (2) for the second consecutive year as defined in § 361.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

**§ 361.200 What other administrative actions will be applied to States' performance requirements?**

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

**§ 361.205 What performance indicators apply to local areas?**

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 361.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 361.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 361.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 361.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 361.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

**§ 361.210 How are local performance levels established?**

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 361.170 must be:

(1) Used to establish local performance targets for the upcoming program year, and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels,

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

**§ 361.215 Under what circumstances are local areas eligible for State Incentive Grants?**

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract

strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 361.160.

**§ 361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?**

(a) If a local area fails to meet the levels of performance agreed to under § 361.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan,

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 361.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

**§ 361.225 Under what circumstances may local areas appeal a reorganization plan?**

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

**§ 361.230 What information is required for the eligible training provider performance reports?**

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 361.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in §§ 361.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

**§ 361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?**

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

**§ 361.240 What are the requirements for data validation of State annual performance reports?**

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

■ 7. Add subpart F to part 361 to read as follows:

**Subpart F—Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act**

Sec.

361.300 What is the one-stop delivery system?
361.305 What is a comprehensive one-stop center and what must be provided there?
361.310 What is an affiliated site and what must be provided there?
361.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?
361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?
361.400 Who are the required one-stop partners?
361.405 Is Temporary Assistance for Needy Families a required one-stop partner?
361.410 What other entities may serve as one-stop partners?
361.415 What entity serves as the one-stop partner for a particular program in the local area?
361.420 What are the roles and responsibilities of the required one-stop partners?
361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
361.430 What are career services?
361.435 What are the business services provided through the one-stop delivery system, and how are they provided?
361.440 When may a fee be charged for the business services in this subpart?
361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
361.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?
361.510 How should the Memorandum of Understanding be negotiated?
361.600 Who may operate one-stop centers?
361.605 How is the one-stop operator selected?
361.610 How is sole source selection of one-stop operators accomplished?
361.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
361.620 What is the one-stop operator's role?
361.625 Can a one-stop operator also be a service provider?
361.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?
361.635 What is the effective date of the provisions of this subpart?
361.700 What are one-stop infrastructure costs?
361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
361.710 How are infrastructure costs funded?
361.715 How are one-stop infrastructure costs funded in the local funding mechanism?
361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
361.730 What is the State one-stop infrastructure funding mechanism?
361.735 How are partner contributions determined in the State one-stop funding mechanism?
361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
361.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?
361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
361.900 What is the common identifier to be used by each one-stop delivery system?

## Subpart F—Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act

**§ 361.300 What is the one-stop delivery system?**

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 361.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 361.310;

(2) A network of eligible one-stop partners, as described in §§ 361.400 through 361.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or

technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 361.500.

**§ 361.305 What is a comprehensive one-stop center and what must be provided there?**

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 361.430;

(2) Access to training services described in of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 361.400 through 361.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 361.800(b).

(d) ''Access'' to programs and services means having either: Program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A ''direct linkage'' means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A ''direct linkage'' does not include providing a phone number or computer Web site that can be used at an individual's home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 361.800.

**§ 361.310 What is an affiliated site and what must be provided there?**

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 361.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 361.800.

**§ 361.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?**

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

**§ 361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?**

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 361.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

**§ 361.400 Who are the required one-stop partners?**

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 361.405(b).

**§ 361.405 Is Temporary Assistance for Needy Families a required one-stop partner?**

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

**§ 361.410 What other entities may serve as one-stop partners?**

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

**§ 361.415 What entity serves as the one-stop partner for a particular program in the local area?**

(a) The entity that carries out the program and activities listed in § 361.400 or § 361.405, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 361.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

**§ 361.420 What are the roles and responsibilities of the required one-stop partners?**

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other

appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 361.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 361.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)) and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

**§ 361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?**

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 361.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

**§ 361.430 What are career services?**

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and,

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) ''Meaningful assistance'' means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants, or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her

employment goals, including the list of, and information about, the eligible training providers (as described in);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

**§ 361.435 What are the business services provided through the one-stop delivery system, and how are they provided?**

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in § 361.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv)). Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v)).

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

**§ 361.440 When may a fee be charged for the business services in this subpart?**

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 361.435(a).

(c) A fee may be charged for services provided under § 361.435(b) and (c). Services provided under § 361.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

**§ 361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?**

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 361.700 through 361.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 361.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 361.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

**§ 361.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?**

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 361.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

**§ 361.510 How should the Memorandum of Understanding be negotiated?**

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 361.715(c). Once the final infrastructure cost plan is approved, the Local Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 361.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local Board in resolving the impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

**§ 361.600 Who may operate one-stop centers?**

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 361.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

**§ 361.605 How is the one-stop operator selected?**

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or

a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

**§ 361.610 How is sole source selection of one-stop operators accomplished?**

(a) As set forth in § 361.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 361.605(d)(3) of this section, written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

**§ 361.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?**

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

**§ 361.620 What is the one-stop operator's role?**

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

**§ 361.625 Can a one-stop operator also be a service provider?**

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

**§ 361.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?**

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

**§ 361.635 What is the effective date of the provisions of this subpart?**

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

**§ 361.700 What are one-stop infrastructure costs?**

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are

necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 361.400 through 361.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

**§ 361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?**

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 361.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

**§ 361.710 How are infrastructure costs funded?**

Infrastructure costs are funded either through the local funding mechanism described in § 361.715 or through the State funding mechanism described in § 361.730.

**§ 361.715 How are one-stop infrastructure costs funded in the local funding mechanism?**

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 361.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 361.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6 months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 361.725.

**§ 361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?**

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated

authority to serve as one-stop local partners by a State eligible agency as permitted by § 361.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

**§ 361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?**

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 361.730. (WIOA sec. 121(h)(2))

**§ 361.730 What is the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 361.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 361.745.

**§ 361.735 How are partner contributions determined in the State one-stop funding mechanism?**

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 361.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) *Limitations.* Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) *WIOA formula programs and employment service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a program year.

(2) *Other one-stop partners.* The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) *Vocational rehabilitation.* Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 361.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 361.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be

required to pay an amount that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 361.735(c).

**§ 361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 361.400 through 361.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 361.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 361.415(e).

**§ 361.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?**

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA 121(h)(3)(B))

(b) Using the funds contributed by the one-stop partners described in § 361.735, the Governor will then use this formula to allocate funds to the local areas that did not use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

**§ 361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?**

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 361.400 through 361.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 361.735(a), the cost contribution limitations in § 361.735(b), or the cost contribution caps in § 361.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 361.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

**§ 361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?**

The MOU, fully described in § 361.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

**§ 361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?**

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 361.400 through 361.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs'

Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

**§ 361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?**

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 361.135.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 361.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 361.580. Local Boards must certify one-stop centers in order to be eligible to receive infrastructure funds in the State infrastructure funding mechanism described in § 361.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth.

**§ 361.900 What is the common identifier to be used by each one-stop delivery system?**

(a) The common one-stop delivery system identifier is ''American Job Center.''

(b) As of July 1, 2016, each one-stop delivery system must include the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

## PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

■ 8. The authority citation for part 463 continues to read as follows:

**Authority:** 29 U.S.C. 102 and 103, unless otherwise noted.

■ 9. Add subpart H to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

**Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act**

Sec.

463.100 What is the purpose of the Unified and Combined State Plans?
463.105 What are the general requirements for the Unified State Plan?
463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?
463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?
463.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?
463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
463.130 What is the submission and approval process of the Unified State Plan?
463.135 What are the requirements for modification of the Unified State Plan?
463.140 What are the general requirements for submitting a Combined State Plan?
463.143 What is the submission and approval process of the Combined State Plan?

463.145 What are the requirements for modifications of the Combined State Plan?

## Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

### § 463.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 463.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 463.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

### § 463.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 463.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 463.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

### § 463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

### § 463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-

secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

**§ 463.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?**

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

**§ 463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?**

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

**§ 463.130 What is the submission and approval process of the Unified State Plan?**

(a) The Unified State Plan described in § 463.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the ''Sunshine Provision'' of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

**§ 463.135 What are the requirements for modification of the Unified State Plan?**

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 463.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 463.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

**§ 463.140 What are the general requirements for submitting a Combined State Plan?**

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 463.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to

receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 463.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38, United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 463.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 463.140 through 463.145 the term ''appropriate Secretary'' means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

**§ 463.143 What is the submission and approval process of the Combined State Plan?**

(a) For purposes of § 463.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 463.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 463.140(d), including the criteria for

approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) *Special rule.* In paragraphs (d)(1) and (3) of this section, the term ''criteria for approval of a plan or application,'' with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

**§ 463.145 What are the requirements for modifications of the Combined State Plan?**

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 463.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 463.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 463.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 463.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 463.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 463.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 463.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 463.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 463.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

■ 10. Add subpart I to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

**Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act**

Sec.

463.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?
463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
463.160 What information is required for State performance reports?
463.165 May a State require additional indicators of performance?
463.170 How are State adjusted levels of performance for primary indicators established?
463.175 What responsibility do States have to use quarterly wage record information for performance accountability?
463.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?
463.185 When are sanctions applied for failure to report?
463.190 When are sanctions applied for failure to achieve adjusted levels of performance?
463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
463.200 What other administrative actions will be applied to States' performance requirements?
463.205 What performance indicators apply to local areas?
463.210 How are local performance levels established?
463.215 Under what circumstances are local areas eligible for State Incentive Grants?
463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
463.225 Under what circumstances may local areas appeal a reorganization plan?
463.230 What information is required for the eligible training provider performance reports?
463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?
463.240 What are the requirements for data validation of State annual performance reports?

## Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

**§ 463.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?**

(a) *Participant.* A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in

the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with § 463.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with § 463.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

**§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?**

(a) All States submitting either a Unified or Combined State Plan under §§ 463.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

**§ 463.160 What information is required for State performance reports?**

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 463.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs

identified in § 463.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 463.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I–B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

**§ 463.165 May a State require additional indicators of performance?**

States may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

**§ 463.170 How are State adjusted levels of performance for primary indicators established?**

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 463.135 and 463.145.

(b) The State must reach agreement on levels of performance with the Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

**§ 463.175 What responsibility do States have to use quarterly wage record information for performance accountability?**

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 463.155 and local performance indicators identified in § 463.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) ''Quarterly wage record information'' means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible

training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability, protection against disaggregation that would violate privacy.

**§ 463.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?**

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

**§ 463.185 When are sanctions applied for failure to report?**

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters,

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

**§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?**

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 463.170 to account for actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 463.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

**§ 463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?**

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 463.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 463.190(d)(1) or (2) for the second consecutive year as defined in § 463.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

**§ 463.200 What other administrative actions will be applied to States' performance requirements?**

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

**§ 463.205 What performance indicators apply to local areas?**

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 463.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 463.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 463.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 463.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 463.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

**§ 463.210 How are local performance levels established?**

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 463.170 must be:

(1) Used to establish local performance targets for the upcoming program year, and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels,

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

**§ 463.215 Under what circumstances are local areas eligible for State Incentive Grants?**

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 463.160.

**§ 463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?**

(a) If a local area fails to meet the levels of performance agreed to under § 463.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan,

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 463.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

**§ 463.225 Under what circumstances may local areas appeal a reorganization plan?**

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and

remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

**§ 463.230 What information is required for the eligible training provider performance reports?**

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 463.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 463.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

**§ 463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?**

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

**§ 463.240 What are the requirements for data validation of State annual performance reports?**

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

■ 11. Add subpart J to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

**Subpart J—Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act**

Sec.

463.300 What is the one-stop delivery system?
463.305 What is a comprehensive one-stop center and what must be provided there?
463.310 What is an affiliated site and what must be provided there?
463.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?
463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?
463.400 Who are the required one-stop partners?
463.405 Is Temporary Assistance for Needy Families a required one-stop partner?
463.410 What other entities may serve as one-stop partners?
463.415 What entity serves as the one-stop partner for a particular program in the local area?
463.420 What are the roles and responsibilities of the required one-stop partners?
463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
463.430 What are career services?
463.435 What are the business services provided through the one-stop delivery system, and how are they provided?
463.440 When may a fee be charged for the business services in this subpart?
463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
463.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

463.510 How should the Memorandum of Understanding be negotiated?
463.600 Who may operate one-stop centers?
463.605 How is the one-stop operator selected?
463.610 How is sole source selection of one-stop operators accomplished?
463.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
463.620 What is the one-stop operator's role?
463.625 Can a one-stop operator also be a service provider?
463.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?
463.635 What is the effective date of the provisions of this subpart?
463.700 What are one-stop infrastructure costs?
463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
463.710 How are infrastructure costs funded?
463.715 How are one-stop infrastructure costs funded in the local funding mechanism?
463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
463.730 What is the State one-stop infrastructure funding mechanism?
463.735 How are partner contributions determined in the State one-stop funding mechanism?
463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
463.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?
463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
463.900 What is the common identifier to be used by each one-stop delivery system?

## Subpart J—Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act

### § 463.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 463.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 463.310;

(2) A network of eligible one-stop partners, as described in §§ 463.400 through 463.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 463.500.

### § 463.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 463.430;

(2) Access to training services described in § 680.200 of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 463.400 through 463.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 463.800(b).

(d) ''Access'' to programs and services means having either: Program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner

programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A ''direct linkage'' means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A ''direct linkage'' does not include providing a phone number or computer Web site that can be used at an individual's home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 463.800.

**§ 463.310 What is an affiliated site and what must be provided there?**

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 463.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 463.800.

**§ 463.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?**

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

**§ 463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?**

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 463.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

**§ 463.400 Who are the required one-stop partners?**

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 463.405(b).

**§ 463.405 Is Temporary Assistance for Needy Families a required one-stop partner?**

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

**§ 463.410 What other entities may serve as one-stop partners?**

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private

sector, may serve as additional partners in the one-stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

**§ 463.415 What entity serves as the one-stop partner for a particular program in the local area?**

(a) The entity that carries out the program and activities listed in § 463.400 or § 463.405, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 463.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

**§ 463.420 What are the roles and responsibilities of the required one-stop partners?**

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 463.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 463.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)) and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

**§ 463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?**

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 463.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

**§ 463.430 What are career services?**

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and,

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) ''Meaningful assistance'' means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants, or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in § 680.180 of this chapter);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in § 680.170 of this chapter);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

**§ 463.435 What are the business services provided through the one-stop delivery system, and how are they provided?**

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in §§ 463.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv)). Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v)).

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with

Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

**§ 463.440 When may a fee be charged for the business services in this subpart?**

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 463.435(a).

(c) A fee may be charged for services provided under § 463.435(b) and (c). Services provided under § 463.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

**§ 463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding ?**

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 463.700 through 463.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 463.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 463.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

**§ 463.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?**

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 463.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

**§ 463.510 How should the Memorandum of Understanding be negotiated?**

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 463.715(c).

Once the final infrastructure cost plan is approved, the Local Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 463.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local Board in resolving the impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

**§ 463.600 Who may operate one-stop centers?**

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 463.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in § 679.430 of this chapter);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at § 683.295 of this chapter, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

**§ 463.605 How is the one-stop operator selected?**

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

**§ 463.610 How is sole source selection of one-stop operators accomplished?**

(a) As set forth in § 463.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 463.605(d)(3), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

**§ 463.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?**

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures

must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

**§ 463.620 What is the one-stop operator's role?**

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

**§ 463.625 Can a one-stop operator also be a service provider?**

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

**§ 463.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?**

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

**§ 463.635 What is the effective date of the provisions of this subpart?**

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

**§ 463.700 What are one-stop infrastructure costs?**

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 463.400 through 463.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

**§ 463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?**

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 463.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

**§ 463.710 How are infrastructure costs funded?**

Infrastructure costs are funded either through the local funding mechanism described in § 463.715 or through the State funding mechanism described in § 463.730.

**§ 463.715 How are one-stop infrastructure costs funded in the local funding mechanism?**

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 463.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 463.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6 months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 463.725.

**§ 463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?**

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by §§ 463.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

**§ 463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?**

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 463.730. (WIOA sec. 121(h)(2))

**§ 463.730 What is the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 463.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 463.745.

**§ 463.735 How are partner contributions determined in the State one-stop funding mechanism?**

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other

applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in 20 CFR part 684. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 463.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) *Limitations.* Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) *WIOA Formula programs and employment service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a program year.

(2) *Other one-stop partners.* The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) *Vocational rehabilitation.* Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 463.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 463.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be required to pay an amount that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 463.735(c).

**§ 463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?**

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 463.400 through 463.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 463.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 463.415(e).

**§ 463.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?**

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by

such centers, and other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA 121(h)(3)(B))

(b) Using the funds contributed by the one-stop partners described in § 463.735, the Governor will then use this formula to allocate funds to the local areas that did not use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

**§ 463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?**

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 463.400 through 463.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 463.735(a), the cost contribution limitations in § 463.735(b), or the cost contribution caps in § 463.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of § 683.630 of this chapter.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 463.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

**§ 463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?**

The MOU, fully described in § 463.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

**§ 463.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?**

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 463.400 through 463.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs' Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

**§ 463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?**

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 463.135.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 463.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in § 679.410 of this chapter, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and 20 CFR part 677. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 463.580. Local Boards must certify one-stop centers in order to be eligible to receive infrastructure funds in the State infrastructure funding mechanism described in § 463.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth in 29 CFR part 37.

**§ 463.900 What is the common identifier to be used by each one-stop delivery system?**

(a) The common one-stop delivery system identifier is ''American Job Center.''

(b) As of July 1, 2016, each one-stop delivery system must include the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

**Thomas E. Perez,**

*Secretary of Labor.*

**Arne Duncan,**

*Secretary of Education.*

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Part III

## Department of Labor

Employment and Training Administration

20 CFR Parts 601, 651, 652 et al.

Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking; Proposed Rules

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688

**[Docket No. ETA–2015–0001]**

**RIN 1205–AB73**

## Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Department of Labor (DOL) is proposing, through rulemaking, to implement titles I and III of the Workforce Innovation and Opportunity Act of 2014 (WIOA). Through these regulations, the Department proposes to implement job training system reform and strengthen the workforce investment system of the nation to put Americans, particularly those individuals with barriers to employment, back to work and make the United States more competitive in the 21st Century. This proposed rule intends to provide guidance for statewide and local workforce investment systems that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the nation.

**DATES:** To be ensured consideration, comments must be submitted in writing on or before June 15, 2015.

**ADDRESSES:** You may submit comments, identified by docket number ETA–2015–0001, for Regulatory Information Number (RIN) 1205–AB73, by one of the following methods:

Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD–ROM submissions may be mailed to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

*Instructions:* Label all submissions with ''RIN 1205–AB73.''

Please submit your comments by only one method. Please be advised that the Department will post all comments received that related to this NPRM on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers (SSNs), personal addresses, telephone numbers, and email addresses included in their comments as such information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov*.

*Docket:* All comments on this proposed rule will be available on the *http://www.regulations.gov* Web site and can be found using RIN 1205–AB73. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research (OPDR) at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed below.

Comments under the Paperwork Reduction Act (PRA): In addition to filing comments with ETA, persons wishing to comment on the information collection (IC) aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Adele Gagliardi, Administrator, Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

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## I. Executive Summary

On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128), comprehensive legislation that reforms and modernizes the public workforce system. It reaffirms the role of the public workforce system, and brings together and enhances several key employment, education, and training programs. WIOA provides resources, services, and leadership tools for the workforce system to help individuals find good jobs and stay employed and improves employer prospects for success in the global marketplace. It ensures that the workforce system operates as a comprehensive, integrated and streamlined system to provide pathways to prosperity for those it serves and continuously improves the quality and performance of its services.

The Department of Labor is publishing this NPRM to implement those provisions of WIOA that affect the core programs under titles I and III, and the Job Corps and national programs authorized under title I which will administered by the Department. In addition to this NPRM, the Departments of Education (ED) and Labor (DOL) are jointly publishing an NPRM to implement those provisions of WIOA that affect all of the WIOA core programs (titles I–IV) and which will have to be jointly overseen and administered by both Departments. Readers should note that there are a number of cross-references to the Joint NPRM published by ED and DOL, with particular focus on those provisions in the Joint NPRM that have to do with performance reporting among all the core programs. Finally, this NPRM has been structured so that the proposed Code of Federal Regulations (CFR) parts will align with the Joint NPRM CFR parts in once all of the proposed rules of have been finalized.

WIOA seeks to deliver a broad array of integrated services to individuals seeking jobs and skills training, as well as employers seeking skilled workers by improving the workforce system, more closely aligning it with regional economies and strengthening the network of about 2,500 one-stop centers. Customers must have access to a seamless system of high-quality services through coordination of programs, services and governance structures. The Act builds closer ties among key workforce partners—business leaders, workforce boards, labor unions, community colleges, non-profit organizations, youth-serving organizations, and State and local officials—in striving for a more job-driven approach to training and skills development.

WIOA will help job seekers and workers access employment, education, training, and support services to succeed in the labor market and match employers with the skilled workers they need to compete in the global economy. The purposes of WIOA described in the Act include:

- Increasing access to and opportunities for the employment, education, training, and support services that individuals need, particularly those with barriers to employment.
- Supporting the alignment of workforce investment, education, and economic development systems, in support of a comprehensive, accessible, and high-quality workforce development system.
- Improving the quality and labor market relevance of workforce investment, education, and economic development efforts.
- Promoting improvement in the structure and delivery of services.
- Increasing the prosperity of workers and employers.
- Providing workforce development activities that increase employment, retention, and earnings of participants and that increase post-secondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity, and competitiveness of the nation.

WIOA is complemented by the groundwork laid by the Administration-wide review of employment, education, and training programs to ensure Federal agencies do everything possible to prepare ready-to-work-Americans with ready-to-be-filled jobs. The review identified seven priorities for these Federal programs:

- Work up-front with employers to determine local or regional hiring needs and design training programs that are responsive to those needs;
- Offer work-based learning opportunities with employers—including on-the-job training, internships, and pre-apprenticeships and registered apprenticeships—as training paths to employment;
- Make better use of data to drive accountability, inform what programs are offered and what is taught, and offer user-friendly information for job seekers to choose what programs and pathways work for them and are likely to result in a job;
- Measure and evaluate employment and earnings outcomes;
- Promote a seamless progression from one educational stepping stone to another, and across work-based training and education, so individuals' efforts result in progress;
- Break down barriers to accessing job-driven training and hiring for any American who is willing to work, including access to supportive services and relevant guidance; and
- Create regional collaborations among American Job Centers, education institutions, labor, and nonprofits.

As WIOA implementation progresses, success in accomplishing the purposes of WIOA at the State, local, and regional levels, will be assessed by whether:

- One-stop centers are recognized as a valuable community resource and are known for high quality, comprehensive services for customers.
- The core programs and one-stop partners provide seamless, integrated customer service.
- Program performance, labor market and related data drive policy and strategic decisions and inform customer choice.
- Youth programs reconnect out-of-school youth (OSY) to education and jobs.
- Job seekers access quality career services either online or in a one-stop career center through a ''common front door'' that connects them to the right services.
- One-stop centers facilitate access to high quality, innovative education and training.
- Services to businesses are robust and effective, meeting businesses' workforce needs across the business lifecycle.

## II. Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
ALJ Administrative Law Judge
ANVSA Alaska Native Village Service Area
AOP Agricultural Outreach Plan
ARS Agricultural Recruitment System
AWOL Absent Without Official Leave
BLS Bureau of Labor Statistics
CBO Community-based organization
CCC Civilian Conservation Center
CEO Chief elected official
CFR Code of Federal Regulations
Complaint System Employment Service and Employment-Related Law Complaint System

COSO Committee of Sponsoring Organizations of the Treadway Commission
CTT Career Technical Training
DINAP Division of Indian and Native American Programs
DOL Department of Labor
ED Department of Education
E.O. Executive Order
EO Equal opportunity
ES Employment Service
ESA Employment Standards Administration
ESARS Employment Security Automated Reporting System
ETA Employment and Training Administration
ETP Eligible training provider
ETPL Eligible training provider list
FECA Federal Employees Compensation Act
FEIN Federal employer identification number
FEMA Federal Emergency Management Agency
FERPA Family Educational Rights and Privacy Act
FLSA Fair Labor Standards Act
FOA Funding Opportunity Announcement
FR Federal Register
GED General Educational Development
GIS Geographic information system
GPRA Government Performance and Results Act
HEARTH Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
HHS Department of Health and Human Services
HSD High School Diploma
HUD U.S. Department of Housing and Urban Development
IC Information collection
IEVS Income and Eligibility Verification System
INA Indian and Native American
ISDEAA Indian Self-Determination and Education Assistance Act
ISY In-school youth
ITA Individual Training Account
JIS Job Information Service
JS Job Service
JTPA Job Training Partnership Act
JVSG Jobs for Veterans State Grants
LEHD Longitudinal Employer-Household Dynamics
LEP Limited English proficiency
MOU Memorandum of Understanding
MSFW Migrant and Seasonal Farmworker
NAACP National Association for the Advancement of Colored People
NAFTA North American Free Trade Agreement
NAICS North American Industry Classification System
NDWG National Dislocated Worker Grant
NEG National Emergency Grant
NFJP National Farmworker Jobs Program
NICRA Negotiated Indirect Cost Rate Agreement
NPRM Notice of Proposed Rulemaking
OALJ Office of Administrative Law Judges
OBS On-board strength
OFLC Office of Foreign Labor Certification
OJT On-the-job training
OMB Office of Management and Budget
OMS Outcome Measurement System
OPDR Office of Policy Development and Research
OSHA Occupational Safety and Health Administration
OSY Out-of-school youth
OTSA Oklahoma Tribal Service Area
OWI Office of Workforce Investment
PART Program Assessment and Rating Tool
PBP Program Budget Plan
PRA Paperwork Reduction Act of 1995
PRH Policy and Requirements Handbook
Pub. L. Public Law
PY Program year
RFA Regulatory Flexibility Act
RFP Requests for proposals
Richey Order Judge Richey Court Order
RIN Regulatory Information Number
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDA Service delivery area
sec. Section of a Public Law or the United States Code
SESA State Employee Security Act
SMA State Monitor Advocate
SOC Standard Occupational Classification
SNAP Supplemental Nutrition Assistance Program
SSA Social Security Act
SSN Social Security Number
State Board State Workforce Development Board
STAWRS Simplified Tax and Wage Reporting System
SWA State Workforce Agency
TAA Trade Adjustment Assistance
TANF Temporary Assistance for Needy Families
TEGL Training and Employment Guidance Letter
TEN Training and Employment Notice
UC Unemployment Compensation
UCX Unemployment Compensation for Ex-service members
UI Unemployment insurance
U.S.C. United States Code
VA Department of Veterans Affairs
VETS Veterans' Employments and Training Service
VR Vocational rehabilitation
Wagner-Peyser Wagner-Peyser Act of 1933
WARN Worker Adjustment and Retraining Notification
WDB Workforce Development Board
WHD Wage and Hour Division
WIA Workforce Investment Act of 1998
WIAC Workforce Information Advisory Council
WIC Workforce Information Council
WIOA Workforce Innovation and Opportunity Act of 2014
WLMI Workforce and Labor Market Information
WLMIS Workforce and Labor Market Information System
WRIS Wage Record Interchange System

## III. Background

### *A. Workforce Innovation and Opportunity Act Principles*

On July 22, 2014, President Obama signed the WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Adult Education and Family Literacy Act (AEFLA), the Wagner-Peyser Act, and the Rehabilitation Act of 1973. WIOA presents an extraordinary opportunity for the workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce investment system, and enhances and increases coordination among several key employment, education, and training programs. Most provisions in WIOA take effect on July 1, 2015, the first full program year (PY) after enactment, although the new State plans and performance accountability system take effect July 1, 2016. Title IV, however, took effect upon enactment.

WIOA presents an extraordinary opportunity for the workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) Increasing access to and opportunities for the employment, education, training, and support services for individuals, particularly those with barriers to employment; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers; and (6) providing workforce development activities that increase

employment, retention, and earnings of participants and that increase post-secondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

Beyond achieving the requirements of the new law, WIOA offers an opportunity to continue to modernize the workforce system, and achieve key hallmarks of a customer centered workforce system, where the needs of business and workers drive workforce solutions, where one-stop career centers and partners provide excellent customer service to job seekers and businesses, where the workforce system pursues continuous improvement through evaluation and data-driven policy, and where the workforce system supports strong regional economies.

Regulations and guidance implementing titles I and III are issued by DOL, with the exception of joint regulations that will be issued by DOL and ED on the provisions in title I relating to unified and combined planning, performance, and the one-stop delivery system. Regulations and guidance on implementing titles II and IV will be issued by ED.

WIOA retains much of the structure of WIA, but with critical changes to advance greater coordination and alignment. Under title I–A, each State will be required to develop a single, unified strategic plan that is applicable to four core workforce development programs. The core programs consist of (1) the adult, dislocated worker, and youth formula programs administered by the Department under title I of WIOA; (2) the Adult Education and Family Literacy program administered by ED under title II of WIOA; (3) the Wagner-Peyser Act employment services (ES) program administered by the Department, as amended by title III of WIOA; and (4) the vocational rehabilitation (VR) programs under title I of the Rehabilitation Act administered by ED, as amended by title IV of WIOA. In addition to core programs, WIOA provides States the opportunity to include other key one-stop partner programs such as the Supplemental Nutrition Assistance Program (SNAP), Unemployment Insurance (UI), Temporary Assistance for Needy Families (TANF), and Perkins Career Technical Education in a Combined State Plan. The law also includes a common performance accountability system applicable to all of the core programs.

The remainder of WIOA title I authorizes the adult, dislocated worker, and youth formula programs; the State and local workforce development (formerly investment) boards; the designation of regions and local areas; local plans; the one-stop system; national programs, including Job Corps, YouthBuild, Indian and Native American programs, and Migrant and Seasonal Farmworker (MSFW) programs; technical assistance and evaluations; and general administrative provisions currently authorized under title I of WIA. Title II retains and amends the Adult Education and Family Literacy Program currently authorized under title II of WIA. Title III contains amendments to the Wagner-Peyser Act relating to the ES and Workforce and Labor Market Information System (WLMIS), and requires the Secretary to establish a Workforce Information Advisory Council (WIAC). Title IV contains amendments to the Rehabilitation Act of 1973, which were also included under title IV of WIA; it also requires the Secretary of Labor to establish an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Finally, title V contains general provisions similar to the provisions applicable under title V of WIA as well as the effective dates and transition provisions.

Since the enactment of WIOA, the Department has used a variety of means to coordinate with other Federal agencies that have roles and responsibilities under the Act. The Department works closely with staff at ED and the Department of Health and Human Services (HHS) on all shared policy and implementation matters. Key areas of collaboration include the Unified State Plan, performance reporting, one-stop service delivery, and services to disconnected youth and to individuals with disabilities. WIOA created an opportunity to enhance coordination and collaboration across other Federal programs through the Combined State Plan and the Department meets with the other Federal agencies regarding those plans.

Before publishing the NPRM, the Department solicited broad input through a variety of mechanisms including:

- Issued Training and Employment Notice (TEN) No. 05–14 to notify the public workforce system that WIOA was enacted, accompanied by a statutory implementation timeline, a fact sheet that identified key reforms to the public workforce system, and a list of frequently asked questions.
- Issued TEN No. 06–14 to announce a series of webinars to engage WIOA stakeholders in implementation of WIOA.
- Issued TEN No. 12–14 to provide guidance to States and other recipients of funds under title I of WIA on the use and reporting of PY 2014 funds for planning and implementation activities associated with the transition to WIOA.
- Established a WIOA Resource Page (*www.doleta.gov/WIOA*) to provide updated information related to WIOA implementation to the public workforce system and stakeholders;
- Established a dedicated email address for the public workforce system and stakeholders to ask questions and offer ideas related to WIOA (*DOL.WIOA@dol.gov*);
- Conducted, in conjunction with ED and HHS outreach calls, webinars, and stakeholder and in-person town halls in each ETA region. The Department and its Federal partners hosted 10 town halls across the country, reaching over 2,000 system leaders and staff representing core programs and one-stop partners, employers, and performance staff. This included a town hall with Indian and Native American leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives as well as a formal consultation with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.
- Conducted readiness assessments to implement WIOA in all States and 70 local workforce areas to inform technical assistance.

*B. Major Changes From Current Workforce Investment Act of 1998*

This section contains a summary of the major changes from the current WIA. As indicated above, WIOA retains much of the structure of WIA.

Major changes in WIOA are:

- *Aligns Federal investments to support job seekers and employers.* The Act provides for States to prepare a single Unified State Plan that identifies a 4-year strategy for achieving the strategic vision and goals of the State for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the workforce system meets employment and skill needs of all workers and employers.
- *Streamlines the governing bodies that establish State, regional and local workforce investment priorities.* WIOA makes State and Local Workforce

Development Boards more agile and well positioned to meet local and regional employers' workforce needs by reducing the size of the boards and assigning them additional responsibilities to assist in the achievement of the State and local strategic workforce vision and goals. The State Workforce Development Boards (State Boards) continue to have a majority of business representation and a business chair that work for all workers and jobseekers, including low-skilled adults, youth, and individuals with disabilities, while they foster innovation, and ensure streamlined operations and service delivery excellence.

• *Creates a common performance accountability system and information for job seekers and the public.* WIOA ensures that Federal investments in employment, education, and training programs are evidence-based and data-driven, and accountable to participants and the public. It establishes a performance accountability system that applies across the core programs, by generally applying six primary indicators of performance: entry into unsubsidized employment at two points in time, median earnings, attainment of post-secondary credentials, measurable skill gains, and effectiveness in serving employers.

• *Fosters regional collaboration to meet the needs of regional economies.* WIOA promotes alignment of workforce development programs with regional economic development strategies to meet the needs of local and regional employers.

• *Enhances access to high quality services through the network of one-stop system.* WIOA helps jobseekers and employers acquire the services they need in centers and online, clarifies the roles and responsibilities of the one-stop partner programs, adds the TANF program as a required one-stop partner unless the Governor objects, requires competitive selection of one-stop operators, and requires the use by the one-stop system of a common one-stop delivery identifier or brand that is to be developed by the Secretary of Labor.

• *Improves services to individuals with disabilities.* WIOA stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services.

• *Makes key investments for disconnected youth.* WIOA emphasizes services to disconnected youth to prepare them for successful employment by requiring that a minimum of 75 percent of youth formula program funds be used to help OSY, in contrast to the 30 percent required under WIA. WIOA increases OSYs' access to WIOA services, including pre-apprenticeship opportunities that result in registered apprenticeship. It adds a requirement that at least 20 percent of formula funds at the local level be used on work-based training activities such as summer jobs, on-the-job training (OJT), and apprenticeship.

• *Helps Employers Find Workers with the Necessary Skills.* WIOA contributes to economic growth and business expansion by ensuring the workforce system is job-driven—matching employers with skilled individuals. WIOA requires Local Boards to promote the use of industry and sector partnerships that include key stakeholders in an industry cluster or sector that work with public entities to identify and address the workforce needs of multiple employers.

Additionally, successful implementation of many of the approaches called for within WIOA, such as career pathways and sector strategies, require robust relationships across programs and with businesses, economic development, education and training institutions, including community colleges and career and technical education, local entities, and supportive services agencies.

*C. Rule Format*

The NPRM format reflects the Department's commitment to writing regulations that are reader-friendly. The Department has attempted to make this NPRM clear and easy to understand. To this end, the regulatory text is presented in a ''question and answer'' format and organized consistent with the Act. While the Department has provided cross-references to the statute(s), the Department also has included the Act's provisions in the answers for completeness.

While the Department has anticipated many issues that may arise and provided appropriate directions, there are many other areas where the Department continues to weigh options. Thus, the Department raises questions throughout the preamble where the Department seeks additional information or where the Department is weighing options and seek comments.

*D. Legal Basis*

On July 22, 2014, the President signed the Workforce Innovation Opportunity Act (WIOA) (Pub. L. 113–128) into law. WIOA repeals WIA (29 U.S.C. 2801 *et seq.*). As a result, the WIA regulations no longer reflect current law. Section 503(f) of WIOA requires that the Department issue an NPRM and then a final rule that implements the changes WIOA makes to the public workforce system in regulations. Therefore, DOL seeks to develop and issue a NPRM that proposes to implement WIOA. The Department of Labor will issue regulations regarding the Section 188 Nondiscrimination provisions through separate rulemaking.

## IV. Section-by-Section Discussion of Proposal

*A. Part 603—Federal-State Unemployment Compensation Program Disclosure of Confidential Unemployment Compensation Information Under WIOA Sec. 116*

Relationship Between 20 CFR Part 603 and WIOA

The Department is amending its regulations at 20 CFR part 603 to help States comply with the WIOA. WIOA requires that States use ''quarterly wage records'' in assessing the performance of certain Federally-funded employment and training programs.

States must make available performance reports for local areas and for eligible training providers (ETPs) under title I of the WIOA. WIOA also requires that States cooperate in evaluations, by the Departments of Labor and Education, of State programs overseen by those Federal agencies.

To help States comply with these requirements, the Department has determined that it would be useful to more clearly and specifically, describe in unemployment compensation (UC) confidentiality regulations, the standards for disclosure between the State UC, workforce, and education systems. This proposal amends current regulations to clarify, in a limited fashion, those State government officials with whom the State may share certain confidential information in order to carry out requirements under the law. The regulations enumerate certain additional public officials who may access confidential State wage records that are the basis for the State's performance reporting. Ensuring such access to these State records would allow State agencies to better manage the information for the purpose of making Federally-required reports on certain program outcomes, and to cooperate more effectively and be more informative with respect to Federal program evaluations.

WIOA section (sec.) 116(i)(2) and proposed regulation § 677.175 (a) require State workforce, training, and education programs to use quarterly wage records to measure the progress of

the State on State and local performance accountability measures. Under WIA, the Department interpreted the reference to ''quarterly wage records'' in sec. 136(f)(2) to require States to use the confidential UC information in the employer-provided wage reports collected under sec. 1137 of the Social Security Act (SSA), 42 U.S.C. 1320b–7. (See 20 CFR 677.175.) These are the reports that the State UC agency obtains from employers for determining UC tax liability, monetary eligibility, or for cross-matching against State UC agencies' files to determine if improper payments have been made. The Department adheres to this interpretation in implementing WIOA sec. 116(i)(2).

The ''wage information'' defined in § 603.2(k)—which the regulations allow State agencies to disclose under limited circumstances—includes the three data categories or elements (wages, SSN(s), employer information) that States must use as their data source for State and local performance reporting under WIOA. The proposed WIOA implementing regulation at 20 CFR 677.175 (b) defines ''quarterly wage record information'' to include three data elements or categories of data elements: (1) A program participant's SSN(s); (2) information about the wages program participants earn after exiting from the program; and (3) the name, address, State and (when known) the Federal Employer Identification Number (FEIN) of the employer paying those wages. The disclosure of such wage record data is governed by UC part 603 regulations, which establish requirements for maintaining the confidentiality of UC information along with standards for mandatory and permissive disclosure of such information.

Part 603 permits State agencies to disclose confidential UC information—including ''wage information''—to ''public officials'' (defined at § 603.2(d)) under limited circumstances (defined under § 603.5), and authorizes such ''public officials,'' in turn, to use the information to develop Federally-required performance reports.

As explained in greater detail below, the Department proposes changes to § 603.2 (definition of ''public official'') and § 603.5 (governing disclosures to public officials), to help States comply with WIOA's performance requirements, including the performance reports of the States, local areas, and ETPs. In addition, the Department proposes to amend § 603.6 to add a provision requiring disclosure to implement the new statutory requirement on State cooperation with certain DOL and ED evaluations. These changes would facilitate States' obligations to report on performance through the use of quarterly wage records, and to cooperate in DOL and ED evaluations.

The amendments the Department is proposing to part 603 relate only to State agency disclosures necessary to comply with certain provisions of WIOA. The Department is not proposing to redefine or expand the confidential State information—the confidential wage records or wage information—that is currently the basis for State performance reporting, and is not proposing to reduce in any way the significant privacy protections and confidentiality requirements that currently govern that information. The Department is not proposing to change any requirements relating to the permissible or mandatory disclosure of confidential UC information for any other purpose, or addressing any general UC issues. We note, in particular, that nothing in these proposed regulations exempts disclosures made under these regulations from the safeguards and security requirements in § 603.9, the requirements in § 603.10 governing agreements, or the requirements for payment of costs under § 603.8(a).

The Department invites comments on our proposed additions to part 603, but will not consider or address comments on part 603 or other UC matters that are outside the scope of this NPRM.

Section 603.2(d)(2)–(5)

Proposed §§ 603.2(d)(2)–(5) expand the definition of who and what entities are considered ''public officials'' for purposes of complying with WIOA's requirements. Currently, § 603.2(d) defines ''public official'' as ''an official, agency, or public entity'' in the executive branch of government with ''responsibility for administering or enforcing a law,'' or ''an elected official in the Federal, State or local government.'' Proposed § 603.5(e) allows disclosure to public officials who need the information to carry out their official duties. This exception allows State agencies that collect ''wage information'' (including the data required for performance reporting under WIOA sec. 677.175) to provide that information to the State agencies responsible for administering and reporting on the WIOA core programs and mandatory one-stop partner programs. For example, State UC agencies, which are governed by part 603, may disclose confidential UC information to the State adult basic education agency for purposes of performing their official duties, as used in § 603.5(e).

The proposed amendments to § 603.2(d) would clearly enumerate that ''public official'' includes officials from public post-secondary educational organizations, State performance accountability and customer information agencies, the chief elected officials (CEOs) of local Workforce Development Areas (as that term is used in WIOA sec. 106), and a public State educational authority, agency, or institution. Proposed § 603.2(d)(2) would permit disclosure to public post-secondary educational institutions, regardless of how those institutions are structured or organized under State law. The regulation, as proposed, specifically mentions three categories of institutions. Proposed § 603.2(d)(2)(i) would permit disclosure to public post-secondary educational institutions that are part of a State's executive branch, *i.e.,* derive their authority either directly from the Governor or from an entity (State Board, commission, etc.) somewhere in that line of authority. Proposed § 603.2(d)(2)(ii) would permit disclosure to public post-secondary educational institutions that are independent of the State's executive branch, which means those institutions whose directors derive their authority either directly from an elected official in the State other than the Governor or from an entity (again, a State Board, commission, or other entity) in that line of authority. Proposed § 603.2(d)(2)(ii) covers any public post-secondary educational institution established and governed under State law, for example, a State Board of Regents. Proposed § 603.2(d)(2)(iii) would allow disclosure specifically to State technical colleges and community colleges. (Those institutions may also be covered under (i) or (ii))

Proposed § 603.2(d)(5) permits disclosure to a public State educational authority, agency or institution'' as the terms are used in the Family Educational Rights and Privacy Act (FERPA) to clarify that the Department considers the heads of public institutions that derive their authority from a State educational authority or agency to be ''public officials'' for purposes of part 603.

The Department proposes these changes to help States comply with WIOA's requirement to use wage records to measure performance (WIOA sec. 116(i)(2)) and to facilitate the performance reporting required for ETPs under secs. 116(d) and 122 of WIOA. WIOA mandates the use of wage records to measure State and local performance. As long as the recipients of the data adhere to all of the requirements in 20 CFR part 603, this proposed section

would permit States to make these disclosures to comply with WIOA requirements for Federal, State, or local government reporting on program outcomes and for other specified purposes.

Non-public educational institutions, including non-profit or for-profit educational institutions or other ETPs which are not subject to the authority of the executive branch or another State elected official would not be permitted to obtain confidential UC information, including wage information, under this authority because they are not public entities. Any disclosures of confidential UC information to those entities for purposes of complying with WIOA would have to be authorized under the provisions of § 603.5 other than § 603.5(e). However, it is permissible and encouraged to develop processes or systems, such as the Wage Record Interchange System, to enable a State agency or State educational authority (including a State Education Agency) that collects wage records to match program participant data with wage records, and to provide aggregate participant outcome data to non-governmental educational entities, including ETPs under title I of WIOA.

Section 603.5(e)

Proposed § 603.5(e), as amended, would assist State workforce and State education programs in complying with WIOA, and in particular with WIOA's sec. 116 performance accountability responsibilities, by explicitly stating that confidential UC information may be disclosed to a ''public official'' as defined in § 603.2(d)(2) for limited, specified WIOA purposes.

Proposed § 603.5(e), as amended, in conjunction with the revised definition of ''public official'' under 603.2(d)(2), would enable State UC agencies to disclose confidential UC information to State and local agencies and other public officials authorized to carry out their responsibilities under WIOA for performance accountability, including audits and evaluations of the programs and other required reporting of outcomes, as described in proposed § 603.2(d)(2). To enable States to comply with WIOA, State UI agencies, or other State agencies responsible for collection of wage record information, must collaborate with the entities under WIOA that are required to use wage record data for performance to make the data available pursuant to part 603.

The Department notes that the proposed amendment to § 603.5(e) would permit disclosure to a public official for purposes of performance accountability of the entities on the State's eligible training provider list (ETPL). In addition, disclosure of confidential UC information for other programs' performance accountability purposes (*e.g.,* TANF or SNAP) may be accomplished under existing § 603.5, as these entities are public officials and are performing their public duty, as defined in this section.

A new clause (iii) under proposed § 603.5(e) would permit disclosures ''as otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.'' The Department intends that this provision apply only in the limited instance where a Federal or State law requires performance reporting for which data covered by part 603 is needed in a way that is not covered by the other WIOA-specific provisions. In those instances, this provision would permit a State agency to disclose confidential UC information to a ''public official'' seeking the information to comply with that statute.

Section 603.6(8)

Proposed § 603.6(8) makes the disclosure of confidential UC information for certain Federal evaluations mandatory when the disclosure would not interfere with the efficient administration of State UC law. The Department proposes this change to § 603.6 to implement the requirement, under WIOA sec. 116(e)(4), that States cooperate, ''to the extent practicable,'' in the conduct of evaluations by either the Secretary of Labor or the Secretary of Education. WIOA sec. 116(e)(4) defines cooperation to include ''the provision of data (in accordance with appropriate privacy protections established by the Secretary of Labor)''; this includes 20 CFR part 603 and any other privacy protections the Secretary may establish. The proposed new regulation at § 603.6(8) would implement these requirements for purposes of providing confidential UC information regulated by part 603. The new regulation would require disclosure of confidential UC information to Federal officials, or their agents or contractors, requesting such information in the course of an evaluation covered by WIOA § 116(e)(4) and 116(e)(1), to the extent that such disclosure is ''practicable.''

In these cases, the Department interprets ''to the extent practicable'' to mean that the disclosure would not interfere with the efficient administration of State UC law. This standard is consistent with the standard the regulation applies to disclosures under § 603.5, in situations where the disclosure is permitted but a State must determine, first, that the disclosure would not interfere with the efficient administration of State UC law. In effect, the proposed provision would require that State UC agencies make disclosures to Federal education and labor agencies carrying out evaluations when it would not interfere with the efficient administration of the State UC law. The Department anticipates this cooperation and related disclosures would include responding to surveys and allowing site visits, as well as disclosure of confidential UC information needed for the evaluation.

*B. Part 675—Introduction to the Regulations for the Workforce Innovation and Opportunity Systems Under Title I of the Workforce Innovation and Opportunity Act*

Proposed part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions which are not found and defined in the Act.

Proposed § 675.100 describes the purposes of title I of WIOA.

Proposed § 675.200 outlines the structure of the proposed WIOA regulations.

Proposed § 675.300 provides a list of proposed definitions that are applicable across the WIOA regulations.

In addition to the definitions in the WIOA regulations and at secs. 3, 142, 166(b), 167(i), 170(a), 171(b), 203, 302, and 404 of WIOA, proposed § 675.300 provides additional definitions that apply to the programs and activities authorized and funded under title I of WIOA.

Included in this list of definitions, the Department proposes to adopt the following relevant definitions from the Office of Management and Budget's (OMB) ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards'' found at 2 CFR part 200: Contract, Contractor, Cooperative Agreement, Federal Award, Federal Financial Assistance, Grant Agreement, Non-Federal Entity, Obligations, Pass-Through Entity, Recipient, Subaward, Subrecipient, Unliquidated Obligations, and Unobligated Balance. All other definitions at 2 CFR part 200 apply to these regulations where relevant, but have not been included in this section.

Contract: The proposed definition for ''contract'' incorporates the definition established by OMB at 2 CFR 200.22. Specifically, the proposed term ''contract'' refers to the legal document that a non-Federal entity uses to purchase property or services used to carry out its duties under a grant authorized under WIOA. If the

Department determines that a particular transaction entered into by the entity is a Federal award or subaward it will not be considered a contract.

Contractor: The proposed definition of ''contractor'' incorporates the definition contained in OMB's Uniform Guidance at 2 CFR 200.23. The Uniform Guidance has replaced the term ''vendor'' with the term ''contractor.'' As used in these regulations, the term ''contractor'' includes entities that the Act refers to as ''vendors.'' Additionally, it is important to note that contractors are not subrecipients. Additional guidance on distinguishing between a contractor and a subrecipient can be found at 2 CFR 200.330.

Cooperative Agreement: The proposed definition of ''cooperative agreement'' incorporates the definition contained in the Uniform Guidance at 2 CFR 200.24.

Department or DOL: This proposed term refers to the United States DOL, its agencies, and organizational units.

Employment and Training Activity: As used in these regulations, the proposed term ''employment and training activity'' refers to any workforce investment activities carried out for an adult or dislocated worker under sec. 134 of WIOA and 20 CFR part 678.

Equal Opportunity (EO) Data: This proposed term refers to the data required by the Department's regulations at 29 CFR part 37 implementing sec. 188 of WIOA.

ETA: This proposed term refers to the ETA, an agency of DOL, or its successor organization.

Federal Award: This proposed definition incorporates the definition in the Uniform Guidance at 2 CFR 200.38.

Federal Financial Assistance: The proposed definition of ''Federal financial assistance'' incorporates the definition contained in the Uniform Guidance at 2 CFR 200.40.

Grant or Grant Agreement: The proposed definition of ''grant agreement'' incorporates the definition contained in the Uniform Guidance at 2 CFR 200.51. Because both WIOA and these regulations use ''grant'' and ''grant agreement'' interchangabily, the inclusion of both terms here clarifies that the terms are synonymous.

Grantee: The proposed definition of ''grantee'' refers to a recipient of funds under a grant or grant agreement. Grantees are also referred to as recipients in these regulations.

Individual with a Disability: This proposed definition adopts the definition from sec. 3 of the Americans with Disabilities Act, as amended, and is further defined at 29 CFR 37.4.

Labor Federation: This proposed definition remains unchanged from the definition used in the regulations under WIA at 20 CFR 660.300.

Literacy: The proposed definition for ''literacy'' as used in these regulations is a measure of an individual's ability to participate and successfully function both in the workplace and in society.

Local Board: This proposed definition clarifies that the term ''Local Board'' as used in these regulations refers to the Local Workforce Development Boards established under sec. 107 of WIOA.

Non-Federal Entity: The proposed definition of ''non-Federal entity'' incorporates the definition contained in the Department's Exceptions to the Uniform Guidance at 2 CFR 2900.2.

Obligations: The definition of ''obligations'' incorporates the definition contained in the Uniform Guidance at 2 CFR 200.71.

Outlying Area: The proposed term ''outlying area'' refers to those Territories of the United States which are not within the definition of ''State,'' including the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, in certain circumstances, the Republic of Palau.

Pass-through entity: The proposed definition of pass-through entity incorporates the definition in the Uniform Guidance at 2 CFR 200.74.

Recipient: The proposed definition of ''recipient,'' which is different than the current definition of recipient under WIA at 20 CFR 660.300, incorporates the definition in the Uniform Guidance at 2 CFR 200.86.

Register: The proposed definition of ''register'' means the point at which an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment. This is also when information that is used in performance information begins to be collected. At a minimum, individuals must provide identifying information to be registered.

Secretary: This proposed term refers to the Secretary of the U.S. DOL, or their officially delegated designees.

Secretaries: This proposed term refers to the Secretaries of the U.S. DOL and the U.S. ED, or their officially designated designees.

Self-Certification: The proposed term ''self-certification'' refers to the certification made by an individual that they are eligible to receive services under title I of WIOA.

State: The proposed term ''State'' refers to each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State Board: This proposed definition clarifies that the term ''State Board'' as used in these regulations refers to the State Boards established under sec. 101 of WIOA

Subgrant or Subaward: This proposed term incorporates the definition of ''subaward'' in the Uniform Guidance at 2 CFR 200.92. This term replaces the term ''subgrant'' found in WIA at 20 CFR 660.300. Because both WIOA and these regulations use ''subgrant'' and ''subaward'' interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Subrecipient: The proposed definition of ''subrecipient'' incorporates the definition in the Uniform Guidance at 2 CFR 200.93. This term is synonymous with the term ''subgrantee.''

Unliquidated Obligations: The proposed definition of ''unliquidated obligations'' incorporates the definition contained in the Uniform Guidance at 2 CFR 200.97.

Unobligated Balance: The proposed definition of ''unobligated balance'' incorporates the definition in the Uniform Guidance at 2 CFR 200.98.

Wagner-Peyser Act: As used in these regulations, the proposed term ''Wagner-Peyser Act'' refers to the Wagner-Peyser Act passed on June 6, 1933, and codified at 29 U.S.C. 49, *et seq.*

WIA Regulations: The proposed term ''WIA Regulations'' as used in this regulation or subsequently by the Department refers to the regulations 20 CFR parts 660–672. This definition is necessary because, as described in the introduction to these regulations, the Department has chosen to retain the WIA regulations at parts 660–672 of title 20 of the CFR.

WIOA Regulations: This proposed term, as used in this regulation or generally by the Department means those regulations in 20 CFR parts 675 through 687, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIOA sec. 188 in 29 CFR part 37.

Workforce Investment Activities: The proposed term ''workforce investment activities'' is a general term that describes the broad array of activities and services provided to eligible adults, dislocated workers, and youth under secs. 129 and 134 of title I of WIOA.

Youth Workforce Investment Activity: The proposed term ''youth workforce investment activity'' refers to those activities carried out for eligible youth that fall within the broad definition of ''workforce investment activity.''

*C. Part 679—Statewide and Local Governance of the Workforce Innovation and Opportunity System Under Title I of the Workforce Innovation and Opportunity Act*

1. Subpart A—State Workforce Development Board

This subpart A sets forth the conditions under which the Governor must establish the State Board.

Proposed §§ 679.100(a)–(e) explain the purpose of the State Board. The State Board represents a wide variety of individuals, businesses, and organizations throughout the State. WIOA is designed to help job seekers and workers access employment, education, training, and support services needed to succeed in the labor market, and match employers with the skilled workers needed to compete in the global economy. Further, the Department envisions a State Board that takes leadership to ensure that the one-stop system in each State is customer driven. The State Board can help lead this effort by aligning Federal investments in job training, integrating service delivery across programs, and ensuring that the workforce system is job-driven and matches employers with skilled individuals.

The Department envisions that the State Board will serve as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system; align and improve employment, training, and education programs, and through these efforts, promote economic growth.

The State Board must be a strategic convener that promotes partnerships and engages key stakeholders. This role can only be accomplished if each State Board member is an active participant in the business of the board. State Board members must establish a platform in which all members actively participate and collaborate closely with the required partners of the workforce development system, including public and private organizations. This engagement is crucial in the State Board's role to help integrate and align a more effective job-driven workforce investment system that invests in the connection between education and career preparation.

Section 679.100 What is the vision and purpose of the State Board?

A key goal of Federally-funded training programs is to get more Americans ready to work with marketable skills and support businesses to find workers with the skills that are needed. The role of the State Board in achieving this goal includes engaging employers, education providers, economic development, and other stakeholders to help the workforce development system achieve the purpose of WIOA and the State's strategic and operational vision and goals outlined in the State Plan. The Department encourages the State Board to develop a comprehensive and high-quality workforce development system by working with its workforce, education, business, and other partners to improve and align employment, training, and education programs under WIOA.

The Department encourages the State to take a broad and strategic view when considering representatives of the State Board, and also in establishing processes which it will use to include necessary perspectives in carrying out State Board functions. For example, alignment of required one-stop partner investments is essential to achieving strategic and programmatic alignment at the State, regional, and local level. Further, States are encouraged to examine factors like the natural bounds of regional economies, commuting patterns, and how economic sectors impact the State, which may benefit from inputs either from formal members of the board, or through other engagement. Further, a broad geographic representation as well as a reflection of diversity of populations within the State is critical.

Section 679.110 What is the State Workforce Development Board?

Proposed § 679.110 describes the membership requirements of the State Board. WIOA sec. 101(b) uses the terms ''representative'' and ''representatives'' in several places. In this section the Department interprets ''representatives'' to mean two or more individuals and ''representative'' as one individual.

Proposed § 679.110(a) explains that States must establish State Boards in accordance to the requirements of WIOA sec. 101 and these regulations. This proposed section retains the same requirements found at 20 CFR 661.200(a).

Proposed § 679.110(b) generally requires, in accordance with sec. 101(b)(2) of WIOA, that the State Board membership represent the diverse geographic areas of the State. Employers' and workers' challenges and needs differ among the urban, rural, and suburban areas of the States due to demographics, labor market information and conditions, and business and worker needs and access to the workforce development system. Accordingly, the Department strongly encourages that each category of membership on the Board—the members of the State legislature, business representative, workforce and labor representatives, and State and local officials—represent the diverse geographic areas of the State to ensure that the workforce development system meets the education, employment, and skill needs of workers, jobseekers, and businesses, no matter their location in the State.

Proposed § 679.110(b)(1) and (2) implement secs. 101(1)(A) and (B) of WIOA by requiring that the board include the Governor of the State and one member of each chamber of the State legislature.

Proposed § 679.110(b)(3)(i)(A) through (C), implementing sec. 101(b)(1)(C)(i) of WIOA, require the majority of State Board representatives to be from businesses or organizations in the State. These representatives must either be the owner or chief executive of the business or be an executive with optimum policy-making or hiring authority as defined in proposed § 679.120. These representatives must also come from businesses or organizations that represent businesses which provide employment and training opportunities that include high-quality, work-relevant training, and development opportunities in in-demand industry sectors or occupations. Work-relevant and development opportunities may include customized training, registered apprenticeship, or OJT. Finally, the Governor must appoint these members based on nominations from business organizations and trade associations in the State. The Department envisions that these members will be individuals that will be able to drive the board to align the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system.

Proposed § 679.110(b)(3)(i)(D) requires, at a minimum, that one member of the State Board represent small business as defined by the U.S. Small Business Administration. Small businesses are a critical component of and major contributor to the strength of local economies and present new employment opportunities. The Department proposes to require a small business representative because the presence of at least one small business representative on the State Board will allow the board as a whole to more readily receive the unique perspectives, experiences, and needs of small businesses.

Proposed § 679.110(b)(3)(ii)(A) through (D) require that not less than 20

percent of the members of the State Board be representatives of the workforce. Such representatives must include representatives from labor organizations and registered apprenticeship programs within the State, in accordance with sec. 101(b)(1)(ii). This provision maintains WIA's emphasis and requirement that State Board representatives include members of the workforce and labor organizations. The Department anticipates that the inclusion of workforce and labor representatives will foster cooperation between labor and management, strengthening the operation and effectiveness of the State workforce development system. This proposed section also encourages representation from CBOs that have demonstrated experience and expertise, as defined in proposed § 679.120, in addressing the employment, training, or education needs of individuals with barriers to employment across the State including organizations that serve veterans or that provide or support competitive, integrated employment for individuals with disabilities, and organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve OSY.

Proposed § 679.110(b)(3)(iii)(A)(*1*) and (*2*), implementing WIOA sec. 101(b)(1)(iii)(I), require the Governor to appoint to the State Board representatives of government that include the lead State officials with primary responsibility for each of the core programs and two or more CEOs that represent both cities and counties, where appropriate. The inclusion of State officials with primary responsibility for each of the core programs and CEOs on the State Board is important so that they can support and improve the service delivery of each core program through their experience in workforce investment activities and positions as public leaders. This provision also requires that where the State official with primary responsibility for a core program represents more than one core program, that official must ensure adequate representation on the State Board of the needs of all the core programs under their jurisdiction. Additionally, the CEOs must be able to represent their geographic area such as their surrounding cities and counties in the area.

Proposed § 679.110(b)(3)(iii)(B), in accordance with WIOA sec. 101(b)(1)(C)(iii)(II), allows the Governor to designate other representatives and officials to the Board, including but not limited to, representatives and officials such as State agency officials from agencies that are responsible for one-stop partners, State agency officials responsible for economic development or juvenile justice programs, individuals who represent an Indian tribe or tribal organizations, and State agency officials responsible for education programs.

Proposed § 679.110(c), implementing sec. 101(c) of WIOA, requires the Governor to select a chairperson for the State Board from the business representatives on the board. This proposed section retains the same requirements found at 20 CFR 661.200(g).

Proposed § 679.110(d) requires the Governor to establish by-laws that help improve operations of the State Board. Proposed § 679.110(d)(1) through (7) require that at a minimum the by-laws address the nomination process used by the Governor to select the State Board chair and members, term limitations and how the term appointments will be staggered to ensure only a portion of memberships expire in a given year, the process to notify the Governor of a board member vacancy to ensure a prompt nominee, the proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee, brokers relationships with stakeholders, and any other conditions governing appointment or membership on the State Board as deemed appropriate by the Governor. In addition to these required elements, the Governor must include any additional requirements in the board's by-laws that he or she believes is necessary to ensure the orderly administration and functioning of the board. An effective State Board establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help State Boards to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board.

Proposed § 679.110(e) requires, as a general condition of State Board membership, that members who represent the non-business organizations, agencies, or other entities described in proposed § 679.110(b)(3)(ii) and (iii) have optimum policy-making authority. Because WIOA sec. 101(d) adds State Board functions, such as identifying and disseminating information on best practices and developing and reviewing statewide policies affecting the coordinated provision of services through the State's one-stop delivery system, all members, not just those representing the business community, should have optimum policy-making authority to accomplish the purposes of WIOA and conduct the State Board required functions.

Proposed § 679.110(f) implements the multiple-entity representation limitations for State Board members at WIOA sec. 101(b)(3). Robust representation in each of the categories is essential to ensure that the State Board benefits from the diversity and experience of board members.

Proposed § 679.110(f)(1) explains that a State Board member may not represent more than one of the three membership categories: Business representatives, workforce representatives, or government representatives. For example, one member could not serve as a business representative and a joint labor-management apprenticeship program even if the member would otherwise satisfy the criteria for both categories.

Proposed § 679.110(f)(2) explains that a State Board member may not serve as a representative of more than one subcategory under (b)(3)(ii). Under this provision, a single board member could not serve as a representative of an organized labor organization and an apprenticeship program (or the optional subcategories) even if the member would otherwise satisfy the criteria for either category.

Proposed § 679.110(f)(3) prohibits a government representative from serving as a representative of more than one subcategory under (b)(3)(iii). However, where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs. In some instances, it would be appropriate and beneficial for one representative to represent multiple programs on the State Board. For example, the head of a State Workforce Agency might represent both the WIOA title I and Wagner-Peyser programs. This arrangement could serve to improve integration of these two programs and/or help the State Board better achieve the colocation requirements at WIOA sec. 123(c)(3). In other instances, such an arrangement would be less beneficial. For example, where vocational rehabilitation services fall under the State Workforce Agency, appointing a single representative to satisfy the membership requirements of WIOA title I, Wagner-Peyser, and vocational rehabilitation services may limit the voice and influence of a core program partner. The Department encourages Governors to use discretion

when appointing board members to represent multiple subcategories under (b)(3)(iii).

Proposed § 679.110(g) requires that all required board members have voting privileges and allows the option for the Governor to convey voting privileges to non-required members. All required board members must have a voice in the State Board's decisions to ensure that the interests of all members of the community represented by the required members are taken into account by the board. Requiring voting rights allows the required board members to have an effect on the State Board's key decisions and initiatives and enables the required board members to effectively represent the individuals and organizations of their communities. This proposed section also permits the Governor to grant voting privileges to the non-required members of the board, and the Department encourages the Governor to do so if doing so, in their opinion, would further the mission and goals of the board.

Section 679.120 What is meant by the terms ''optimum-policy-making authority'' and ''demonstrated experience and expertise''?

Proposed § 679.120(a) defines the term ''optimum policy-making authority'' as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. This proposed section retains the same requirements found at 20 CFR 661.203(a).

Proposed § 679.120(b) defines the term ''demonstrated experience and expertise'' as an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function. WIOA sec. 101(d) adds new State Board functions, such as the development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. This provision will ensure that the State Board will include members that will assist the board in fulfilling these functions. The Department seeks public comment on how to further define ''demonstrated experience and expertise'' and examples of the types of qualifications that would meet such a definition.

Section 679.130 What are the functions of the State Board?

Proposed § 679.130 implements sec. 101(d) of WIOA and describes the role and functions of the State Board. Proposed § 679.130(a), (d) through (e), and (g) through (k) reiterate the relevant statutory requirements at secs. 101(d)(1), (4)–(5), and (7)–(11). These functions are the primary functions of the State Board.

Proposed § 679.130 is consistent with WIOA's statutory requirement that the State Board must assist the Governor in the development, implementation, and modification of the 4-year State Plan.

Proposed § 679.130(b) is consistent with WIOA sec. 101(d)(2) and reiterates the statutory requirements. The proposed regulation states the review of statewide policies, programs, and recommendations on actions that must be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations must include a review and provision of comments on the State plans, if any, for programs and activities of one-stop partners that are not core programs.

Proposed § 679.130(c)(1) through (7) are consistent with WIOA secs. 101(d)(3)(A) through (G) and reiterate WIOA's requirements that the State Board assist the Governor in development and continuous improvement of the State's workforce development system, including removing barriers to aligning programs and activities, developing career pathways to support individuals to retain and enter employment, developing customer outreach strategies, identifying regions and designating local workforce areas, developing and continuously improving the one-stop system, and developing strategies to train and inform staff.

Proposed § 679.130(d) and (e) reiterate statutory language requiring State Boards to assist in the development of State performance and accountability measures and to identify and disseminate best practices.

Proposed § 679.130(f)(1) through (3) are consistent with WIOA secs. 101(d)(6)(A) through (C) to assist in the development and review of statewide policies on coordinated service provisions, which includes criteria for Local Boards to assess one-stop centers, allocation of one-stop center infrastructure funds, and the roles and contributions of one-stop partners within the one-stop delivery system. In addition, it is important for the State Board to consult with CEOs and Local Boards when establishing objective criteria and procedures for Local Boards to use when certifying one-stop centers. Where Local Boards serve as the one-stop operator, the State Board must use such criteria to assess and certify the one-stop center to avoid inherent conflicts of interest in a Local Board assessing itself.

Proposed § 679.130(g) through (k) reiterate statutory language requiring State Boards to assist in the development of strategies for technological improvements to improve access and quality of service, align technology and data systems across one-stop partner programs to improve service delivery and effectiveness in reporting on performance accountability, develop allocation formulas for distribution of adult and youth programs, and in accordance with WIOA and these regulations, prepare the annual report and develope the statewide WLMIS.

Proposed § 679.130(l) is consistent with WIOA sec. 101(d)(12). This proposed regulation requires the State Board to assist the Governor in the development of other policies that promote statewide objectives and enhance the performance of the workforce development system in the State.

Section 679.140 How does the State Board meet its requirement to conduct business in an open manner under ''sunshine provision'' of the Workforce Innovation and Opportunity Act sec. 101(g)?

Proposed § 679.140 implements sec. 101(g) of WIOA, requires that the State Board conduct its business in an open and transparent manner, and describes several pieces of information that the board is required to provide to ensure transparency.

Proposed § 679.140(b)(1) through (4) requires the State Board to make certain information available on a regular basis to ensure that it is conducting its business in an open manner. Transparency promotes accountability and provides valuable information to citizens on the Federal, State, and local government's activities. Therefore, the State Board must make available to the public on a regular basis, through electronic means and open meetings, information about State Board activities such as the State Plan, modifications to the State Plan, board membership, the board's by-laws, the minutes of meetings. This information must be easily accessed by interested parties. Ensuring that this information is widely available promotes transparency and

provides access to the public on how the State Board works to align, integrate, and continuously improve the workforce development system.

Section 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

Proposed § 679.150(a) and (b) implement the requirements of WIOA sec. 101(e)(1) and describe the circumstances by which the Governor may select an alternate entity in place of a State Board. Paragraph (b) lists the conditions that must be met if a State uses an alternative entity in place of the State Board and requires that the entity meets the requirements of § 679.110.

Proposed § 679.150 (c)(1) through (3) stipulate that if the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The proposed section further requires that the State Board ensure that the alternative entity maintain a meaningful, ongoing role for unrepresented membership groups, including entities carrying out the core programs, and to inform the Board's actions.

Proposed § 679.150(d) stipulates if the membership structure of the alternative entity had a significant change after August 7, 1998, the entity will no longer be eligible to perform the functions of the State Board. In such a case, the Governor must establish a new State Board which meets all of the criteria of WIOA sec. 101(b).

Proposed § 679.150 (e)(1) and (2) define a significant change in the membership structure which includes a change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. This proposed section retains the same requirements found at 20 CFR 661.210(e).

Proposed § 679.150(f) stipulates all State Board references in 20 CFR parts 675 through 687 also apply to an alternative entity used by a State. This proposed section implements sec. 101(e)(2) of WIOA.

Section 679.160 Under what circumstances may the State Board hire staff?

Proposed § 679.160 implements sec. 101(h) and describes the board's authority to hire staff. Per proposed § 679.160(c), the pay provided to the director and staff hired by the board is subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

2. Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

The WIOA envisions a workforce development system that is customer-focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. It requires Workforce Development Boards and CEOs to design and govern the system regionally, aligning workforce policies and services with regional economies and supporting service delivery strategies tailored to these needs. To support this regional approach, WIOA requires States to identify intrastate and interstate regions which may be comprised of more than one local area, and requires local areas to plan regionally. WIOA envisions a regional system where not only do local areas plan regionally, but workforce system leaders partner and provide leadership as part of comprehensive, regional workforce and economic strategies. This subpart provides the requirements for designation of regions and local areas under WIOA.

Section 679.200 What is the purpose of a region?

Proposed § 679.200 describes the purpose of requiring States to identify regions: to align workforce development resources to regional economies to ensure coordinated and efficient services to both job seekers and employers. WIOA requires States to establish regions in order to ensure that training and ES support economic growth and related employment opportunities and are meeting the skill competency requirements of the regions. The development of comprehensive regional partnerships facilitates alignment of workforce development activities with regional economic development activities, and better supports the execution and implementation of sector strategies and career pathways. Regional cooperation may also lower costs and increase the effectiveness of service delivery to businesses that span more than one local workforce development area within a region and to job seekers through coordination of shared services, processes, and operations. The Department encourages States to use these processes to identify any performance, fiscal, or planning challenges and to ensure that local and regional planning areas are aligned to support improved service delivery, improved training and employment outcomes, better meet employer needs, and greater effectiveness and efficiency in achieving these outcomes.

Section 679.210 What are the requirements for identifying a region?

Proposed § 679.210 outlines the requirements for identifying a region.

Proposed § 679.210(a) requires that the Governor assign local areas to a region prior to the submission of the State Unified or Combined Plan.

Proposed § 679.210(b) explains that the Governor must develop a policy for designation of a region prior to submission of the State Unified or Combined Plan, in order to receive WIOA title I–B adult, dislocated worker, and youth allotments. The regional assignment is important because regional economic development areas do not necessarily correspond to State, county, or local workforce development areas, or municipal boundaries.

Proposed § 679.210(b) clarifies the required factors that a Governor must consider when identifying a region and the parties the Governor must consult, implementing WIOA sec. 106(a)(1). The considerations for identifying a planning region are consistent with those for local area designation outlined in proposed § 679.240(a).

Proposed § 679.210(c) provides additional criteria the Governor may consider when identifying regions. These additional criteria, which provide a more comprehensive picture of regional economies and labor markets, provide additional data points to inform the Governor's decision to assign local areas to regions. However, the Department seeks comment on the appropriateness of these factors and requests suggestions of additional data points for defining a regional economy and labor market.

The Department has included ''population centers'' in proposed § 679.210(c)(1) because they and their contiguous areas of growth are a basic factor distinguishing economic development areas and planning regions.

Proposed § 679.210(c)(2) allows the consideration of ''commuting patterns'' because commuting pattern data can show the movement of workers from their residence to their workplace. A

strong flow of commuters from one local area, municipality, or county into another is an indication of the economic interdependence of the two areas.

''Land ownership'' is included in proposed § 679.210(c)(3) because land ownership can significantly affect the economic development potential of an area.

''Industrial composition'' has been proposed as a factor in § 679.210(c)(4) because it is primarily based upon industry employment patterns. The factors used in determining regions could be jobs by industry and share of total employment by industry.

Proposed § 679.210(c)(5) permits the Governor to consider ''location quotients,'' which are ratios that could be computed by dividing a local area's percentage of employment in a particular industry by the State's percentage of employment in a particular industry. The economic base of a local area includes those industries in which the local area has a higher proportion of employment than the State as a whole, or a higher location quotient. Adjacent local areas with similar economic bases are strong candidates for placement in the same region.

''Labor force conditions'' is proposed as a factor in § 679.210(c)(6). Local area labor force employment and unemployment data could provide a measure of labor availability throughout the State. Adjacent local areas with similar labor force characteristics, such as unemployment rates, might have similar workforce/economic development needs, thus joining those areas into a region may be beneficial.

Proposed § 679.210(c)(7) suggests that the Governor consider ''geographic boundaries'' when setting regions because they may serve to facilitate or hinder the movement of people and commerce between areas, thereby naturally delineating regional boundaries.

Finally, proposed § 679.210(c)(8) indicates that the Secretary may suggest additional factors in future guidance.

Proposed § 679.210(d), implementing sec. 106(a)(2) of WIOA, outlines the types of regions and how local areas may be assigned to regions. A region may consist of a single local area, two or more contiguous local areas with a State, or two or more contiguous local areas in two or more States. When the Governor(s) assigns two or more local areas to a region, the region, per WIOA sec. 3(48), is considered a planning region, which is required to coordinate regional service strategies, regional sector initiatives, the collection and analysis of regional labor market data, administrative costs, transportation, partnership with economic develop agencies, and the negotiation of local performance consistent with the regional planning requirements at § 679.510. A single local area may not be split across two planning regions. Local areas must be contiguous in order to be a planning region and effectively align economic and workforce development activities and resources. The Department anticipates providing additional guidance regarding the creation and management of interstate planning regions.

Section 679.220 What is the purpose of the local workforce development area?

Distinct from the regional designation, WIOA also provides for local workforce development areas. As described above, these local areas may be identified individually or in combination, as regions. Proposed § 679.220 describes the purpose of the local workforce development area (local area). The Governor must designate local areas in order to receive WIOA title I adult, dislocated worker, and youth allotments, as required by WIOA sec. 106. Local areas serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. States allocate workforce investment funds based on various population characteristics of the local area. Local areas may correspond to regions identified in WIOA sec. 106(a)(1) or may be smaller geographic areas within a planning region, each with its own Local Workforce Development Board.

Section 679.230 What are the general procedural requirements for designation of local workforce development areas?

Proposed § 679.230 describes the procedural requirements that the Governor must use for the designation or redesignation of a local workforce development area. Proposed § 679.220 (a) through (c), implementing WIOA sec. 106(b)(1)(A), requires the Governor to consult with the State Board and CEO, and consider public comments from a wide range of stakeholders consistent with provisions at WIOA sec. 102(b)(2)(e)(iii)(II) as part of the process of identifying the local area. The Governor has the discretion to establish the process and procedures to solicit comments that it determines appropriate; however a wide-reaching, inclusive process allows sufficient time for stakeholders to provide substantive comments that will enable the Governor to receive meaningful feedback from all interested stakeholders, ensuring that the Governor is able to consider all relevant information, data, and opinions before making a decision to designate or redesignate a local area.

Section 679.240 What are the substantive requirements for designation of local workforce development areas that were not designated as local areas under the Workforce Investment Act of 1998?

Proposed § 679.240 provides the substantive requirements that Governor must use for the designation or redesignation of local workforce development areas.

Proposed § 679.240(a) explains that the Governor must develop a policy for designation or redesignation of local workforce development areas, including the factors that the Governor must consider. The statute requires that the Governor designate local areas that ''are consistent'' with labor market and regional economic development areas: The Department interprets this to mean that within a local area, there must be common labor markets and economic development areas. Better integration between the workforce and economic development systems serves to best connect the employment needs of workers with the skilled workforce needs of employers. This section implements sec. 106(b)(1)(B) of WIOA.

Proposed § 679.240(b) permits the Governor to approve a local area designation request from any unit of local government, including a combination of multiple units. This provision implements sec. 106(b)(4) of WIOA and retains the same requirements found at 20 CFR 661.250(c). Proposed paragraph (c) permits the Governor to redesignate a local area that has been designated or redesignated under § 679.240(a) or has been designated under § 679.250(a) or (c) if the local area requests, and the Governor approves, the redesignation.

Section 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

Proposed § 679.250 describes the requirements for initial and subsequent designation of local areas that had been designated as local areas under WIA.

Proposed § 679.250(a) implements sec. 106(b)(2) of WIOA that requires, during the first 2 full PYs following the enactment of WIOA, a Governor is to approve a request for initial designation from any local area designated as a local area under WIA as long as the entity

was designated a local area under WIA, performed successfully, and maintained sustained fiscal integrity for 2 years prior to the enactment of WIOA. This provision requires the Governor to continue the designation of local areas that performed well and maintained sound fiscal practices under WIA. If a local area that was designated under WIA requests initial designation under WIOA but does not meet all of the requirements of § 679.250(a), the Governor has the discretion to approve the initial designation under WIOA or to redesignate the local area pursuant to the procedures described in § 679.240.

Proposed § 679.250(b) clarifies that initial designation applies to PYs 2015 and 2016, as per WIOA sec. 106.

Proposed § 679.250(c), in accordance with sec. 106(b)(3) of WIOA, describes the requirements for the subsequent designation of local workforce development areas that were initially designated under § 679.250(a). Specifically, the Governor must approve requests for subsequent designation as long as the local area performed successfully, sustained fiscal integrity, and in the case of a local area in a planning region, met the planning region requirements during the 2-year period of initial designation. Local areas that are able to demonstrate successful performance and fiscal integrity must be permitted to continue to operate and may not be redesignated without the consent of the Local Board and CEO in the local area.

Proposed § 679.250(d) describes the role of the Governor in reviewing a local area's subsequent designation. Paragraph (d)(1) permits the Governor to evaluate a local area at any time to ensure the local area continues to meet the requirements for subsequent eligibility at paragraph (c). Paragraph (d)(2) requires the Governor to review local areas to ensure they continue to satisfy the requirements at paragraph (2) as part of each 4-year State planning cycle. Sections 116(g)(2)(A) and 184(b)(1) of WIOA describe the required actions that the Governor must take in the event that a local workforce area fails to meet its negotiated levels of performance or does not comply with administrative requirements, respectively. Under these provisions the Governor retains the authority to take corrective action in light of failure of performance or fiscal management short of redesignation, and is not required to redesignate a local area that has failed to maintain the requirements of paragraph (c). Furthermore, the Governor may redesignate local areas at any time with the cooperation of the CEO and Local Board in a given local area.

Proposed § 679.250(e) presumes that local areas will be considered to have requested continued designation unless the CEO and the Local Board directly notify the Governor that they no longer wish operate as a local area. This newly proposed paragraph reduces the administrative burden of maintaining local area status, while still holding local areas accountable to the requirements of paragraph (c).

Proposed § 679.250(f) specifies that the requirements for subsequent designation do not apply to local areas that are designated or redesignated under § 679.240 or are single-area States designated under § 679.270.

Proposed § 679.250(g) clarifies that rural concentrated employment programs are not eligible to apply for initial designation as a local area. WIOA allows any unit of local government (or combination of units of local government) to request designation as a local area; however, unlike under WIA, this provision does not extend to rural concentrated employment programs.

Section 679.260 What do the terms ''performed successfully'' and ''sustained fiscal integrity'' mean for purposes of designating local areas?

Proposed § 679.260 defines the terms ''performed successfully'' and ''sustained fiscal integrity'' used in § 679.250. This section implements sec. 106(e) of WIOA.

Proposed § 679.260(a) defines the term ''performed successfully'' for the purpose of initial designation to mean that the local area met or exceeded all performance levels the Governor negotiated with Local Board and CEO under WIA sec. 136(c) for the last 2 full PYs before the enactment of WIOA. It also requires that the local area not fail any individual measure for the last 2 consecutive PYs before the enactment of WIOA. Proposed § 679.260(a)(1) requires the Governor, in order to determine if a local area has performed successfully, to have defined the terms ''met or exceeded'' and ''failure'' at the time the performance levels were negotiated. Proposed § 679.260(a)(2) clarifies that the Governor may not retroactively apply any higher WIOA threshold to performance negotiated and achieved under WIA for the purposes of local area designation.

Proposed § 679.260(b) defines the term ''performed successfully'' for the purpose of subsequent designation to mean that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and CEO for core indicators of performance described at WIOA sec. 116(b)(2)(A). It also requires the Governor to have defined the terms ''met or exceeded'' and ''failure'' in the State Plan.

Proposed § 679.260(a) and (b) expand on the definition at WIOA sec. 106(e)(1) to ensure that the initial and subsequent designation of local areas is conducted in a fair and transparent manner by ensuring that the local area's performance is judged on the contemporaneous standards agreed to between the State and local area at the time rather than under subsequently imposed performance standards.

Proposed § 679.260(c) defines the term ''sustained fiscal integrity'' for the purpose of determining initial and subsequent local area designation to mean that the Secretary has not made a formal determination that either the grant recipient or any other entity charged with expending local area funds misexpended such funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

Proposed §§ 679.250 and 679.260 allow for an orderly transition from WIA to WIOA and protects the designation status of local areas that meet or exceed performance targets negotiated in good faith under the relevant authorizing legislation while allowing the Governor both to oversee properly the performance of the local areas and take action necessary to improve the area's performance in a timely fashion.

Section 679.270 What are the special designation provisions for single-area States?

Proposed § 679.270 outlines the special designation provisions for single-area States. Under WIOA sec. 106(d), the Governor of any single-area State under WIA may choose to continue to designate the State as a single-State area. However, proposed § 679.270(b) clarifies that the Governor must identify the single-area status of the State in its Unified or Combined State Plan and proposed § 679.270(c) further clarifies that the State Board in a single-area State must continue to carry out the functions of the State and Local Boards. This section is intended to clarify single-area States' responsibilities and functions: Key local functions, such as monitoring; entering into a memorandum of understanding (MOU) with one-stop partners; selecting one-stop operators; selecting eligible providers of youth activities, career services and training services; and

certifying one-stop centers, are essential to the proper functioning of the public workforce system and remain so within single-area States.

Section 679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

Proposed § 679.280 describes how the State fulfills the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area.

Proposed § 679.280(a) asserts that the State must authorize statewide funds for transition activities when all local areas in a planning region petition the Governor for redesignation as a single local area as required by WIOA sec. 106(b)(6). WIOA introduces redesignation assistance as a required statewide activity. This provision will help local areas consolidate where appropriate for the purposes of cost savings and streamlined service delivery.

Proposed § 679.280(b) clarifies that when statewide funds are exhausted in a given PY, the State may fulfill the requirement to provide redesignation assistance in the following PY. This section provides States with the flexibility to balance priorities while ensuring local areas receive redesignation assistance.

Proposed § 679.280(c) provides examples of the activities that local areas may elect to pursue with the redesignation assistance received from the State. However, the State may establish policy on what other activities local areas may use funds received for the purposes of redesignation or leave such determination to the local areas.

Section 679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

Proposed § 679.290 outlines the appeals process for an entity that submits a request for initial or subsequent designation as a local workforce development area that is rejected by the Governor. This section implements sec. 106(b)(5) of WIOA.

Proposed § 679.290(a) establishes that entities that are not approved as local areas may follow the process established at 20 CFR 683.640. This section is essentially unchanged from WIA. However, while provisions at WIOA sec. 106(b) permit any unit of local government or combination of units to apply for designation as a local area, the law does not specify that rural concentrated employment programs may apply for designation as a local area. The intent of this section was to prohibit such an arrangement under WIOA and that this prohibition logically applies to the appeals process.

Proposed § 679.290(b) establishes that an entity making an unsuccessful appeal to the State Board may request a review of the appeal by the Secretary of Labor if the State does not respond to the appeal in a timely manner or if the appeal for designation is denied by the State. The Department defines a 'timely manner' to be 60 days after the submission of the appeal. This provides adequate time for the State to review and make a ruling on the appeal while not being so long as to delay unreasonably the appeal and designation processes.

Proposed § 679.290(c) summarizes the circumstances under which the Secretary of Labor may require an entity to be designated as a local area. Specifically, the Secretary may require designation upon a finding of either a denial of procedural rights or a finding that the area meets the requirements for designation. This section was updated from WIA to reflect that neither the 'automatic' nor 'temporary and subsequent' designation statuses exist under WIOA.

3. Subpart C—Local Boards

Section 679.300 What is the vision and purpose of the Local Workforce Development Board?

Proposed § 679.300 explains the purpose of the Local Board. The Local Board represents a wide variety of individuals, businesses, and organizations throughout the local area. The Local Board serves as a strategic convener to promote and broker effective relationships between the CEOs and economic, education, and workforce partners.

The Local Board must develop a strategy to continuously improve and strengthen the workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote economic growth. Local Board members must establish a platform in which all members actively participate and collaborate closely with the required and other partners of the workforce development system, including public and private organizations. This is crucial to the Local Board's role to integrate and align a more effective, job-driven workforce investment system.

Proposed § 679.300(b)(1) and (2) outlines the purposes of the Local Board. A key goal of Federally-funded training programs is to prepare job seekers ready to work with marketable skills. This includes providing strategic and operational oversight in collaboration with required and other partners to help the workforce development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. The Local Board must work to develop a comprehensive and high-quality workforce development system by collaborating with its workforce and education partners to improve and align employment, training, and education programs under WIOA.

Section 679.310 What is the Local Workforce Development Board?

Proposed § 679.310 defines the Local Workforce Development Board. Proposed § 679.310(a) explains that the CEO in each local area appoints the Local Board in accordance with WIOA sec. 107(b) and that the Governor must certify the Local Board on a biannual basis. This proposed section retains the same requirements found at 20 CFR 661.300(a).

Proposed § 679.310(b) describes that the Local Board sets policy within the local area in partnership with the CEO, consistent with State policy. This proposed section retains the same requirements found at 20 CFR 661.300(b).

Proposed § 679.310(c), asserts that the CEO may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the CEO remains liable for funds received under title I of WIOA unless they reach an agreement for the Governor to act as the local grant recipient and bear such liability. This proposed section retains the same requirements found at 20 CFR 661.300(c).

Proposed § 679.310(d) describes that the Local Board, in partnership with the CEO, are responsible for the development of the local plan. This proposed section retains the same requirements found at 20 CFR 661.120(d).

Proposed § 679.310(e) affirms that in local areas with more than one unit of general local government, the CEOs of the respective units may execute an agreement to describe their responsibilities for carrying out their roles and responsibilities. If the various parties cannot come to an agreement, the Governor may appoint the Local Board. This proposed section retains the

same requirements found at 20 CFR 661.300(3).

Proposed § 679.310(f) indicates that in single-State areas, the State Board must fulfill the functions of the Local Board, which the Department also required under the WIA regulation at 20 CFR 661.300(f). As required by WIOA sec. 107(c)(4)(B)(iii), the proposed section clarifies that the State is not required to establish or report on local performance measures. This clarification presents a logical approach to local performance because the local area performance will be reflected in the State performance reports.

Proposed paragraph (g) requires the CEO to establish by-laws, consistent with State policy, that help improve operations of the Local Board. Proposed § 679.310(g)(1) through (7) require that at a minimum the by-laws address the nomination process used by the CEO to elect the Local Board chair and members, term limitations and how the term appointments will be staggered to ensure only a portion of memberships expire in a given year, the process to notify the CEO of a board member vacancy to ensure a prompt nominee, the proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee, the use of technology to improve board functions, brokers relationships with stakeholders, and any other conditions governing appointment or membership on the Local Board as deemed appropriate by the CEO. In addition to these required elements, the CEO must include any additional requirements in the board's by-laws that it believes is necessary to ensure the orderly administration and functioning of the board. An effective Local Board establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help Local Boards to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board.

Section 679.320 Who are the required members of the Local Workforce Development Board?

Proposed § 679.320 explains that the CEO in a local area must appoint a Local Workforce Development Board and provides guidelines on requirements and options for the CEO to follow in appointing members to the Local Board.

Proposed § 679.320(b) requires that a majority of the Local Board members must represent businesses as per WIOA sec. 107(b)(2)(A). Business representatives include owners, chief executive or operating officers, and other business executives, including small businesses, and business organizations. As reflected in proposed paragraph (b)(2), WIOA requires that business representatives on the Local Board must represent business that provide employment opportunities in in-demand industry sectors or occupations as defined in WIOA sec. 3(25). Employers with employment opportunities in high-growth sectors are uniquely suited to communicate the emerging workforce needs of employers in these high-growth, in-demand sectors to the Local Board.

Proposed § 679.320(c) explains the required and optional member categories that must make up at least 20 percent of the Local Board membership representing labor organizations, or where they do not exist, employee representatives. Proposed paragraphs (c)(1) and (2) require that the Local Board must include two or more representatives of labor organizations (or other employee representatives if there are no labor organizations operating in the local area) and one or more representatives of a joint-labor management registered apprenticeship program (or other registered apprenticeship program if there is no joint labor-management program in the local area). The use of the word 'representatives' with respect to labor organization membership indicates a requirement for two or more members. In areas with joint apprenticeship programs, the apprenticeship representative must be a member of a labor organization or a training director.

In addition to these required members, proposed paragraphs (c)(3) and (4) explain that the CEO may appoint one or more representatives of CBOs with experience in addressing the employment needs of individual barriers to employment including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities, and one or more representative of organizations with experience addressing the employment needs of WIOA-eligible youth, including serving OSY. While not mandatory, the two representative categories in proposed paragraphs (c)(3) and (4) count towards reaching the 20 percent threshold. Proposed § 679.320(c) underscores both the importance of registered apprenticeship, a proven training strategy that effectively meets the needs of both employers and workers,[1] and the role of organized labor in workforce development, particularly in developing registered apprenticeship programs.

Proposed § 679.320(d)(1) and (2) describe the entities required to be on the board to provide an adult education perspective and representation. These sections require that Local Boards include a minimum of one member with experience providing adult education and literacy activities under title II of WIOA and at least one member from a higher education institution, which may include community colleges, that provides workforce training.

Proposed paragraph (d)(3) sets forth the statutory requirement that a minimum of one Local Board member must be included from each of the following organizations: Economic or community development organizations, the State ES Office under Wagner-Peyser serving the local area, and programs carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720, *et seq.*) other than sec. 112 or part C of that title.

Proposed § 679.320(e) provides examples of other appropriate optional members of the board. In addition to the entities described in (e)(1) through (3), proposed paragraph (e)(4) explains that the CEO may appoint other individuals to the board at his or her discretion. This provides the CEO the flexibility to assemble a Local Board that connects all key resources and stakeholders.

Proposed § 679.320(f) requires that Local Board members possess optimum policy-making authority in the organizations they represent. This proposed section retains the same requirements found at 20 CFR 661.315(c).

Proposed § 679.320(g) explains the nomination criteria for business and labor representatives, as well as representatives of adult education and literacy activities under title II when there are multiple institutions providing these services in a local area. These nomination requirements are unchanged from the requirements at 20 CFR 661.315(e), however, a formal policy ensures that business and labor organizations are provided the opportunity to provide input on board member selection. When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce

[1] Ibid; and Kleinman, Liu, Mastri, Reed, Reed, Sattar, & Ziegler (2012). An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States. Mathematica Policy Research. Prepared for the U.S. Department of Labor, Employment and Training Administration.

investment activities as described in WIOA 107(b)(2)(C)(i) or (ii), the CEO must solicit nominations from those particular entities. This requirement provides for a representative selection process for these membership categories.

Proposed § 679.320(h) explains that an individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (g) of this section, for each entity. While such ''multiple entity'' representation may not be appropriate in all cases, the Department proposes to allow an individual to represent more than one entity, because there may be instances when such representation may be an effective tool for reducing board size while still ensuring that all entities entitled to representation receive effective representation.

Proposed § 679.320(i) explains that all required board members must have voting privileges and that the CEO may give voting privileges to non-required members. Voting rights allow the required board members to have an effect on the Local Board's key decisions and initiatives. This will enable the required board members to effectively represent the individuals and organizations of their communities.

Section 679.330 Who must chair a Local Board?

Proposed § 679.330 affirms that the Local Board must elect a chairperson from the business representatives on the Local Board. This proposed section retains the same requirements found at 20 CFR 661.320.

Section 679.340 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?

Proposed § 679.120 explains what is meant by ''optimum policy-making authority'' and ''demonstrated experience and expertise'' for members of the Local Board under sec. 107(b)(5) of WIOA. Proposed paragraph (a) defines an individual with ''optimum policy-making authority'' as someone who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. In order for the decisions of the board to have the greatest possible impact, all board members must be able to speak authoritatively when committing their organization to a decided course of action.

Proposed paragraphs (b)(1) through (3) define the qualifications that satisfy the ''experience and expertise'' requirement for Local Board members. The CEO has a duty to appoint only those board members that have the skills and practical knowledge to contribute fully to the strategic vision of the local area's workforce system.

Section 679.350 What criteria will be used to establish the membership of the Local Board?

Proposed § 679.350 affirms that the CEO appoints the Local Board in accordance with the criteria in WIOA sec. 107(b) and applicable State criteria. This proposed section retains the same requirements found at 20 CFR 661.325.

Section 679.360 What is a standing committee, and what is its relationship to the Local Board?

Proposed § 679.360 establishes the roles and responsibilities of standing committees within the Local Board structure. Such committees were not legislated in the past, are optional under WIOA, and may be used to assist the Local Board in carrying out its responsibilities as outlined in WIOA sec. 107. The Department encourages the use of standing committees to expand opportunities for stakeholders to participate in board decision-making, particularly for representatives of organizations that may no longer sit on the Local Board but continue to have a stake in the success of board decisions. Such committees also expand the capacity of the board in meeting required functions.

Proposed paragraph (a) expressly authorizes Local Boards to establish standing committees that include individuals who are not formal members of the board, but who have expertise to advise on issues that support the board's ability to attain the goals of the State, local and regional plans, and the objective of providing customer-focused services to individuals and businesses. The subpart provides examples of areas where standing committees may be particularly beneficial, including serving targeted groups of customers such as individuals with disabilities and youth, and addressing one-stop system issues.

Proposed paragraph (b) provides for Local Board discretion in terms of what kinds of standing committees, in any, the Local Board creates.

Proposed paragraph (c) allows Local Boards to designate an entity in existence on the date that WIOA was enacted, such as an effective youth council, to fulfill the requirements of a standing committee as long as the entity meets the requirements outlined in paragraph (a).

Section 679.370 What are the functions of the Local Board?

Proposed § 679.370 provides the functions of the Local Boards as enumerated in statute. Under WIOA, the Local Board, in partnership with the CEO, must perform a variety of functions to support the local workforce system. Many of these functions have been expanded and enhanced under WIOA. Proposed § 661.305(a), (c), (d), (g), (h), (j), (o), and (p) reiterate the relevant statutory requirements at WIOA secs. 107(d)(1) through (3), (6), (7), (9), (12), and (13); no further discussion of these provisions is provided below.

Proposed paragraph (b) discusses a new role for Local Boards that are part of a planning region that includes multiple local areas. This regulation repeats the new statutory requirement that Local Boards that are part of a planning region must develop and submit a regional plan in collaboration with the other Local Boards in the region. Under WIOA, the local plan is incorporated into the regional plan, where required, in accordance with § 679.540.

Proposed paragraph (e) explains the role of the Local Boards in engaging employers, promoting business representation on the board, and developing and implementing proven or promising strategies for meeting the needs of employers and workers (like industry or sector partnerships) and providing linkages and coordination among employers and the workforce system. It enhances the Local Board's role in engaging employers beyond what was required by WIA by requiring the board to develop and implement promising strategies for meeting the employment skill needs of workers and employers. Engaging employers presents an opportunity to meet the local area's labor market and workforce development needs and connect customers seeking jobs or career advancement to greater employment prospects.

Proposed paragraph (f) requires the Local Board to connect with representatives of secondary and post-secondary education programs in the local area in order to develop and implement career pathways. This regulation supports the statute's focus on career pathways.

Proposed paragraph (i) enhances the oversight role of the Local Board beyond what was required in WIA. It requires the Local Board to conduct oversight, in partnership with the CEO, of the use and management of funds, including

ensuring the appropriate management and investment of funds to maximize performance outcomes under WIOA sec. 116.

Proposed paragraph (k) requires that the Local Board must negotiate with CLEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715. This provision ensures each partner in the one-stop system is provided resources equitably.

Proposed paragraph (l) also expands and enhances the Local Board's role in the selection of eligible service providers in the local area which must be conducted consistent with 2 CFR part 200. The regulation maintains the board's role in the identification of eligible providers of youth workforce investment activities, but now requires, consistent with WIOA sec. 107(d)(10)(B), that this identification be accomplished through the award of grants or contracts on a competitive basis. It also adds that the recommendations of the youth standing committee, if one is established, must be taken into account. It also indicates that the Local Board must identify eligible providers of career services through the award of contracts, if the one-stop operator does not provide such services. This provision does not impact those services provided by State merit staff. The final proposed expansion in this subpart is the requirement that Local Boards select one-stop operators through the competitive process described in §§ 678.600 through 678.635.

Proposed paragraph (m) describes the requirement that the Local Board work with the State to ensure that there are sufficient numbers and types of providers of career and training services in the local area so that consumer choice and opportunities for employment for individuals with disabilities are maximized.

Proposed paragraph (n) reflects a number of new functions for the Local Board related to coordination with adult education and literacy providers in the local area. The regulation requires the Local Board to review applications to provide adult education and literacy activities under title II to determine whether such applications are consistent with the local plan. It also requires the board to make recommendations to the eligible agency to promote alignment with the local plan. Further information regarding Local Board coordination with adult education and literacy providers is provided at 34 CFR 463 which requires the eligible agency to establish in its competition, a processes by which applicants must submit an application to the Local Board for review prior to its submission to the eligible agency. This subpart also includes a role for the board in replicating and implementing cooperative agreements in accordance with subparagraph (B) of sec. 101(a)(11) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)), and implementing cooperative agreements in accordance with that section with the local agencies administering plans under title I of that Act (29 U.S.C. 720 *et seq.*) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) to enhance the provision of services to individuals with disabilities and other individuals.

Proposed paragraph (q) requires the Local Board to certify one-stop centers in accordance with § 662.600.

Section 679.380 How does the Local Board satisfy the consumer choice requirements for career services and training services?

Proposed § 679.380 describes how the Local Board satisfies the consumer choice requirements for career services and training services. While WIA required the Local Board to maximize consumer choice for training services, consumer choice for career services is a new requirement under WIOA. Clarification of the board's role will minimize confusion for one-stop managers and frontline staff.

Proposed paragraphs (a)(1) through (3) describe the process of how the Local Board assists the State Board in identifying providers, ensures a sufficient number of providers, and provides performance and cost information through the one-stop system.

Proposed paragraphs (b)(2)(i) and (ii) describe how the Local Board satisfies the requirement to provide consumer choice for career services. In general, the Local Board must decide which services are best provided by the one-stop operator and which services may require a contracted provider. Furthermore, these paragraphs require the board to identify a wide range of services based on the needs in the local area with special attention to services for individuals with disabilities and literacy services. Requiring the board to identify a wide array of potential career service providers, while still allowing the board to ultimately determine the career service providers, balances board flexibility and customer choice. There is no requirement to provide customers with a choice of providers for a given career service.

Section 679.390 How does the Local Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of the Workforce Innovation and Opportunity Act?

Proposed § 679.390 maintains the Local Board's requirement to conduct business in an open manner, but expands on the scope of what the public must be made aware of and requires that information be shared by electronic means as well as through open meetings as provided for in WIOA sec. 107(e). These new requirements facilitate the transparent functioning of the board and contribute to smoother board operations. This can only be accomplished by each Local Board member actively participating during Local Board meetings, and by developing effective by-laws that outline the nomination process, which includes steps for a prompt nominee during a vacancy, term limitations, and encourage the use of technology and active participation.

Section 679.400 Who are the staff to the Local Board and what is their role?

Proposed § 679.400 describes the Local Board's authority to hire staff and the appropriate roles for board staff. This proposal clarifies and differentiates the staff's role and requires the Local Board to hire only qualified staff.

Proposed paragraph (a) authorizes the board to hire a director and other staff. The volunteer board may not have the capacity to fulfill the required board functions at WIOA sec. 107(d). Board support ensures these functions are achieved.

Proposed paragraph (b) requires the board to apply objective qualifications to the board director. It is in the best interest of the public workforce system to ensure the director of the board is competent and experienced with workforce programs and service delivery.

Proposed paragraph (c) limits the board staff's role to assisting the board fulfill the functions at WIOA sec. 107(d) unless the entity selected to staff the board enters into a written agreement with the board and CEO as noted in paragraph (e) and described more fully in § 679.430 of this part. The reasons that the Department proposes to require a written agreement if the staff provide functions outside of those in WIOA sec. 107(d) are discussed in the preamble to § 679.430 of this part.

Proposed paragraph (d) requires Local Boards that elect to hire a director to establish objective qualifications to ensure that the selected candidate possesses the knowledge and skills to

assist the board in carrying out its functions.

Proposed paragraph (e) limits the payment of the Local Board director and board staff to the basic pay rate for level II of the Executive Schedule under sec. 5313 of title 5, U.S.C. This requirement ensures that board staff are compensated at a reasonable level.

Section 679.410 Under what conditions may a Local Board directly be a provider of career services, or training services, or act as a one-stop operator?

Proposed § 679.410 explains the situations in which the Local Board may directly act as a one-stop operator, a provider of career services or training services. Proposed § 679.410(a)(1)(i) and (ii) establishes that a Local Board may act as a one-stop operator where a Local Board successfully participates in a competition or if the board meets the criteria for sole source procurement. Under both circumstances, as required by proposed § 679.410(a)(2), implementing WIOA sec. 107(g)(2), the Governor and CEO must agree to such selection. This clarifies the interaction between sec. 122(d)(2)(A) of WIOA, which requires that Local Boards select a one-stop operator through a competitive process, and WIOA sec. 107(g)(2), which states that a Local Board can be designated as a one-stop operator only with the agreement of the Governor and CEO in the local area. One interpretation of sec. 107(g)(2) is that Local Boards, with approval of the Governor and CEO, could be selected as one-stop operators without undergoing a competitive process. However, such a non-competitive selection is only appropriate after a competitive process has been conducted as required by WIOA sec. 122(d)(2)(A). The Department welcomes comments regarding this interpretation.

Proposed § 679.410(a)(3) also requires that where a Local Board acts as a one-stop operator, the State must ensure certification of one-stop centers. Local Boards are required to certify one-stop centers; however, States must fulfill that role when a Local Board acts as a one-stop operator to avoid conflicts of interest with a Local Board certifying its own performance.

Proposed § 679.410(b) provides that a Local Board may act as a provider of career services only with the agreement of the CEO in the local area and the Governor. The Department interprets WIOA sec. 107(g)(2) to operate as a general exception from the requirement that the Local Board award contracts to providers of career services consistent with 2 CFR part 200. A Local Board acting as a direct provider of services is not optimal, as the Local Board is designed to oversee the one-stop system and its services, not provide them. However, unlike the selection of one-stop operators, which are statutorily required to be competitively selected, there is no similarly clear statutory requirement for providers of career services. Therefore, the Department does not propose to require that a competition fail before the Local Board may provide career services.

Proposed 679.410(c) specifies that a Local Board is prohibited from providing training services unless the Governor grants a waiver in accordance with WIOA sec. 107(g)(1). Proposed § 679.410(c)(1) requires the State to develop a procedure to review waiver requests received from Local Boards and the limitations of the waiver that incorporates the criteria listed at WIOA sec. 107(g)(1)(B)(i). While WIA contained provisions for a similar waiver, it did not include any such criteria. The intent of this waiver is to provide the option for Local Boards to provide training services in extenuating circumstances only, such as rural areas with limited training providers. A formal procedure facilitates transparency and clarity regarding the criteria for the training waiver and ensures that any Local Board that applies is subject to the same criteria. Furthermore, the new criteria underscore that the waiver is not appropriate for local areas that have a robust network of training providers.

Proposed § 679.410(c) indicates that the local area must make the request to be designated as a training provider available through public comment for a period of 30 days or more and include those comments in the local area's final request to the State. The proposed section also outlines the timeline for approval and Governor's authority to revoke a waiver if the Governor determines it is no longer needed or the Local Board demonstrates a pattern of inappropriate referrals. This proposed section helps ensure that the local area is acting in good faith when asserting that there are insufficient providers in the local area and protects against a conflict of interest.

Proposed § 679.410(d) affirms that the general prohibitions that apply to Local Boards directly providing career services or training services also apply to board staff.

Section 679.420 What are the functions of the local fiscal agent?

Proposed § 679.420 describes the role of the local fiscal agent when the CEO in a local area elects to designate a fiscal agent. While the term 'fiscal agent' was widely used under WIA, the term was never defined, which led to inconsistent understanding of their role and function throughout the workforce system. This section clarifies the role of a fiscal agent to create a common understanding of that role.

Proposed paragraph (a) describes that the CEO or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent.

Proposed paragraph (b) provides a list of the key functions of a fiscal agent. The appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Proposed fiscal agent functions include those listed in paragraphs (b)(1) through (6) and (c) provide additional potential functions for single State areas. The Department requests comment from State and local stakeholders regarding appropriate functions for a fiscal agent.

Section 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Proposed § 679.430 clarifies how entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest. This proposed provision requires a written agreement with the Local Board and CEO when a single entity operates in more than one of the following roles: Local fiscal agent, Local Board staff, one-stop operator, or direct provider of career services or training services. The proposed paragraph clarifies how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant OMB circulars, and the State's conflict of interest policy. While it may be appropriate in some instances for a single organization to fulfill multiple roles, a written agreement between the Local Board, CEO, and the organization fulfilling multiple roles is the best method to limit conflict of interest or the appearance of conflict of interest, minimize fiscal risk, and develop appropriate firewalls within a single entity performing multiple functions.

4. Subpart D—Regional and Local Plan

WIOA provides designated regions and local workforce areas the responsibility and opportunity to develop employment and training systems tailored specifically to regional economies. These systems must meet the needs of the full range of learners and workers, including those with

barriers to employment. The system must also address the specific needs of regional employers and the skills they require. WIOA requires the Local Board, in partnership with the CEO, to submit a local plan to the Governor. If the local area is part of a planning region, the Local Board will submit its local plan as part of the regional plan and will not submit a separate local plan. The local or regional plan provides the framework for local areas to define how their workforce development systems will achieve the purposes of WIOA. The regional or local plans serve as 4-year action plans to develop, align, and integrate the region and local area's job-driven workforce development systems, and provides the platform to achieve the local area's visions and strategic and operational goals. Since the local plan is only as effective as the partnerships that operationalize it, it must represent a collaborative process among local elected officials, boards, and required and other partners (including economic development, education, and private sector partners) to create a shared understanding of the local area's workforce investment needs, a shared vision of how the workforce investment system can be designed to meet those needs, and agreement on the key strategies to realize this vision.

Section 679.500 What is the purpose of the regional and local plan?

Proposed § 679.500 describes the purpose of the regional and local plans. Proposed § 679.500(a)(1) through (4) explain that the local plan is the primary vehicle for communicating the Local Board's vision for the local workforce system and aligning and integrating local service delivery across Federal programs in a region to foster better alignment of Federal investments in job training, integrate service delivery across programs, and ensure that the workforce system is job-driven and matches employers with skilled individuals. Proposed § 679.500(b) clarifies that when a State-designated region encompasses two or more local areas, the regional plan must meet the purposes of the local plan and coordinate resources across the region and across local areas. This approach is intended to align resources between multiple Local Boards.

Section 679.510 What are the requirements for regional planning?

Proposed §§ 679.510, 679.520, and 679.530 describe the required contents of the regional plan, the approval process, and when the regional plan must be modified. While sec. 106(c) of WIOA clearly describes the required contents of the regional plan, it provides less detail about the approval and modification process, saying only that officials in the planning region must ''prepare, submit, and obtain approval'' of the plan. Because the local plan is a component of the regional plan, the Department has decided to apply the approval and modification requirements, including the requirement to seek public comment and sunshine provision, to the regional plan.

Proposed § 679.510 implements sec. 106(c) of WIOA and describes the State and local requirements for regional planning. Proposed § 679.510(a)(1) requires Local Boards and CEOs to participate in a regional planning process. In some instances, where a single local workforce development area comprises a region, the local area will carry out its planning in this context.

Proposed § 679.510(a)(2) describes the regional plan contents and submission process. The Local Boards and CEOs must submit a regional plan to the Governor for approval that includes the activities listed at proposed § 679.510(a)(1) and incorporates the local plans developed for each local area. Local areas are not required to submit an additional local plan outside of the regional planning process. The coordination required for regional planning is an effective method for local areas to identify areas of efficiency, coordinate effective practices, and streamline service delivery. While the regional plan requires coordination of local performance negotiations with the State, each CEO, as required by § 677.210(b) and (c) will negotiate performance goals with the State and will remain ultimately responsible for ensuring that the local area meets or exceeds those goals.

Proposed § 679.510(b) requires Local Boards to make the regional plan available for comment before submitting the plan to the Governor and describes the steps necessary to ensure adequate public comment. This requirement provides all affected entities and the public an opportunity to provide input to inform plan development.

Proposed § 679.510(b)(5) specifically requires the public comment process to be consistent with the 'sunshine provisions' at WIOA sec. 107(e), which requires that the Local Boards must make the plan available through electronic means and open meetings. This requirement ensures greater transparency in the planning process, and encourage regions to consider efforts to maximize the transparency and inclusiveness of the process.

Proposed § 679.510(c) requires the State to provide technical assistance and labor market data to facilitate regional planning. Because States possess a broader understanding of labor market information across jurisdictions and tools for analysis that individual local areas may not possess, States have a responsibility to provide and instruct local areas on the effective use of regional labor market information.

Section 679.520 What are the requirements for approval of a regional plan?

Proposed § 679.520 describes the approval of the comprehensive 4-year regional plan. This section requires that the Governor review completed plans and stipulates that unless the Governor determines that any of the conditions described in proposed paragraphs (a) through (c) are met the plan will be considered approved 90 days after submission of the plan to the Governor.

Section 679.530 When must the regional plan be modified?

Proposed § 679.530 describes when a regional plan must be modified. Proposed § 679.530(a) requires the Governor to establish procedures governing regional plan modification, which will help ensure that the biannual modification of regional plans is conducted consistently throughout the State.

Proposed § 679.530(b) explains that the Local Boards and appropriate CEOs in the planning region must review the regional plan every 2 years and submit a modification based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, and any changes in the financing available to support WIOA title I and partner-provided WIOA services. This proposed requirement helps ensure that planning regions use their plans to drive economic development, sector, career pathway, and customer-focused service delivery strategies.

Section 679.540 How are local planning requirements reflected in a regional plan?

Proposed § 679.540 outlines how local planning requirements are reflected in a regional plan. WIOA is silent on the coordination of the regional and local plan, noting only that the regional plan must ''incorporate local plans for each of the local areas in the planning region.'' The Department has determined that the most appropriate and least burdensome approach to implementing this provision is to incorporate the local plans within the regional plan. In this arrangement, the regional plan is completed in

cooperation with the Local Boards and CEOs in a planning region, per § 679.510(a). Each individual Local Board and CEO will respond to the local planning requirements at § 679.560(b) through (e) individually. The Local Boards and CEOs in a planning region must cooperate to develop a common response to the local planning requirements that discuss regional labor market information, as required by § 679.540(a), and any other appropriate requirements permitted by the Governor per § 679.540(b). When these activities are completed, the planning region submits one regional plan to the Governor that includes the common discussion of regional labor market information and other requirements as required by the Governor, as well as each local plan in a single document.

Proposed § 679.540(a) requires regional plans to include the items identified in §§ 679.510 and 679.560, which implement secs. 106(c)(1) and 108(b) of WIOA.

Proposed § 679.540(b) specifies the Governor may issue regional planning guidance that allows local areas to provide a common response to any local requirements it deems as a shared regional responsibility, which may include regional economic analysis. The Department recognizes there are many planning requirements and encourages Governors to minimize the individual local area burden by reducing duplication and encouraging a coordinated service delivery strategy.

Section 679.550 What are the requirements for the development of the local plan?

Proposed § 679.550 explains the requirements for the development of the local plan. This section emphasizes the importance of collaboration and transparency in the development and submission of the local plan and subsequent modifications.

Proposed § 679.550(a) implements sec. 108(a) of WIOA and describes the general requirements for the preparation and content of the local plan.

Proposed § 679.550(b) requires Local Boards to make the local plan available for comment before submitting the plan to the Governor and describes the steps necessary to ensure adequate public comment. This requirement provides all affected entities and the public an opportunity to provide input to inform plan development. This section implements sec. 108(d) of WIOA.

Proposed § 679.550(b)(5) requires the public comment process to be consistent with the 'sunshine provisions' at WIOA sec. 107(e) and proposed § 679.390 and that the Local Board must make the plan available through electronic means and in open meetings. This requirement ensures transparency to the public. This provision implements sec. 107(e) of WIOA.

Section 679.560 What are the contents of the local plan?

Proposed § 679.560, consistent with sec. 108(b) of WIOA, explains what information must be included in the local plan. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to the economic needs of the local workforce development area and matching employers with skilled workers. In addressing these planning requirements, boards engage strategic partners to develop and implement regionally aligned workforce development priorities and streamlined service delivery. Local and regional planning also is expected to lead to greater efficiencies by reducing duplication and maximizing financial and human resources. WIOA significantly expands the content requirements for the local plan.

Proposed § 679.560(a)(1) specifies that the local plan must meet the requirements of WIOA sec. 108(b)(1). Of relevance to this section, the use of economic and labor market information ensures that the local strategies are based on a thorough understanding of the economic opportunities and workforce needs of the region, and inform the alignment of strategies to the best interests of job seekers and employers with the economic future of the State. Similarly, the contents of the plan must include an analysis of the workforce development activities in the region, including an analysis of the strengths and weaknesses of such services to address the identified education and skill needs of the workforce and employment needs in the region. A thorough assessment of the best available information or evidence of effectiveness and performance information for specific service models in the region, as well as a plan to improve the effectiveness of such programs by adopting proven or promising practices, is an important part of this assessment and strategic vision. In addition, the regional analyses described in this proposed section may be conducted in cooperation with the other local areas in a local planning region as part of the regional planning requirements described at § 661.290 and must not be conducted by each local area.

Proposed § 679.560(a)(1)(iii), consistent with sec. 108(c) of WIOA permits local areas to use an existing analysis to meet the requirements in § 679.560(a).

Proposed § 679.560(b) outlines the required contents of the local plan that are required by secs. 108(b)(2)-(21) of WIOA to ensure that a local plan presents a comprehensive, customer-focused, and actionable service delivery strategy. This section emphasizes alignment and coordination to a greater extent than that required by WIA. Except where noted, the requirements outlined in § 679.560(b)(2) through (21) simply reiterate the statutory requirements without additional explanation.

Proposed § 679.560(b)(2) requires elaboration on the strategies for alignment by requiring that the Local Board describe how such alignment will improve access to services and to activities that lead to a recognized post-secondary credential. Proposed § 679.560(b)(2)(ii) explains that the Local Board must describe how they will work with entities carrying out core programs to facilitate the development of career pathways and co-enrollment, as appropriate, in core programs. Co-enrollment allows partners to leverage resources, while providing a more comprehensive service delivery strategy that meets the needs of customers with several barriers to employment. Additionally, coordination of services in a customer-focused manner minimizes the possibility of subsequent reentry into the public workforce system in cases where needed services were not provided or possible barriers not addressed.

Proposed § 679.560(b)(4) explains that the Local Board must describe how they will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local Board will promote entrepreneurial skills training and microenterprise services. Alignment between the public workforce system and local economic development activities is critical in order to identify and fulfill industry talent needs by training customers for emerging and in-demand job skills. Furthermore, microenterprise services refers to training for the purposes of self-employment. This training strategy may be appropriate for individuals or participants with multiple barriers to employment, including persons with disabilities.

Proposed § 679.560(b)(5) focuses on the delivery of services through the one-stop delivery system in the local area

and requires descriptions regarding how the Local Board will ensure the continuous improvement of eligible providers of services, including through the promotion of proven and promising approaches and evaluation; how the Local Board will facilitate access to services, including in remote areas, through the use of technology and other means; how entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) regarding physical and programmatic accessibility; and the roles and resource contributions of the one-stop partners. WIOA, and the corresponding regulations at § 678.420, establishes the roles of one-stop partners. These include providing access to the partner's programs through the one-stop system; making program funds available to maintain the one-stop delivery system, including infrastructure costs; providing applicable career services; entering into a MOU with the Local Board regarding one-stop operation; ongoing participation in the one-stop system; and providing representation on State and Local Workforce development boards as required and Board committees as needed. Additionally, one-stop partners are responsible for sharing infrastructure and career services costs. Documenting how one-stop partners will manage their shared roles and contribute to the funding of the one-stop in the local plan increases accountability and transparency.

Proposed § 679.560(b)(6) through (11) focus on coordination activities for improving services and avoiding duplication. Proposed § 679.560(b)(11) reflects a new statutory requirement not contained in WIA that the local plan include plans, assurances and strategies for maximizing coordination with Wagner-Peyser Act services and other services provided through the one-stop system.

Proposed § 679.560(b)(12) and (13) are also new requirements under WIOA. Proposed § 679.560(b)(12) speaks to coordination with adult education and literacy activities under title II of WIOA and requires a description of how the Local Board will carry out the review of local applications submitted under title II. Proposed § 679.560(b)(13) is intended to enhance the provision of services to individuals with disabilities through cooperative agreements, as defined in WIOA sec. 107(d)(11), and other collaborative efforts between the Local Board and the local VR entity. All such collaborative efforts must be described in the local plan.

Proposed § 679.560(b)(16) requires the Local Board to include local levels of performance that the board has negotiated with the Governor in the local plan. Additionally, this section proposes that the local plan must include the standards, process, or performance measures that the Local Board will use to evaluate the performance of the local fiscal agent where the CEO has designated such an entity. These proposed requirements increase transparency and public accountability, while helping ensure the Local Board has the information it needs to ensure sustained fiscal integrity of public funds.

Proposed § 679.560(b)(19) maintains the requirement that the local plan include a description of the process used by the Local Board to provide for public input into the development of the plan and for public comment on the completed plan prior to its submission. Unlike WIA, this regulation identifies the 30-day timeframe for public comment prior to submission of the plan.

Proposed § 679.560(b)(20), new to WIOA, requires a description of how the one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners.

Proposed § 679.560(b)(21) requires that the plan include the process by which priority of service must be applied by the one-stop operator, but also clarifies that such priority is for adult career and training services and must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. The Department is proposing to include this requirement under the authority to require additional reporting, recordkeeping, and investigations. Including the priority service policy in the local plan will help ensure a more uniform application of the policy throughout the local area.

As permitted by sec. 108(b)(22) of WIOA, proposed § 679.560(c) requires that the plan include any additional information required by the Governor.

Proposed § 679.560(d) recommends that the local plan identify the portions of the local plan that the Governor has designated as appropriate for common response among all local areas in a planning region, as per the regulations at 20 CFR 679.540.

Proposed § 679.560(e) reflects the requirement in WIOA sec. 108(e) that any comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

Section 679.580 When must the local plan be modified?

Proposed § 679.580(a) requires the Governor to establish procedures governing local plan review and modification to ensure that the biannual review and modification of local plans is conducted consistently throughout the State.

Proposed § 679.580(b) explains that the Local Board and appropriate CEOs must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals. This requirement is consistent with WIOA sec. 108(a). This proposed requirement helps ensure that local areas use their plans to drive service delivery strategies and the activities the local area is performing remains consistent with the plan.

Section 679.570 What are the requirements for approval of a local plan?

Proposed § 679.570 describes the approval of the comprehensive 4-year local plan. Proposed § 679.570(a) requires that the Governor review completed plans and stipulates that unless the Governor determines that the conditions described in paragraphs (a)(1) through (3) are met the plan will be considered approved 90 days after submission of the plan to the Governor. This section implements sec. 108(e) of WIOA.

Proposed § 679.570(b) outlines the processes, roles, and responsibilities for situations in which the State is a single local area. Proposed § 679.570(b)(1) clarifies the State must incorporate the local plan in the State's Unified or Combined State Plan submitted to DOL. Proposed § 679.570(b)(2) states that the Secretary of Labor will perform the roles assigned to the Governor as they relate to local planning activities. Proposed § 679.570(b)(3) indicates the Secretary of Labor will issue planning guidance for single area States. This section implements sec. 106(d) of WIOA.

The Department recognizes that the development of the local plan is dependent on several other essential State and local WIOA implementation activities and that local areas may not be

able to respond fully to each of the required elements of the local plan in the timeframe provided. The Department seeks comment on the scope of the challenges local areas may face regarding regional and local planning, and potential actions that the Department can take to help local areas address these challenges.

5. Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

This subpart describes the statutory and regulatory waiver authority provided by WIOA sec. 189(i), and the requirements for submitting a Workforce Flexibility Plan under WIOA sec. 190. WIOA provides States the flexibility to request a waiver of program requirements in order to implement new strategic goals for the improvement of the statewide workforce development system and to provide better customer service in exchange for accountability for expected programmatic outcomes. A Workforce Flexibility plan provides additional flexibility to the State. In general, a State with an approved Workforce Flexibility plan is given the authority to identify local level provisions to waive without further approval from the Secretary of Labor to achieve outcomes specified in the plan.

A description of what provisions of WIOA and Wagner-Peyser may and may not be waived is included, along with an explanation of the procedures for requesting a waiver. The subpart also describes what may and may not be waived under a Workforce Flexibility Plan, and the procedures for obtaining approval of a plan. The WIOA requirements for obtaining approval for a waiver or Workforce Flexibility Plan are similar to those in WIA secs. 189(i) and 192, respectively; therefore, many of the proposed regulations are the same as the regulations implementing WIA.

Section 679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?

Proposed § 679.600(a) explains that the purpose of the general statutory and regulatory waiver authority, provided under WIOA sec. 189(i)(3), is to provide flexibility to States and local areas to enhance their ability to improve the statewide workforce investment system to carry out WIOA's goals and purposes.

Proposed § 679.600(b) explains that a waiver may be requested to address impediments to a strategic plan that is consistent with the purposes of title I of WIOA, which are identified at § 675.100(a) through (h).

Section 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

Proposed § 679.610(a) implements WIOA sec. 189(i)(3)(A)(i), and explains that the Secretary may waive for a State or local area any of the statutory or regulatory requirements of WIOA title I, subtitles A, B, and E, except for the requirements listed in paragraphs (a)(1) through (12). As noted in this section, the purposes of title I of WIOA are described at 20 CFR 675.100(a) through (h). The Department will provide examples of requirements that it will not waive in subsequently issued guidance.

Proposed § 679.610(b) follows WIOA sec. 189(i)(3)(A)(ii), and explains that the Secretary may waive the statutory or regulatory requirements of Wagner-Peyser secs. 8 through 10, except for the requirements listed in paragraphs (b)(1) and (2).

Section 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

Proposed § 679.620(a) through (f) implements WIOA sec. 189(i)(3) and describes the conditions under which a Governor may request, and the Secretary may approve a waiver of statutory or regulatory requirements.

Proposed § 679.620(a) explains that the Secretary will issue guidelines on waiving WIOA and Wagner-Peyser requirements. States will be required to follow the Secretary's guidelines, which supplement the requirements listed in 20 CFR 679.600 through 679.620. The guidelines will be issued contemporaneously with State planning guidance. This proposed section retains the same requirements found at 20 CFR 661.420(f).

Proposed § 679.620(b) explains that the Governor may request a general waiver in consultation with the appropriate CEOs by submitting a waiver plan which accompanies the State's WIOA 4-year Unified or Combined State Plan, 2-year modification, or by directly submitting a waiver plan at any time after a State's WIOA Plan is approved. This approach is consistent with WIOA secs. 102 and 103, which require the State to submit either a 4-year Unified or Combined State Plan.

Proposed § 679.620(c) explains that a Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State. This proposed section retains the same requirements found at 20 CFR 661.420(b).

Proposed § 679.620(d) lists the required components of a waiver plan for the improvement of the statewide workforce development system and includes the requirements of WIOA sec. 189(i)(3)(B). Specifically, the plan must identify the statutory or regulatory requirements that are requested to be waived, and the goals that the State or local area intend to achieve as a result of the waiver. The plan must also describe the actions that the State or local area has taken to remove State or local statutory or regulatory barriers; the goals of the waiver and the expected programmatic outcomes if the waiver is granted; the individuals affected by the waiver; and the processes used to monitor the progress in implementing the waiver, provide notice to any Local Board affected by the waiver, and provide any Local Board affected by the waiver an opportunity to comment on the request.

Proposed § 679.620(d)(1) requires that the waiver plan explain how the goals of the waiver relate to the Unified or Combined State Plan. Waivers must support State strategies as enumerated in the State Plan. Waivers are not separate or detached from the Unified or Combined State Plan: An approved waiver constitutes a modification of the State Plan.

Additionally, as required by § 679.620(d)(4), the waiver plan must describe how the waiver will align with the Department's priorities, such as supporting employer engagement, connecting education and training strategies, supporting work-based learning, and improving job and career results. The Department's priorities may change and evolve to reflect major changes in the economy, changes in the needs of the workforce, and new developments in service strategy approaches. This new requirement ensures that the Department is issuing waivers that align with and help achieve the priorities of the Department. As noted in § 679.620(d)(4)(v), a more complete list of current priorities will be articulated in future guidance.

Proposed § 679.620(d)(5) requires the waiver plan to generally describe the individuals affected by the proposed waiver. This section specifically requires that the plan describe how the waiver will impact services for disadvantaged populations and individuals with multiple barriers to employment. One of the primary purposes of WIOA is to increase and enhance education, employment, and

training opportunities for individuals with barriers to employment, including low-income individuals, individuals with disabilities, the Native American population, and the other groups identified in sec. 3(24) of the Act. The Department has added this specific requirement to ensure that the State, as part of its waiver request, considers the employment and training needs of these groups and how the proposed waiver would affect these populations.

An additional requirement at proposed § 679.620(d)(6)(iv) is that the plan must describe the processes used to ensure meaningful public comment, including comment by business and organized labor. This requirement was included to ensure as transparent a process as possible, to make sure that the public is given an opportunity to voice their concerns or support of potential changes in the public workforce system, while the Governor is afforded an opportunity to reflect on the opinions of the public before proceeding with a waiver request. This proposed section retains the same requirements found at 20 CFR 661.420(c)(5)(iv).

The Governor must also describe, per § 679.620(d)(6)(v), the process used to collect and report information about the goals and outcomes achieved under the waiver plan in the State's WIOA Annual Report. The Department approves waivers in order to assist States and local areas in achieving goals and outcomes that will improve the statewide workforce development system. This collection and reporting requirement holds States accountable for the goals and outcomes to be achieved with the approved waivers and provides a regular and public assessment of the effectiveness of States and local areas in doing so.

Finally, proposed § 679.620(d)(7) explains that if a waiver is up for renewal, the Secretary may require that States provide the most recent data available about the outcomes achieved under the existing waiver. This requirement will ensure that the Department has the most recent, relevant information before deciding whether to renew a waiver. As part of its decision the Department may take other factors into account when deciding to renew or deny a waiver.

Proposed § 679.620(e) specifies that the Secretary will issue a decision on a waiver request within 90 days of the receipt of the waiver, consistent with WIOA sec. 189(i)(3)(C).

Proposed § 679.620(f) implements the requirements of WIOA secs. 189(i)(C)(i) and (ii), and explains that the Secretary will approve a waiver request only to the extent that the Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the statewide workforce investment system, and the State has executed a MOU with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability. This section also makes approval of the waiver contingent on the Secretary's determining that the waiver plan meets all of the requirements of WIOA sec. 189(i)(3) and §§ 679.600 through 679.620. This proposed section retains the same requirements found at 20 CFR 661.420(e), except that the statutory reference has changed from sec. 189(i)(4) to sec. 189(i)(3).

Consistent with current practice, proposed § 679.620(g) authorizes the Secretary to approve a waiver for as long as the Secretary determines is appropriate; however, the duration of the waiver may not exceed the duration of a State's current Unified or Combined State Plan. For example, a waiver granted during the third year of the Plan would have to be reconsidered as part of the subsequent plan submission and approval cycle, at the latest. By limiting the duration of the waiver, the Department will be able to ensure that the waiver is consistent with the goals of the State's plan and remains consistent with the priorities of the Department.

Proposed § 679.620(h) gives the Secretary the authority to revoke a State's waiver under certain circumstances. The Secretary has an obligation to oversee the implementation and performance of States under their State plan, including any waivers granted by the Department. As part of this responsibility, the Department proposes to allow the Secretary to revoke a waiver granted under this section if the State fails to meet the agreed upon outcomes and measures, the State fails to comply with the terms and conditions of the MOU or other document that includes the terms and conditions of the waiver, and if the Secretary determines that the waiver no longer meets any of the requirements of §§ 679.600 through 679.620. Limiting the Secretary's authority to revoke to these circumstances balances the State's need for flexibility with the Secretary's duty to oversee the implementation of the waiver.

Section 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

Proposed § 679.630 describes the conditions under which the Governor may submit a workforce flexibility (work-flex) plan.

Proposed § 679.630(a) includes the requirements of WIOA sec. 190(a), and explains that a State may submit a workforce flexibility plan for approval by the Secretary, under which three categories of statutory or regulatory requirements can be waived.

Proposed § 679.630(a)(1), implementing WIOA sec. 190(a)(1), permits a State to waive any of the statutory or regulatory requirements that are applicable to local areas under WIOA title I (if the local area requests the waiver), except for the requirements listed in proposed paragraphs (a)(1)(i) through (iv). In addition to the statutory exceptions, this proposed section adds the requirement that any of the statutory provisions essential to WIOA's title I purposes cannot be waived.

The second category, described in proposed § 679.630(a)(2), and implementing WIOA sec. 190(a)(2), explains that any of the statutory or regulatory requirements applicable to the State under Wagner-Peyser Act secs. 8 through 10 may be waived, except for requirements listed at § 679.630(a)(2)(i) and (ii). This proposed section retains the same requirements found at 20 CFR 661.430(a)(2).

Proposed § 679.630(a)(3), implementing WIOA sec. 190(a)(3), permits waiver of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 to State agencies on aging with respect to activities carried out using funds allotted under sec. 506(b) of the Older Americans Act, except the for requirements identified at § 679.630(a)(3)(i) through (iv).

Proposed § 679.630(b) explains what States are required to include in their workforce flexibility plan.

Proposed § 679.630(b)(1) and (3) implement the requirements at WIOA sec. 190(b)(1), and specify that a State workforce flexibility plan must include a description of the process by which local areas in the State may submit and obtain State approval of applications for waivers, and the requirements of title I of WIOA that are likely to be waived by the State under the plan.

Proposed § 679.630(b)(2) adds the requirement that the plan include a description of the criteria that the State will use to approve local area waiver requests and how such requests support implementation of the goals identified

in the State plan. These criteria must be addressed in the waiver review process discussed at § 679.630(b)(1). This requirement ensures that all local waiver requests are evaluated consistently by the State.

Proposed § 679.630(b)(4) implements the requirements of WIOA sec. 190(b)(2) and requires a description of the Wagner-Peyser Act secs. 8 through 10 that are proposed for waiver, if any. This proposed section retains the same requirements found at 20 CFR 661.430(c)(3).

Proposed § 679.630(b)(5) implements the requirements of WIOA sec. 190(b)(3) and requires a description of the requirements of the Older Americans Act that are proposed for waiver, if any. This proposed section retains the same requirements found at 20 CFR 661.430(c)(4).

Proposed § 679.630(b)(6) implements the requirements of sec. 190(b)(4) of WIOA by requiring that the plan describe the outcomes to be achieved by the waivers. The section explains that ''outcomes'' include, when appropriate, revisions to adjusted levels of performance included in the State or local plan under WIOA title I, and a description of the data or other information the State will use to track and assess outcomes. This provision allows the Department to measure more effectively the impact of waivers. For some waivers, it may be difficult to make a direct connection between the waiver and a direct impact on performance; in those instances the State must discuss the impact of a waiver on performance to the extent that the State has available data.

Proposed § 679.630(b)(7) implements WIOA sec. 190(b)(5) and requires that the plan include the measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers. This proposed section retains the same requirements found at 20 CFR 661.430(b)(6).

Proposed § 679.630(c) explains that a State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, the required 2-year modification of the State's Unified or Combined State Plan, or may be submitted separately as a plan modification. This requirement emphasizes that the State may submit a workforce-flexibility plan at any time.

Proposed § 679.630(d) explains that the Secretary may approve a workforce flexibility plan consistent with a period of approval of the State's Unified or Combined State Plan, and not more than 5 years. For example, if a workflex plan is approved in the third year of a 4-year Unified Plan, the approval would be for the remainder of the period covered by the plan and then would need to be reconsidered as part of the subsequent Unified Plan or Combined Plan. Approving a workforce flexibility plan for the life of a currently approved Unified or Combined State Plan ensures that the waivers granted under the plan are consistent with the strategies outlined in the State Plan. The period of up to 5 years is consistent with sec. 190(c) of WIOA.

Proposed § 679.630(e) implements WIOA sec. 190(d) and requires the State to provide notice and opportunity for comment on the proposed waiver request to all interested parties and the general public before submitting the workforce flexibility plan to the Secretary. This proposed section retains the same requirements found at 20 CFR 661.430(e).

Proposed § 679.630(f) explains that the Secretary will issue guidelines under which States may request designation as a workflex State. This proposed section retains the same requirements found at 20 CFR 661.430(f) and notes that the Secretary's guidelines may include requirements for a State to implement an evaluation of the impact of work-flex in that State.

Section 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?

Proposed § 679.640 explains the limitations that apply to the State's Workforce Flexibility Plan authority under WIOA.

Proposed § 679.640(a)(1) specifies that under work-flex waiver authority, a State must not waive WIOA, Wagner-Peyser Act, or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 679.630(a). This proposed section retains the same requirements found at 20 CFR 661.440(a)(1).

Proposed § 679.640(a)(2) explains that requests to waive title I of WIOA requirements that are applicable at the State level may not be granted under work-flex waiver authority granted to a State. These requests may only be granted by the Secretary under the general waiver authority which is described at §§ 679.610 through 679.620. The Department included this provision to emphasize that work-flex waivers are issued under separate authority than general waivers, and that States may not use work-flex waiver authority as a substitute for the general State-level waivers available under sec. 189(i)(3). This proposed section retains the same requirements found at 20 CFR 661.440(a)(2).

Proposed § 679.640(b) expands on § 679.630(b)(6) by explaining that once approved the Secretary may terminate a work-flex designation if the State fails to meet agreed-upon outcomes or the terms and conditions contained in its workforce flexibility plan. The Department included this provision to emphasize that the Department reserves the authority to terminate a workflex plan if a State is not meeting the terms and conditions agreed to between the Department and the State, including the relevant performance outcomes.

*D. Part 680—Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act*

1. Introduction

In this part of the proposed rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA. Adult services are provided to job seekers who are at least 18 years old; the statute and the proposed rule, in providing for such services, establish a priority for serving low-income individuals, participants on public assistance, and individuals lacking basic work skills. Dislocated worker services are targeted for workers who are unemployed and have lost a job, through no fault of their own, sometimes through mass layoffs that happen during the business cycle. The goal of these services is to provide for the return of these individuals to quality employment. Dislocated workers generally include an individual who:

- Has been terminated or laid off, or has received a notice of termination or layoff from employment;
- Is eligible for or has exhausted entitlement to UC or has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for UC due to insufficient earnings or works for an employer not covered under State UC law; and
- Is unlikely to return to a previous industry or occupation.

Under WIOA, adults and dislocated workers may access career services and training services. WIOA provides for a workforce system that is universally accessible, customer centered, and training that is job-driven. WIOA will provide for career and training services at the nation's nearly 2,500 one-stop centers. Training is supported through a robust ETPL, comprised of entities with a proven capability of securing participants with quality employment. WIOA also provides enhanced access

and flexibility for work-based training options, such as OJT, customized training, and incumbent worker training. In this part, the Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

2. Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Introduction

This subpart discusses the role of WIOA adult and dislocated worker services through the one-stop delivery system. The one-stop delivery system is the foundation of the workforce system. The system provides universal access to career services to meet the diverse needs of adults and dislocated workers. The grant recipient(s) for the adult and dislocated worker program is a required partner in the one-stop delivery system and is subject to the required partner responsibilities set forth in § 678.415.

Career and training services, tailored to the individual needs of jobseekers, form the backbone of the one-stop delivery system. While some jobseekers may only need self-service or other basic career services like job listings, labor market information, labor exchange services or information about other services, some jobseekers will need services that are more comprehensive and tailored to their individual career needs. These services may include comprehensive skills assessments, career planning, and development of an individual employment plan that outlines the needs and goal of successful employment. Under WIA, career services were identified as core and intensive services and generally participants would go through each level of service in order to eventually receive training. WIOA clarifies that individuals receiving services in the one-stop centers must receive the service that is needed to assist the individual to meet his or her job search goals, and does not need to follow a fixed sequence of services that may not be necessary to effectively serve the individual.

Under WIOA, the Department proposes to classify career services into two categories: Basic and individualized career services. This grouping is not designed to create barriers to training, but rather identifies the importance that these two types of career services can have in helping individuals obtain employment. Basic career services must be made available to all job seekers and include services such as labor exchange services, labor market information, job listings, and information on partner programs. Individualized career services identified in WIOA and described in these proposed regulations are to be provided by local areas as appropriate to help individuals to obtain or retain employment.

Under WIA, participants often were required to undergo a sequence of core and intensive services in order to receive training. WIOA clarifies that there is no sequence of service requirement in order to receive training. Training is made available to individuals after an interview, assessment or evaluation determines that the individual requires training to obtain employment or remain employed. Supportive services, including needs-related payments, can be essential to enable individuals to participate in career and training services.

Section 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

Proposed § 680.100 directs that the one-stop system is the foundational system through which adult and dislocated worker program services are provided to eligible individuals. WIOA merges the categories of core services and intensive services under WIA into the category of career services.

Section 680.110 When must adults and dislocated workers be registered and considered a participant?

Proposed § 680.110 addresses the important distinction between registration and participation—two separate actions in the process by which adults and dislocated workers seek direct, one-on-one staff assistance from the one-stop system. The distinction is important for recordkeeping and program evaluation purposes. Individuals who are primarily seeking information are not treated as participants and their self-service or informational search requires no registration. When an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment, the person must be registered and eligibility must be determined. To register, as defined in § 675.300, is the point at which information that is used in performance information begins to be collected. Participation is the point at which the individual has been determined eligible for program services and has received or is receiving a WIOA service, such as career services, other than self-service or informational service and is the point at which an individual is to be included in performance calculations for the primary indicators in 20 CFR part 681.

Proposed § 680.110(a) describes the registration process for collecting information to support a determination of eligibility for the WIOA adult and dislocated worker programs. This section explains that registration can be done electronically, through interviews, or through an application. This section proposes to distinguish the term ''participation'' from registration by providing that participation occurs after IC and eligibility determination, when an individual receives a WIOA service, other than self-service or informational activities.

Proposed § 680.110(b) requires that adults and dislocated workers who receive services other than self-service and informational activities must be registered and considered a participant for WIOA title I services.

Proposed § 680.110(c) maintains the requirement in WIA regulation § 663.105(c) that EO data be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training, and who has signified that interest by submitting personal information in response to a request from the service provider.

Section 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

An individual must be 18 years of age or older to receive career services in the adult program. Priority for individualized career services and training services funded with title I adult funds must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient, in accordance with WIOA sec. 134(c)(3)(E) and proposed § 680.600.

Section 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

Proposed § 680.130(a) states that an individual must meet the definition of ''dislocated worker'' in WIOA sec. 3(15) to receive career services in the dislocated worker program.

Proposed § 680.130(b) provides that Governors and Local Boards may develop policies and procedures for one-stop operators to use in determining a dislocated worker's eligibility for career services consistent with the definitions provided in the statute,

regulations and any guidance issued by the Secretary.

Proposed § 680.130(b)(1) and (2) allows for Governors and Local Boards to develop policies and procedures for what constitutes a ''general announcement'' of a plant closing. These policies and procedures could include policies and procedures for what constitutes a ''general announcement'' of a plant closing or for what constitutes ''unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters'' for individuals who are self-employed, including family members and ranch hands.

Section 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Boards required and permitted to provide?

Proposed § 680.140 describes generally the availability of funds for use in providing services for adult and dislocated workers under title I of WIOA. Local areas have significant flexibility when providing services with adult and dislocated worker funds. In addition to the required career and training services, local areas may use these funds to provide additional job seeker services, business services, as well as facilitate enhanced coordination between other partner programs and entities at the State and local level. Local areas can use these funds to develop new types of technical assistance, develop new intake procedures, test new procurement methods which may lead to better outcomes for jobseekers, and ensure robust services to businesses throughout the workforce system.

Paragraph (a) provides that WIOA title I adult and dislocated worker funds to local areas must be used to provide career and training services through the one-stop delivery system. Local areas have discretion in the appropriate mix of services, but both career and training services must be made available through the one-stop system for provision to eligible individuals served through the system.

Paragraph (b) describes the services that may be provided with WIOA title I adult and dislocated worker funds in local areas.

Subparagraph (b)(1) identifies ''Job Seeker Services.'' These services include customer support activities to help individuals with barriers to employment, training programs for displaced homemakers and individuals training for nontraditional occupations, work support activities for low-wage workers, supportive services and needs-related payments, and providing transitional jobs to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history.

Paragraph (b)(2) identifies ''Employer Services.'' These services include customized screening and referral of qualified participants in training to employers, customized employment-related services to employers, and business services.

Paragraph (b)(3) identifies ''Coordination Activities.'' Coordination is required among training and employment activities under WIOA, child support agencies and services, Department of Agriculture extension programs, facilitating remote access by using technology and the one-stop delivery system, economic development agencies, linkages between the public workforce system and employers and those between the one-stop delivery system and unemployment insurance programs, and organizations that provide services to individuals with disabilities.

Paragraph (b)(4) authorizes local areas to enter into pay-for-performance contracts as part of a training strategy. Local areas may use up to 10 percent of their total adult and dislocated worker funds under this procurement method.

Paragraph (b)(5) provides for technical assistance for one-stop operators, partners, and ETPs regarding the provision of services to individuals with disabilities.

Paragraph (b)(6) provides for local areas to adjust the economic self-sufficiency standards for local areas. Levels of self-sufficiency may vary by local area and the local economy; this flexibility allows local areas to tailor their services in a way that works in their local economy.

Paragraph (b)(7) provides for the implementation of promising services to workers and employers. Local areas can build upon promising practices to improve service delivery to both job seekers and employers.

Paragraph (b)(8) provides for the use of funds for incumbent worker training. Local areas can use up to 20 percent of their combined adult and dislocated worker funds to do incumbent worker training consistent with subpart F of this part.

Section 680.150 What career services must be provided to adults and dislocated workers?

At a minimum, all of the basic career services described in WIOA sec. 134(c)(2)(A)(i)–(xi) and § 678.430(a) must be provided in each local area through the one-stop delivery system. These services include referrals to partner programs, initial assessments, and labor exchange services.

In addition, services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b), such as career counseling and the development of an individual employment plan, must be made available if appropriate for an individual to obtain or retain employment. These services are categorized as ''Individualized Career Services'' in § 678.430(b). An individual employment plan is discussed in connection with proposed § 680.180.

Appropriate follow-up services must be made available to a participant placed in unsubsidized employment for a minimum of 12 months following the participant's first date of employment. Follow-up services can be useful for participants in order to maintain employment. One-stop staff can provide workplace information and tips for success in a workplace environment. Additionally, follow-up services provide a continuing link between the participant and workforce system; these services allow the one-stop to assist with other services the participant may need once he or she obtains employment. Examples may include assistance with employer benefits, health insurance, and financial literacy and budgeting assistance.

Section 680.160 How are career services delivered?

Proposed § 680.160 explains that career services must be provided through the one-stop delivery system. Career services may be provided by the one-stop operator or through contracts with service providers approved by the Local Board. A Local Board may not be the provider of career services unless it receives a waiver from the Governor and meets other statutory and regulatory conditions.

Section 680.170 What is an internship or work experience for adults and dislocated workers?

Proposed § 683.170 defines an internship or work experience as a planned, structured, time-limited learning experience that takes places in a workplace. An internship or work experience may be paid or unpaid, as appropriate. An internship or work experience may be provided in the private for-profit, non-profit, or public sectors. Labor standards apply to any internship or work experience in which an employee/employer relationship exists under applicable law. The Department recognizes the role work experiences and internships play in

helping individuals obtain the skills they need to succeed in the workplace. An internship or work experience for a participant in WIOA is classified as an Individualized Career Service as described in § 678.430(b). Internships and work experiences provide a helpful means for an individual to gain experience that leads to unsubsidized employment.

Section 680.180 What is the individual employment plan?

Proposed § 680.180 explains that an individual employment plan is an individualized career service, as described in § 678.430(b), jointly developed by the participant and career planner, that may be appropriate for an individual. The plan includes an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to obtain these goals and objectives. Individual employment plans are one of the most effective ways to serve individuals with barriers to employment, and to coordinate the various services including training services they may need to overcome these barriers.

3. Subpart B—Training Services

Introduction

Training services are discussed at proposed §§ 680.200 through 680.230. WIOA is designed to increase participant access to training services. Training services are provided to equip individuals to enter the workforce and retain employment. Training services may include, for example, occupational skills training, OJT, registered apprenticeship which incorporates both OJT and classroom training, incumbent worker training, pre-apprenticeship training, workplace training with related instruction, training programs operated by the private sector, skill upgrading and retraining, entrepreneurial training, and transitional jobs. Training services are available for individuals who, after interview, evaluation or assessment, and case management are determined to be unlikely or unable to obtain or retain employment that leads to self-sufficiency or higher wages from previous employment through career services alone. The participant must be determined to be in need of training services and to possess the skills and qualifications to successfully participate in the selected program. The Department explains that some participants may need additional services to assist their vocational training, such as job readiness training, literacy activities including English language training, and customized training.

Section 680.200 What are training services for adults and dislocated workers?

Proposed § 680.200 directs the reader to WIOA sec. 134(c)(3)(D) for a description of available training services. The proposal provides a series of examples that is not all-inclusive.

Section 680.210 Who may receive training services?

Proposed § 680.210(a) discusses the process used to determine when and what training services must be made available to an individual. Under WIOA, an individual may receive training services after an interview, evaluation, or assessment, and career planning if the one-stop operator or partner determines the individual is unlikely or unable, by only receiving career services, to retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment. Additionally, the one-stop operator or partner must also determine that the training the individual receives would result in employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment. The one-stop operator or partner must also determine that the individual has the skills and qualifications to successfully participate in and complete the training. Upon a determination that career services are unlikely to obtain these employment outcomes, the individual may be enrolled in training services. The individual should have the skills and qualifications needed to successfully participate in and complete the training services.

Proposed § 680.210(b) requires that individuals, for whom training has been deemed appropriate, select a training program linked to employment opportunities in the local area or in an area to which the individual is willing to commute or relocate. The selection of this training program should be fully informed by the performance of relevant training providers, and individuals must be provided with the performance reports for all training providers who provide a relevant program.

Proposed § 680.210(c) explains that WIOA training services must be provided when other sources of grant assistance are unavailable to the individual.

Proposed § 680.210(d) requires that training services provided under the WIOA adult funding stream must be provided in accordance with the State or Local Board's priority system.

Section 680.220 Are there particular career services an individual must receive before receiving training services under Workforce Innovation and Opportunity Act?

WIOA removed the requirement under WIA that an individual had to receive an intensive service before receiving training services. The proposal explains that, other than an interview, evaluation, or assessment and career planning there is no requirement that additional career services must be provided before an individual enrolls in training. Where an assessment is provided, a previous assessment may be adequate for this purpose. There is no requirement for a sequencing of services under WIOA. If individuals are determined to be in need of training consistent with WIOA sec. 134(c)(3) then they may be placed in training services. The Department encourages the use of individualized career services under § 678.420(b) when appropriate for an individual; an individual employment plan or career counseling informed by local labor market information and training provider performance reports often will be appropriate before an individual receives training services.

Proposed § 680.220(b) requires that the case files for individuals must document the participant eligibility for training services and explain how this determination was made—by interview, evaluation or assessment, career planning, or other career service, such as an individual employment plan. It is important that the one-stop gather enough information, by whatever means, be they through an interview or through career services, to justify the need for training services.

Section 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Proposed § 680.230 restates the requirements for coordination with other forms of assistance that apply under WIA. The Department has also added a sentence to § 680.230(a)(2) to reflect the new provision in WIOA sec. 134(c)(3)(B)(iii) that one-stop operators and one-stop partners may take into account the full cost of the training, including the cost of supportive services. The Department encourages program operators to do so.

Proposed § 680.230(a) states that when coordinating other grant assistance the one-stop operator or

partner may take into account the full cost of participating in training services, including the cost of dependent care and transportation and other appropriate costs. Additionally, the one-stop operator or partner must coordinate training funds available and make funding arrangements with one-stop partners and other entities.

Proposed § 680.230(b) states that WIOA participants may enroll in WIOA-funded training while the participant has a Pell Grant application pending as long as the one-stop operator has made arrangements with the training provider and the WIOA participant regarding the award of the Pell Grant. The training provider must reimburse the one-stop operator or partner the amount of the WIOA funds used to pay for the training costs covered by the Pell Grant in the event that one is approved after WIOA-funded training has begun. Reimbursement from the participant for education-related expenses is not required.

4. Subpart C—Individual Training Accounts

Introduction

Individual Training Accounts (ITAs) are key tools used in the delivery of many training services. The Department seeks to provide maximum flexibility to State and local program operators in managing ITAs. These proposed regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits. The authority to make those decisions resides with the State or Local Boards. The authority that States or Local Boards may use to restrict the duration of ITAs or restrict funding amounts must not be used to establish limits that arbitrarily exclude eligible providers.

Through the one-stop center, individuals will be provided with quality and performance information on providers of training and, with effective career services, case management, and career planning with the ITA as the payment mechanism. ITAs allow participants the opportunity to choose the training provider that best meets their needs. Under WIOA, ITAs can more easily support placing participants into registered apprenticeship programs than under WIA.

Section 680.300 How are training services provided?

Proposed § 680.300 explains that in most circumstances an individual will receive training services through an ITA. An ITA is established on behalf of the participant, where services are purchased from eligible providers selected in consultation with a career planner. Payments may be made through electronic transfers of funds, vouchers, or other appropriate methods. Payments may be made at the beginning of the training program or on an incremental basis; the payment processes must be decided at the local level. As explained in proposed § 680.300, an ITA is used by an individual to access training services from an entity on the State's ETPL. In some circumstances involving work-based training, such as OJT, customized training, registered apprenticeship, incumbent worker training and transitional jobs, the Local Board may contract out the training services. The section allows for a Local Board itself to provide the training services if it receives a waiver from the Governor. Local Boards must coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist individuals in obtaining training services.

Section 680.310 Can the duration and amount of Individual Training Accounts be limited?

Proposed § 680.310 maintains the State and local flexibility to impose limits on ITAs that exists under WIA.

Section 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

Proposed § 680.320(a) discusses the exceptions to the otherwise required use of an ITA for training. In situations covered by these exceptions, a contract for services may be used to provide for training. The exceptions include:

1. OJT, which could include placing participants in a registered apprenticeship, customized training, incumbent worker training, or transitional jobs.

2. Where a Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purpose of an ITA. The local plan must describe how this determination was made and the process used for contracting for services. This exception maintains the same language as WIA.

3. If the Local Board determines a CBO or other private organization provides effective training services to individuals with barriers to employment. The Local Board must develop criteria to show that the program is effective.

4. Training for multiple individuals in in-demand industry sectors or occupations, as long as the contract does not limit the individual's consumer choice.

5. Circumstances in which a pay-for-performance contract is appropriate, consistent with § 683.510.

Proposed § 680.320(b) includes the term ''individuals with barriers to employment'' in place of the term ''special participant,'' as used under WIA. ''Individuals with barriers to employment'' is broader than ''special participants.'' ''Individuals with barriers to employment'' includes: Displaced homemakers (see § 680.630); low-income individuals; Indians, Alaska Natives, and Native Hawaiians; individuals with disabilities; older individuals; ex-offenders; homeless individuals; youth who are in or have aged out of the foster care system; individuals who are English learners, have low literacy levels, or face substantial cultural barriers; eligible MSFWs; individuals within 2 years of exhausting lifetime eligibility under TANF; single parents (including pregnant women); long-term unemployed individuals; and members of other groups identified by the Governor.

Section 680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

This regulation is designed to ensure States and local areas have the flexibility to serve individuals in both being placed into a registered apprenticeship as well as to assist currently registered apprentices. WIOA provides a new opportunity for registered apprenticeship programs to automatically qualify to be placed on the State's ETPL, allowing ITAs to support participants in registered apprenticeship programs, and more directly connecting apprenticeship programs to job seekers in one-stop centers. Some apprenticeship programs are with a single employer, whereas others may operate through a joint labor-management organization where participants are selected for the apprenticeship but not immediately hired by a specific employer. The Department is seeking comment on how registered apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Proposed § 680.330(a) states that participants may use an ITA to receive training at a pre-apprenticeship program that is on the State's ETPL. Pre-apprenticeship programs provide training to increase math, literacy, and other vocational skills needed to gain entry to a registered apprenticeship program. A pre-apprenticeship program funded with an ITA must have at least one registered apprenticeship partner; such pre-apprenticeship programs must possess or develop a strong record of enrolling their pre-apprenticeship graduates into a registered apprenticeship program. The Department is also open to comment on how pre-apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Proposed § 680.330(b) explains that the cost of tuition may be paid through an ITA to the training provider involved in a registered apprenticeship program. In such instances, the training provider may be an employer, a joint labor-management entity, a labor organization, or an outside training provider.

Proposed § 680.330(c) states that supportive services may be provided to support the placement of a participant into a registered apprenticeship program, consistent with the rules governing supportive services in subpart H.

Proposed § 680.330(d) explains that needs-related payments may be provided to support the placement of a participant into a registered apprenticeship program, consistent with the rules governing needs-related payments in subpart H.

Proposed § 680.330(e) provides a citation to the regulations on using OJT funds with registered apprenticeships.

Section 680.340 What are the requirements for consumer choice?

Proposed § 680.340 largely restates the consumer choice requirements established under WIA. The term ''career planner,'' used in WIOA, replaces the term ''case manager,'' used in WIA. Proposed § 680.340(e) provides that one-stop operators may coordinate funding for ITAs with other funding sources in order to assist the individual in obtaining training services. Proposed § 680.340(f) requires that priority consideration be given to programs that are aligned with in-demand industry sectors or occupations in the local area.

5. Subpart D—Eligible Training Providers

This part describes the methods by which organizations qualify as eligible providers of training services under WIOA. It also describes the roles and responsibilities of the State and Local Boards in managing this process and disseminating ETPLs. The State ETPL and the related eligibility procedures ensure the accountability, quality, and labor-market relevance of programs of training services that receive funds through WIOA title I–B. The regulations emphasize that the list and accompanying information must be easily understood and disseminated widely, in order to maximize informed consumer choice and serve all significant population groups.

The State plays a leadership role in ensuring the success of the eligible provider system in partnership with Local Boards, the one-stop system, and its partners. The Governor must establish eligibility criteria and procedures for initial determination and renewals of eligibility for training providers and training programs to receive funds under WIOA title I–B. In doing so, the Governor may establish minimum performance levels for eligibility and the Department encourages Governors to do so. In establishing minimum performance levels for eligibility, the Govenor should take into consideration the need to serve targeted populations. The Local Board may establish additional performance levels for program eligibility within a local area.

The proposed regulations implement WIOA sec. 122 and refer to WIOA secs. 107, 116, and 134 where those sections affect provider eligibility, the ETPL, the use of ITAs, and the inclusion of registered apprenticeship programs on the ETPL. In § 680.410, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in OJT and customized training (for which the Governor must establish qualifying procedures as discussed in § 680.530). The proposed regulations also explain how registered apprenticeship programs, which WIOA treats differently than other providers in some respects, are to be included in the list. Finally, the regulations describe how the State ETPL must be disseminated with accompanying performance and cost information. The performance information must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups. Separately, ETP performance reports, which require providers to supply performance information for all individuals enrolled in a program are addressed in § 677.230.

In response to concerns expressed by stakeholders that some providers of training would face difficulties in participating in this WIOA-revised system, the Department has clarified the interrelated eligibility requirements and explained that while WIOA places an emphasis on quality training as measured by performance criteria, State and Local Boards and training providers must work together in attaining this goal. The proposed regulations emphasize the Governor's discretion in offering financial or technical support to training providers where the information requirements of this section result in undue cost or burden. Making a wide variety of high-quality training programs available to participants will increase customer choice and that training providers may find performance information useful to improve their programs of study, which in turn will provide a direct benefit to participants. The Department also encourages the Governor to work with ETPs to return aggregate performance information to the provider in ways that will help the training providers improve their program performance. Given that training providers may have many programs of study within their institution, the department is seeking comment on ways that States can help streamline performance reporting for training providers and minimize the burden associated with reporting on multiple programs of study. The State and Local Boards must work together to ensure sufficient numbers and types of training providers and programs in order to maximize customer choice while maintaining the quality and integrity of training services. In addition, the proposed regulations explain that CBOs have the opportunity to deliver training funded under WIOA through contracts for services rather than ITAs, provided the local area determines this is necessary to meet local customer needs and also that the provider meets training performance requirements. Because of WIOA's emphasis on ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department does not intend to waive any of the requirements of this section. The Department is seeking comment on possible adaptations of ETP eligibility and reporting requirements to ensure small CBOs, especially those serving hard to

serve participant populations, have the capacity to qualify as ETPs.

Section 680.400 What is the purpose of this subpart?

The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles. As required by WIOA sec. 122, proposed § 680.400 explains that States, in partnership with Local Boards, must identify providers of training services that are qualified to receive WIOA funds to train adults and dislocated workers. Therefore, WIOA requires that each State must maintain a list of ETPs. The list must be accompanied by relevant performance and cost information and must be made widely available, including in electronic formats, and presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups.

Section 680.410 What entities are eligible providers of training services?

Proposed § 680.410 defines the types of entities that may be considered eligible to provide training services and the specific funds to be used for this purpose. This proposed section explains that training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in OJT and customized training (for which the Governor must establish qualifying procedures as discussed in § 680.530). The proposed regulations identify registered apprenticeship programs as included in the list as long as the program remains registered. This is further explained in proposed § 680.470.

Proposed paragraph (a) explains that only providers that the State determines to be eligible, as required in WIOA sec. 122, may receive training funds under WIOA title I–B. This refers to funds used to provide training for adult and dislocated worker participants who enroll in a program of training services. Proposed paragraph (a) states that the Governor will establish the criteria and procedures for determining eligibility. These criteria must take into account, at a minimum the items in WIOA sec. 122(b)(1)(A). Under the requirements of WIOA sec. 122, the procedures for determining eligibility of providers are established at the State level and include application and renewal procedures, eligibility criteria, and information requirements.

Proposed paragraphs (a)(1) through (4) list the categories of potentially eligible training entities. This list is largely unchanged from WIA. Potentially eligible entities include post-secondary education institutions, registered apprenticeship programs, other public or private providers of training, Local Boards that meet certain conditions, and CBOs or private organizations providing training under contract with the Local Board.

Proposed paragraphs (b)(1) and (2) specify that these eligibility requirements apply to adult and dislocated worker funds. The requirements apply to both participants who seek training using ITAs and those who seek training through the exceptions described in proposed §§ 680.320 and 680.530. Under WIOA sec. 134(c)(3)(G), limited exceptions allow local areas to provide training through a contract for services rather than ITAs in order to maintain consumer choice. These exceptions include: OJT training, customized training, incumbent worker training, or transitional employment; instances where the Local Board determines there are insufficient numbers of eligible providers of training services in the local area; where the Local Board determines an exception is necessary to meet the needs of individuals with barriers to employment (including assisting individuals with disabilities or adults in need of adult education and literacy services); where the Local Board determines that it would be most appropriate to award a contract to an institution of higher education or other eligible provider to facilitate the training of multiple individuals in in-demand industry sectors or occupations (where the contract does not limit customer choice); and, for pay-for-performance contracts.

Proposed paragraph (b)(2) explains that the requirements to become an eligible provider of training services apply to all organizations providing training to adults and dislocated workers, with the specific exception for registered apprenticeship programs. WIOA makes a change from WIA in that registered apprenticeship programs must be included and maintained on the list for as long as the program remains registered. Registered apprenticeship programs are not subject to the same application and performance information requirements as other ETPs. However, because it is possible that particular registered apprenticeship programs may prefer not to be included on the list, the proposed regulation requires registered apprenticeship programs to indicate their interest in being on the State list, according to a mechanism established by the Governor. The pertinent requirements for registered apprenticeship programs are explained in proposed § 680.470.

Section 680.420 What is a ''program of training services''?

Proposed § 680.420 defines the term ''program of training services,'' which is used throughout this part. The Department explains that a program of training services includes a structured regimen that leads to specific outcomes. Our definition reinforces a key principle of WIOA to improve accountability and performance. Proposed paragraphs (a) through (c) align the outcomes for a program of training services with the performance requirements described in WIOA sec. 116(b)(2)(A). These potential outcomes include post-secondary credentials, industry-recognized credentials, employment, and measurable skill gains toward credentials or employment.

Section 680.430 Who is responsible for managing the eligible provider process?

Proposed § 680.430 explains the roles of the Governor and Local Boards in administering the eligible provider process. Throughout this subpart, the Department emphasizes the Governor's discretion, in consultation with stakeholders, to establish eligibility procedures. The eligible provider process under WIOA sec. 122 requires the Governor to establish eligibility procedures and to clarify State and Local Board roles and responsibilities. In various sections, WIOA assigns responsibilities to Local Boards concerning ETPs and identifies additional optional activities that may be undertaken by Local Boards. For the convenience of stakeholders and the public, the Department has listed in proposed § 680.430 these required and potential activities.

Proposed paragraph (a) explains the Governor's responsibilities for managing the process for determining eligibility, developing and maintaining the State's list of ETPs, and disseminating the list to Local Boards, as required by WIOA sec. 122. In keeping with WIOA secs. 122(a)(1) and (c)(1), proposed paragraph (a) further requires that Governors consult with the State Board when establishing these procedures. Proposed paragraph (b) authorizes the Governor to designate a State agency to carry out the requirements of this section. While WIOA sec. 122 does not address this point, the Department anticipates that most States will work through a designated State agency (or appropriate State entity) to administer the

requirements of this section. The Department proposes paragraph (b) to make this option explicit.

Proposed paragraphs (b)(1) through (5) describe the State's responsibilities for developing and maintaining the State list of providers. The State may establish minimum performance levels. The State is responsible for determining if such performance targets are met. It is also the State's responsibility to determine whether accurate information has been submitted, take enforcement actions as needed, and disseminate the list to the Local Boards, the one-stop system, its partner programs, and the public. This includes dissemination through Web sites and searchable databases and any other means the State uses to disseminate information to consumers. Under WIA, similar responsibilities were primarily assigned to the Local Workforce Boards. In establishing greater accountability and flexibility at the State level, WIOA sec. 122 specifically requires the State to manage the ETP process. Proposed paragraph (b) describes these responsibilities and notes the Governor's primary role in exercising these responsibilities, including the assignment of duties to be undertaken by Local Boards.

Paragraph (c) identifies the required responsibilities of Local Boards, which are found in WIOA secs. 107 and 134. These include responsibilities assigned to Local Boards statutorily as well as responsibilities that may be assigned by the Governor. Proposed paragraph (c)(1) makes clear that the Local Board must carry out procedures assigned to it by the State, as provided for under WIOA sec.122(c)(1). The Department provides examples of the responsibilities that the Governor may choose to assign to Local Boards, including duties similar to those undertaken by Local Boards under WIA.

Proposed paragraph (c)(2) explains the Local Boards' responsibility to work with the State to ensure that there are sufficient number and variety of programs to provide participants, as consumers, adequate choice among providers, as described in WIOA sec. 107. Local Boards are charged with working with the State to ensure that there are sufficient numbers and types of providers to meet the skill development needs of adults and dislocated workers, including those who are disabled and/or require adult literacy assistance. This proposed paragraph emphasizes that Local Boards and the State must work together to ensure adequate consumer choice.

Proposed paragraph (c)(3) explains, as required by WIOA sec. 134(a)(2)(B), that Local Boards must also ensure that the State' eligible training provider list is disseminated publicly through the local one-stop system, and its partner programs. The list is a tool to assist one-stop customers in evaluating training programs and provider options. The dissemination of the list is also discussed under proposed § 680.500.

Proposed paragraph (d) explains the roles that a Local Board may choose to exercise in the eligible provider process. The Governor's procedure may not prevent Local Boards from exercising these options.

Proposed paragraph (d)(1) emphasizes the potential for Local Board input into the Governor's development of the eligible provider procedure. WIOA sec. 122(e) requires the Governor to provide an opportunity for interested members of the public to make recommendations and submit comments regarding the eligibility procedure. Although not explicitly addressed in the WIOA sec. 122, the Department interprets its language to encompass Local Boards and thus have included this requirement in the proposed paragraph.

Proposed paragraphs (d)(2) and (3) include the provisions at WIOA sec. 122(b)(3), which allow Local Boards to set additional eligibility criteria, information requirements, and minimum performance levels for local providers beyond what is required by the Governor's procedure. Stakeholders and the public must note that any additional requirements imposed by a Local Board will only affect a program's eligibility and performance requirements within the local area.

Section 680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?

Proposed § 680.440 explains the procedure established by WIOA sec. 122(c) for training providers that were eligible as of the date WIOA was enacted, July 21, 2014, to continue their eligibility under WIOA. The Department anticipates the majority of providers previously eligible under WIA will be affected by this transition.

Proposed paragraph (a) explains that the Governor may establish a transition period and states that providers that were eligible on July 21, 2014 will remain eligible under WIOA until December 31, 2015, or such earlier date as the Governor may set. Proposed paragraph (b) explains that in order to retain eligibility after the transition period, these providers will be subject to the application procedure established by the Governor for providers that have previously been found eligible, as further explained in proposed § 680.460. Proposed paragraph (c) explains that providers that have previously been found eligible are not subject to the initial eligibility procedures, as described in proposed § 680.450. As discussed in § 680.450, the initial eligibility procedures apply only to providers that were not previously eligible under WIA or WIOA.

Section 680.450 What is the initial eligibility procedure for new providers?

Proposed § 680.450 describes the process for adding ''new''' providers to the ETPL (*i.e.,* those that have not previously been found eligible under sec. 122 of either WIA or WIOA). Such providers must first apply for initial eligibility according to procedures set by the Governor. In accordance with WIOA sec. 122(b)(4), this proposed section describes the factors the Governor must take into consideration in developing this procedure and take into account in setting criteria for initial eligibility. Eligibility is determined on a program-by-program basis for each provider. Proposed § 680.450 distinguishes between registered apprenticeship programs seeking inclusion on the list and other providers. Registered apprenticeship programs, consistent with WIOA sec. 122(a)(3), are not subject to the initial eligibility application procedure. However, registered apprenticeship programs are required to indicate their interest to be included in the ETPL, according to a mechanism established by the Governor, as discussed in § 680.470.

Proposed paragraph (a) explains that the Governor's procedure must require that providers of training seeking initial eligibility submit required information in order to receive initial eligibility.

Proposed paragraph (b) explains the exception for providers who are carrying out registered apprenticeship programs under the National Apprenticeship Act. Such programs are included and maintained on the list of eligible providers of training for as long as the program remains registered. Therefore, registered apprenticeship programs are not subject to a period of initial eligibility or to initial-eligibility procedures. Rather, the Department proposes paragraph (b) to require the Governor to establish a procedure whereby registered apprenticeship programs may indicate their interest to be included and maintained on the list. This requirement is further discussed in § 680.470.

Proposed paragraph (c) explains the requirement that the Governor must consult with Local Boards and solicit

public comment in determining the initial eligibility procedure. While the Governor is responsible for developing the initial eligibility procedure, input by the Local Board and public comment remain important for shaping a public workforce system that is responsive to local needs. The Local Board is responsible for working with the State to ensure that there are sufficient numbers and types of providers of career and training services, as required by WIOA sec. 107(d)(10)(E) and described in proposed § 679.370(m). Therefore, the Department is requiring that the Governor consult with Local Boards about the initial eligibility procedure in order to maximize consumer choice at the local level. This is also in keeping with WIOA sec. 122(e) on the requirements for public comment. In addition, although WIOA does not address this point, the Department proposes requiring the Governor to describe the procedure, eligibility criteria, and information requirements for initial eligibility in the State Plan. Although States will need a separate mechanism for public comment during the first year of implementation, in subsequent years the State Plan process will afford the opportunity to solicit comments and recommendations from key stakeholders. In addition, the State Plan submission and review process allows the Department to ensure compliance with statutory and regulatory requirements and identify promising practices and technical assistance needs.

Proposed paragraph (d) explains that the Governor must establish criteria and State requirements for non-exempt providers seeking initial eligibility. These initial requirements apply to providers that were not previously eligible under this section (or sec. 122 of WIA, as in effect on the day before the enactment of WIOA).

Proposed paragraph (e) describes the factors that the Governor must take into account in establishing the criteria for determining initial eligibility. For those institutions that are not exempt from complying with the ETP application process, the State must establish consistent and uniform criteria for providers seeking initial eligibility. The information that must be submitted to the State for review will be defined by the Governor, but must, at a minimum, address factors related to program elements included in both WIOA secs. 122(b)(4)(D) and 116(b)(2)(A)(i)(I)–(IV). The Department has listed these required elements in proposed paragraphs (e)(2) through (5). The elements taken from WIOA sec. 122 include information addressing factors related to program performance indicators, any partnership a program has with a business, attributes indicating high quality training services and credentialing, and the alignment of the program's services with in-demand industry sectors. WIOA requires that providers provide ''verifiable program-specific performance information.'' The Department is interested in comments about the types of verifiable program specific-information this would include. The Department is particularly interested in the methods of providing verifiable information that are the least costly to the training provider and the easiest to verify to reduce the cost to the State or local area. The Department has added a requirement that the applicant provide a description of the program. The Department thinks this information is not burdensome and is essential to enable customers to understand whether the program meets their training needs.

Proposed paragraph (f) describes the Governor's discretion to establish minimum performance standards. As with the application procedures described in § 680.460, the Governor may establish minimum performance levels in the initial eligibility procedures, and the Department encourages them to do so.

Proposed § 680.450(g) emphasizes the time limit for initial eligibility, which is 1 fiscal year for a particular program, per WIOA sec. 122(b)(4)(B).

Proposed paragraph (h) clarifies that after the period of initial eligibility, these training providers are subject to the Governor's application procedure, described at proposed § 680.460 in order to remain eligible.

Section 680.460 What is the application procedure for continued eligibility?

Proposed § 680.460 explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA. Eligibility is determined on a program-by-program basis for each provider.

Proposed paragraphs (a)(1) and (2) list the two groups of providers that are subject to the requirements of proposed § 680.460. These include new training providers that were previously eligible under WIA (following the Governor's transition period, which ends December 31, 2015 or such earlier date established by the Governor) as well as new training providers whose initial eligibility expires after 1 fiscal year.

Proposed paragraphs (b)(1) and (2) explain that the Governor is required to gather and consider input from Local Boards, providers, and the public, including representatives of business and labor organizations. The Local Board is responsible for working with the State to ensure that there are sufficient numbers and types of providers of career and training services, as required by WIOA sec. 107(d)(10)(E) and described in proposed § 679.370(m). Therefore, the Department is requiring that the Governor consult with Local Boards regarding training provider eligibility procedures in order to maximize consumer choice among quality training providers at the local level. This is also in keeping with WIOA sec. 122(e) regarding the requirements for public comment. While WIOA does not specify a timeframe within which the consultation and determination must be completed, proposed paragraph (b)(3) requires the Governor to establish a timeframe for that purpose while leaving the amount of time to the Governor's discretion. The same requirements for Local Board consultation and a public comment period are described above in connection with proposed § 680.450(c) for the Governor's development of initial eligibility procedures.

Proposed paragraph (c) clarifies that registered apprenticeship programs are exempted from these application procedures. Under WIOA sec. 122(a)(3), registered apprenticeship programs must be included and maintained on the State list for as long as the program remains registered. While registered apprenticeships are considered eligible, not all registered apprenticeship sponsors may wish to be included. As described in § 680.470, the Department proposes that the Governor's procedure must include a means for registered apprenticeship program to indicate interest in being included on the list.

Proposed paragraph (d) explains that the Governor's procedure must describe the roles of the State and local areas in the application and eligibility process. WIOA gives the Governor discretion to assign some of the responsibility for receiving, reviewing, and making eligibility determinations to local areas. WIOA emphasizes the Governor's discretion in establishing eligibility procedures.

Proposed paragraph (e) requires the Governor's procedure to be described in the State Plan. Although WIOA does not address this point, the Department proposes requiring the Governor to describe the procedure, eligibility criteria, and information requirements for initial eligibility in the State Plan. Although States will need a separate mechanism for public comment during the first year of implementation, in subsequent years the State Plan process will afford the opportunity to solicit

comments and recommendations from key stakeholders. In addition, the State Plan submission and review process allows the Department to ensure compliance with statutory and regulatory requirements and identify promising practices and technical assistance needs.

Proposed paragraph (f) explains the factors that the Governor must take into account in developing the eligibility criteria. These include nine required factors and any additional factors that Governor considers appropriate. The proposed language closely tracks the language from WIOA sec. 122(b), providing a comprehensive description of the requirements for the application process. WIOA sec. 122(b) includes multiple cross-references to WIOA sec. 116 which identifies required performance accountability measures. Proposed paragraph (f)(1) generally describes the kinds of performance information which training providers must submit as part of their application, which pertain to participants receiving training under WIOA title I–B. The Department recommends the Governor's procedure emphasize these performance indicators as a way of establishing minimum standards and a means for comparison among training providers offering similar training in similar areas. The Department recommends States use these measures to ensure performance accountability, continuous improvement, training provider quality, and informed consumer choice. The Department anticipates that complete performance data as required under (f)(1) may not be available until PY 2018, given the lag time inherent in the performance indicators. Proposed pargraph (f)(1) allows the Govenor to take into account alternate factors for any performance information that is not yet available until such performance data are available. The Department seeks comment on alternate factors related to performance that may be used to establish eligibility during this time.

Proposed paragraphs (f)(2) through (10) list the other factors that the Governor's criteria must take into account. These include the need to ensure access to training services in rural areas, information regarding Federal and State training programs other than within WIOA title I–B, alignment with in-demand industry sectors, State licensure requirements, encouraging industry-recognized credentials, provision of post-secondary credentials, the quality of program and training services, and meeting the needs of individuals with barriers to employment.

Proposed paragraph (f)(10) requires the Governor's criteria to take into account whether the providers timely and accurately submitted eligible training provider performance reports, as required under WIOA sec. 116(d)(4). This requirement is consistent with the requirement under WIOA sec. 122(b)(1)(A)(ii) that the criteria to be taken into account include the outcomes of the training programs for students in general with respect to employment and earnings under the indicators of performance described in WIOA sec. 116(d)(2). The ETP reports provide information on these employment and earnings outcomes for all individuals in a program of study, and the failure to submit such reports on a timely and accurate basis would undermine the ability of the Governor to take such outcomes into account. The Department seeks comment on how best to apply the timely and accurate submission of these ETP performance reports as a factor for eligibility.

Proposed paragraph (f)(11) explains the Governor's discretion to take into account other factors. This paragraph echoes the key principles of the ETPL and WIOA to ensure performance accountability, to meet the needs of local employers and participants, and to ensure informed customer choice.

Proposed paragraph (g) lists the information that training providers are required to provide as part of their application. As discussed in paragraph (k), the Governor has broad discretion to prescribe additional types of information.

Proposed paragraph (h) establishes two additional requirements concerning performance, cost, and information collection. Proposed paragraph (h)(1) states that eligible providers must submit performance and cost information required by paragraph (g) and the Governor's procedure to the State (WIOA secs. 122(b)(1) and (2)). In accordance with the State accountability and flexibility intended by WIOA, the timeframe and manner for submitting this information is to be determined by the State but at least every 2 years. Proposed paragraph (h)(2) states that the collection of information required to demonstrate compliance with the criteria cannot be unduly burdensome or costly to providers, citing to WIOA sec. 122(b)(1)(J)(iv).

Proposed paragraph (i) explains that the Governor's eligibility procedure must provide for the State to biennially review training provider eligibility information and assess the renewal of training provider eligibility, per WIOA sec. 122(c)(2). In keeping with WIOA's emphasis on providing discretion to the Governor, the Department has not prescribed in paragraph (i) the timeline and manner in which this biennial review takes place. These particulars are to be established by State procedure. The Governor or State agency is not required to establish minimum levels of performance, although the Department encourages them to do so. If minimum levels are established, the Governor's procedure must state these requirements and the State may require eligible providers to meet them in order to remain eligible.

Proposed paragraph (j) requires the Governor's procedure to verify the status of registered apprenticeship programs as a part of the biennial review of the State list. Although registered apprenticeship programs are not subject to the same review procedures as other providers, the State must verify the status of the registered apprenticeship programs in order to remove from the list any apprenticeship programs that are no longer registered.

Proposed paragraph (k) establishes that, as was the case under WIA, Local Boards may set additional criteria for eligibility to provide services in a local area. WIOA includes this provision at sec. 122(b)(3).

Proposed paragraph (l) explains that the Governor may establish procedures for providing technical assistance in order to assist eligible providers in meeting these requirements. This is in addition to financial assistance the Governor may provide, as described in proposed § 680.490.

Section 680.470 What is the procedure for registered apprenticeship programs that seek to be included on the State's eligible training provider list?

WIOA encourages registered apprenticeship programs to be active partners in the public workforce system. These programs are proven job-driven strategies that provide workers with career pathways and opportunities to earn while they learn. Under WIOA sec. 122(a)(3), a registered apprenticeship program is included on the list of ETPs so long as the program remains registered. This allows a participant enrolled in a registered apprenticeship who is eligible to use WIOA title I–B funds to use those funds toward apprentice training, consistent with their availability and limitations as prescribed by proposed § 680.300. The use of ITAs and other WIOA title I–B funds toward apprenticeship training is further described in proposed § 680.330. Registered apprenticeship programs differ from other training providers in some respects, notably that a participant's enrollment occurs only

through an agreement among the participant, the registered apprenticeship program sponsor, and an employer.

Proposed § 680.470 explains how registered apprenticeship programs are included and maintained on the ETPL. Registered apprenticeship programs are not subject to the application procedures and information requirements of other training providers to be included on the ETPL, in light of the detailed application and vetting procedures under which apprenticeship programs become registered.

Proposed paragraph (a) requires registered apprenticeship programs to indicate interest in being on the State list of ETPs. While registered apprenticeship programs are automatically eligible, not all registered apprenticeship sponsors may wish to be included on the list. The Department proposes that the Governor's procedure include a mechanism for registered apprenticeship programs to indicate their interest.

Proposed paragraph (b) explains that a registered apprenticeship program will remain on the list until it loses its registration or notifies the State that it no longer wishes to be included on the list.

Proposed paragraph (c) explains that when a registered apprenticeship program is included on the State ETPL, this allows an individual who eligible to use WIOA title I–B funds to use those funds toward apprentice training, consistent with their availability and limitations as prescribed by proposed § 680.300.

Proposed paragraph (d) addresses performance reporting requirements for apprenticeship programs. Registered apprenticeship programs are not subject to the same information reporting requirements as other training programs. However, in light of WIOA's emphasis on performance accountability and informed customer choice, the Department encourages Governors to consult with the State and Local Boards, the Department's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State), or other State agencies, to establish voluntary reporting of performance information.

Section 680.480 May an eligible training provider lose its eligibility?

Proposed § 680.480 describes enforcement provisions that are largely unchanged from WIA. The Governor has the ability to remove training providers or programs of training services from the State list according to the Governor's eligibility and review procedures. Under WIOA sec. 122(f), States must remove from the eligibility list any providers that willfully supply false performance information or that substantially violate requirements of WIOA. Under WIOA, a provider may also be removed from the list following the Governor's biennial review of the provider's program. These provisions support key principles of WIOA by reinforcing performance accountability and ensuring the high quality of training programs made available.

Proposed paragraph (a) affirms that a provider must deliver positive results and provide accurate information in order to maintain eligibility.

Proposed paragraph (b) explains that if a provider intentionally provides inaccurate information or substantially violates any provision of WIOA or its regulations the provider must be removed from the State list for a period of not less than 2 years and is liable to repay all adult and dislocated worker funds it received during the period of non-compliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing.

Proposed paragraph (c) allows the Governor to remove a program or programs from the list for failing to meet State-established criteria or performance levels. The Department seeks comment on how to strengthen enforcement with non-compliant providers over time.

Proposed paragraph (d) explains that the Governor must establish an appeal procedure for providers to appeal a denial of eligibility under this section. An appeals process is required by WIOA sec. 122 (c)(1). Proposed § 683.630(b) explains the appeal process for the denial or termination of a training provider's eligibility.

Proposed paragraph (e) provides that a local area may remove a program or programs from the list for failing to meet higher local standards. The local area must also provide the program with an appeal process.

Section 680.490 What kind of performance and cost information must eligible training providers provide for each program of training?

Proposed § 680.490 describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, as described in WIOA sec. 122(b)(2).

Proposed paragraph (a) requires ETPs to submit performance information at least every 2 years, according to procedures established by the Governor. While the Governor may require reporting at more frequent intervals, the Department interprets WIOA sec. 122 to require that provider performance information for eligibility purposes must be submitted to the State at least biennially.

Proposed paragraphs (b)(1) through (4) list the program-specific performance information, described in WIOA sec. 122, that must be submitted by training providers. Proposed paragraph (b)(1) includes a cross-reference to the performance elements described at WIOA secs. 116(b)(2)(A)(i)(I)–(IV). These elements are further discussed in proposed § 680.460(g)(i) through (iv). Proposed paragraphs (b)(2) through (4) list additional information that must be supplied by providers; this includes information on post-secondary credentials offered, program costs, and the completion rate for WIOA participants in the program.

Proposed paragraph (c) explains that the Governor may require any additional performance information that he or she considers appropriate for determining or renewing eligibility. Separate reporting requirements for the State's ETP performance reports under WIOA sec. 116(d)(4) are addressed in § 677.230.

Proposed paragraph (d) emphasizes the collaborative relationship between a State and its training providers and explains that the Governor must assist providers in supplying the information required of them under WIOA and the proposed regulations. Proposed paragraph (d)(1) states the statutory requirement, at WIOA sec. 122(b)(1)(J)(iv), that the Governor must provide access to cost-effective methods for the collection of information. Proposed paragraphs (d)(2) and (3) explain that the Governor may provide technical and other assistance to providers in helping them to meet the performance requirements and that funds reserved for statewide activities under WIOA sec. 134 (a)(2)(B) may be used for this purpose. While WIOA emphasizes performance accountability, it is also important to assist ETPs in maintaining their eligibility, especially as training providers adjust to the more demanding reporting requirements of WIOA.

Section 680.500 How is the State list of eligible training providers disseminated?

The public's ability to access and easily understand the State ETPL and its accompanying information are cornerstones of informed customer choice and transparency. In keeping

with WIOA's intent for program alignment and service integration, the Department proposes strengthening the distribution of the list to emphasize dissemination to the public through one- stop partner programs in addition to the one-stop system. The ETP performance reports at WIOA sec. 116(d)(4) are addressed separately in § 677.230, which requires the coordinated dissemination of the performance reports with the ETPL and the information required to accompany the list.

Proposed § 680.500 explains the requirements for distributing the list and accompanying information about the programs and providers on the list. These requirements recognize the central importance of the list as the means to provide participants, as consumers of employment and training activities, effective choices among programs and providers of these services. As discussed previously, informed consumer choice is a key principle under WIOA.

Proposed paragraph (a) requires the State to disseminate the list with accompanying performance and cost information to Local Boards in the State and to members of the public online including Web sites and searchable databases, through whatever means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners. Local Boards must disseminate the list through the one-stop system as well, as described in proposed § 680.430(c)(3). Proposed paragraph (b) requires the list to be updated regularly, while provider eligibility is reviewed biennially. The Department is making a distinction between the eligibility of individual providers and updates to the actual list because the Department anticipates the list may be updated on an on-going basis, even though the review of a particular provider's eligibility status may occur biennially.

Proposed paragraph (c) requires the State list and accompanying information to be easily available to all one-stop customers through the one-stop system and its partner programs. The State list is a key piece of the State one-stop system. As such, it must be made available to individuals seeking information on training programs as well as participants receiving career services funded under WIOA and other programs. Proposed paragraph (c) further explains that the list must be available to individuals who are eligible for training under WIOA as well as to individuals whose training is supported by other one-stop partners.

Proposed paragraph (d) describes the information that must accompany the list to help participants in making informed choices regarding training programs and providers. Proposed paragraphs (d)(1) through (4) describe the information that must accompany the list, including recognized post-secondary credentials offered, other information as may be required by the Governor's eligibility criteria, and performance and cost information. The information available for programs in the initial eligibility stage will be different from, and less extensive than, the information available from programs in the continuing eligibility stage.

Proposed paragraph (d)(3) includes the requirement that the State must disseminate the provider list with ''other appropriate information.'' The Department interprets this language to include the performance and cost information described at § 680.490.

Proposed paragraph (d)(4) states that the Governor may include any additional information to accompany the list as he or she considers appropriate. The Department encourages States to include any information that, consistent with WIOA's goal of promoting consumer choice, will assist participants in choosing training activities and providers.

Proposed paragraph (e) requires, as described in WIOA sec. 122(d)(3), that the accompanying information must not reveal personally identifiable information about an individual participant. In addition, disclosure of personally identifiable information from an education record must be carried out in accordance with the FERPA, including the circumstances relating to prior written consent.

The Department is interested in comments on specific ways to structure the accompanying information so that it provides a complete and easily understandable picture of provider performance but is not so detailed or complex that it discourages users from consulting it or limits its utility to the lay person. Should, for example, there be a summary sheet that is easy and quick to read and, if so, what information must be on the summary sheet?

Section 680.510 In what ways can a Local Board supplement the information available from the State list?

Proposed § 680.510 explains that Local Boards may choose to supplement the criteria and information requirements established by the Governor's procedure in order to facilitate informed consumer choice in a local area.

Proposed paragraph (a) states that a Local Board may require that providers of training services furnish additional criteria and information as allowed under WIOA sec. 122(b)(3). These requirements impact the provision of services in the local area involved.

Proposed paragraphs (b)(1) through (4) explain the type of additional information that the Local Board may require providers to supply in their application to become eligible. These provisions are largely unchanged from the WIA regulations. The Local Board may request that the provider of training services explain how the training program specifically links to occupations that are in demand within the local area. The Local Board may also request specific program performance and cost information particular to a local area where programs are offered at multiple sites. The Department further explains that Local Boards may request information from training providers that indicates how programs are responsive to these local requirements, as provided for in WIOA sec. 122(b)(3).

Section 680.520 May individuals choose training providers located outside of the local area?

Proposed § 680.520 explains that an individual may choose a training provider located outside the local area, and, in some instances, in other States. States may enter into reciprocity agreements with other States under which providers of training services are allowed to accept ITAs provided by another State. Providers of training services that are located outside the local area may not be subject to State eligibility procedures if the provider has been determined eligible by another State with such an agreement. The option to enter into reciprocity agreements diminishes the burden on States and providers of training services to be subject to duplicative procedures and is allowable under WIOA sec. 122(g). This provision also expands the array of training options available for individuals seeking training.

Section 680.530 What requirements apply to providers of on-the-job training, customized training, incumbent worker training, and other training exceptions?

In proposed § 680.530, the Department explains that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional employment are not subject to the eligibility requirements under WIOA

secs. 122(a)–(f), but are required to provide performance information established by the Governor. The Department further explains that the local one-stop operator is required to collect and disseminate information that identifies these providers as meeting the Governor's performance criteria. Although these providers are not included on the State ETPL they are considered to be eligible providers of training services.

6. Subpart E—Priority and Special Populations

Introduction

The services provided with adult funds can be a pathway to the middle class for low-income adults, public assistance recipients, and individuals who are basic skills deficient. The proposed regulations implement the statutorily-required priority for the use of adult funds. This subpart contains proposed regulations about how participants from certain populations are able to access adult and dislocated worker services and establish priority access to these services. WIOA sec. 134(c)(3)(E) provides that priority must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Under WIA, this priority applies only when adult funds are limited. Under WIOA, however, priority access to services by members of this group applies automatically. Nonetheless, WIOA allows one-stop operators to provide individualized career services to individuals who are not members of these groups, if determined appropriate by the one-stop operator.

The Department strongly encourages close cooperation between WIOA-funded programs and other Federal and State sources of assistance for job seekers. Coordination between WIOA-funded programs and the TANF program is a crucial element in serving individuals who are on public assistance. TANF is a required partner in the one-stop delivery system. Through close cooperation, each program's participants will have access to a much broader range of services to promote employment retention and self-sufficiency than if they relied only on the services available under a single program.

In this subpart, the Department explains how displaced homemakers may be served with both adult and dislocated worker funds. Under WIOA, a displaced homemaker qualifies as an ''individual with a barrier to employment'' (see proposed § 680.320(b) and its discussion above). WIOA provides a focus on serving ''individuals with a barrier to employment'' to ensure they have opportunities to enter meaningful employment; this term is defined in WIOA sec. 3(24). Additionally, displaced homemakers meet the definition of a ''dislocated worker,'' as defined in WIOA sec. 3(15)(D). The proposed regulations implement WIOA's requirements and effectuate its purpose to aid displaced homemakers, whose work, albeit without a formal connection to the workforce, is recognized for its value, but who may need WIOA services to develop further work skills. WIOA also expands the definition of displaced homemakers to include dependent spouses of the Armed Forces on active duty to ensure they have access to WIOA title I services.

This subpart ensures that veterans and certain service members have access to adult and dislocated worker programs. Under WIOA, as was the case under WIA, veterans receive priority of service in all Department-funded employment and training programs. The proposed regulations describe what is meant by ''priority of service.'' The Department has proposed a regulation consistent with guidance it issued in Training and Employment Guidance Letter (TEGL) 22–04 that separating service members meet the eligibility requirements for dislocated worker activities. This proposed regulation will ensure that service members will have access to the full array of services available through the one-stop delivery system.

Section 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

Proposed § 680.600 provides priority access to career services and training services funded under WIOA sec. 134(c)(2)(A)(xii) and adult title I. In § 678.430(b), the Department proposes to categorize these services as individualized career services. WIOA builds on the priority given under WIA to providing training services to low-income individuals and individuals receiving public assistance. Under WIOA, the priority also extends to individuals who are basic skills deficient.

Proposed § 680.600(a) explains that individualized career services and training services must be given on a priority basis to low-income adults, public assistance recipients, and individuals who are basic skills deficient in the local area under the WIOA adult program. For adults, the term ''basic skills deficient'' is defined in WIOA sec. 3(5)(B) and applies when an individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society. Priority must be given regardless of funding levels.

Proposed § 680.600(b) requires States and local areas to establish criteria for providing priority to individualized career services and training services with WIOA adult funds under title I. The criteria may include other resources and funds for providing career and training-related services in the local area, as well as the needs of specific groups in the local area, as well as other factors the local areas determines appropriate.

Proposed § 680.600(c) clarifies that while priority must be given under WIOA adult funds to low-income individuals, public assistance recipients, or individuals who are basic skills deficient for individualized career services and training services, the Local Board and Governor may establish a process that also gives priority to other individuals.

Section 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

Proposed § 680.610 clarifies that the statutory priority for low-income individuals, public assistance recipients, and individuals who are basic skills deficient only applies to the WIOA adult program and not the WIOA dislocated worker program.

Section 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

Proposed § 680.620 explains how the TANF program relates to the one-stop delivery system. Cooperation among required partner programs is vital to build pathways to the middle class for individuals on public assistance and low-income individuals. Partners, working together, can ensure the best mix of services for each individual seeking to enhance their lives and employment.

Under WIOA, TANF is a required partner in the one-stop system, unless the Governor opts out. TANF provides assistance to needy families and by coordinating closely with WIOA local areas can ensure programs and services include the needs of individuals on public assistance. This section encourages cooperation among the WIOA and TANF programs to maximize

services available to participants eligible under both programs.

Section 680.630 How does a displaced homemaker qualify for services under title I?

Proposed § 680.630 explains displaced homemakers' eligibility for dislocated worker activities. A displaced homemaker can qualify for either adult or dislocated worker funds. First, if an individual meets the definition of a displaced homemaker under WIOA sec. 3(16), the individual is eligible for dislocated worker career and training services. Second, the displaced homemaker may be served with title I adult funds if the individual meets the eligibility requirements for this program; generally priority in the adult program is given to low-income individuals, individuals on public assistance, or if they lack basic work skills. A State may also use reserve funds that target displaced homemakers in which they would be eligible.

Under WIOA, the definition of a displaced homemaker is expanded to explicitly include dependent spouses of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change in station, or the service-connected death or disability of the service member.

Section 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?

Proposed § 680.640 explains that under WIOA an individual with a disability whose family does not meet income eligibility criteria will still qualify for priority as a low-income adult if the individual meets the low-income criteria in WIOA sec. 3(36). Additionally, the Department proposes that if an individual with a disability meets the income eligibility criteria for payments under any Federal, State, or local public assistance program that individual will also be eligible for priority as a low-income adult consistent with WIOA sec. 3(36)(A)(i). This includes recipients of SNAP, TANF, and recipients of the Supplemental Security Income program.

Section 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Proposed § 680.650 builds on the Department's efforts to ensure veterans are entitled to priority of service in all Department-funded training programs under 38 U.S.C. 4215 and 20 CFR 1010. The proposal states that veterans must receive priority of service in programs for which they are eligible. In programs that require income-based eligibility to receive services, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for VR, disability, or other related VA programs are not considered as income when determining low-income status. Generally, this means many separating service members may qualify for the WIOA adult program because it provides priority for low-income individuals and military earnings are not to be considered income for this purpose.

Section 680.660 Are separating service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

Proposed § 680.660 explains, consistent with the Department's long-standing policy, that service members exiting the military qualify as dislocated workers. Dislocated worker funds under title I can help separating service members enter or reenter the civilian labor force.

Proposed § 680.660(a) clarifies that a notice of separation, a DD–214 from the Department of Defense, or other appropriate documentation that shows a separation or imminent separation from the Armed Forces qualifies as a notice of termination or layoff required for the dislocated worker definition.

Proposed § 680.660(b) clarifies that a separating service member meets the dislocated worker requirements concerning UC.

Proposed § 680.660(c) clarifies that a separating service member meets the dislocated worker requirement that an individual is unlikely to return to his or her previous industry or occupation.

7. Subpart F—Work-Based Training

Introduction

Proposed §§ 680.700 through 680.850 are proposed regulations for work-based training under WIOA. The proposed regulations apply to (OJT) training, customized training, incumbent worker training, and transitional jobs. The proposed regulations include specific information about general, contract, and employer payment requirements. Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program. Registered apprenticeship training is a type of work-based training that can be funded in the adult and dislocated worker programs; additionally pre-apprenticeships may be used to provide work experiences that can help participants obtain the skills needed to be placed into a registered apprenticeship.

Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a high quality workforce. Each of these work-based models can be effectively used to target different job seeker and employer needs. OJT is primarily designed to provide a participant with the knowledge and skills necessary for the full performance of the job. Incumbent worker training is designed to ensure that employees of a company are able to gain the skills necessary to retain employment and advance within the company or to provide the skills necessary to avert a layoff. Customized training is designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers and employers or groups of employers.

Both training providers and OJT providers must be providing the highest quality training to participants. OJT contracts must be continually monitored so that WIOA funds provided through OJT contracts are providing participants with successful employment. It is important that OJTs have a strong ability to provide participants with in-demand skills with opportunities for career advancement and employers with a skilled workforce.

Under WIA, States could apply for a waiver to increase reimbursement amounts of the OJT wage rate. Under WIOA, the statute enables a Governor or Local Board to increase this rate to 75 percent without a waiver. This change is designed to give States and Local Boards additional flexibility in developing OJT opportunities that work best with the participating employers and in the local economy.

WIOA also explicitly allows for incumbent worker training at the local level. WIOA introduces incumbent worker training as an allowable type of training for a local area to provide. Under WIA, States could use their statewide activities funds to conduct incumbent worker training, and local areas could conduct incumbent worker training with an approved waiver. Incumbent worker training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's

competitiveness. Local areas may use up to 20 percent of their local adult and dislocated worker funds for incumbent worker training. In this proposed regulation, the Department seeks to ensure that incumbent worker training is targeted to improving the skills and competitiveness of the participant and increasing the competitiveness of the employer. The training should, wherever possible, allow the participant to gain industry-recognized training experience, and ultimately should lead to an increase in wages. To receive incumbent worker funding under WIOA, an incumbent worker must have an employer-employee relationship, and an established employment history, with the employer. Incumbent workers are employed at the time of their participation, and the contract funds are paid to the employer for training provided to the incumbent worker either to avert a lay-off or otherwise retain employment. An ideal incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job within the company, thus allowing the company to hire a job seeker to backfill the incumbent worker's position. The Departments are seeking comment on the best way to structure these arrangements to maximize the likelihood that this ideal outcome occurs.

WIOA also discusses transitional jobs as a way for adults and dislocated workers with barriers to employment who are experiencing chronic unemployment or have an inconsistent work history to develop a work history and basic work skills essential to keeping a job. Transitional jobs are time-limited, subsidized employment in the private, non-profit, or public sectors.

Section 680.700 What are the requirements for on-the-job training?

OJT is a type of training that is provided by an employer to a participant. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides the knowledge or skills essential to the full and adequate performance of the job. Studies over the past 3 decades have found that in the United States formal OJT programs have positive employment and earnings outcomes.[2] OJT is a critical tool that can help jobseekers enter into successful employment.

Proposed § 680.700(a) explains that OJT may be provided under contract with an employer in the public, private non-profit, or private sectors. Under WIOA, the reimbursement level may be raised up to 75 percent of the wage rate, in contrast to 50 percent of the wage rate under WIA. Typically, the OJT contract provides reimbursement to the employer for a portion of the wage rate of the participant for the extraordinary costs of providing training and supervision related to the training.

Proposed § 680.700(b) states that contracts must not be entered into with an employer that received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages, employment benefits, or working conditions at the same level as other employees performing the same type of work for the same length of time.

Proposed § 680.700(c) continues the requirement under WIA that OJT contracts must be limited in duration to the time necessary for a participant to become proficient in the occupation for which they are receiving the OJT training. When determining the length of the contract, the Governor or Local Boards must take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan.

Section 680.710 What are the requirements for on-the-job training contracts for employed workers?

Proposed § 680.710 is unchanged from the WIA regulations. The proposal identifies the requirements for OJT contracts used to train employed workers.

Section 680.720 What conditions govern on-the-job training payments to employers?

Proposed § 680.720 identifies the conditions that govern OJT payment to employers. OJT payments are to be compensation to the employer for the extraordinary costs associated with training participants. The Department does not seek to define through this regulation what ''extraordinary costs'' are, and is seeking public comment on this issue. The Department generally believes extraordinary costs are those costs the employer has in training participants who may not yet have the knowledge or skills to obtain the job through an employer's normal recruitment process.

Section 680.730 Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

Proposed § 680.730(a) identifies the factors that a Governor or Local Board must consider and document in determining whether to raise the reimbursement rate for OJT contracts up to 75 percent of the wage rate.

Proposed § 680.730(1) allows for the wage rate to be up to 75 percent after taking into consideration, among other factors, the characteristics of the participants (WIOA sec. 134(c)(3)(H)(ii)(I)), including whether the OJT contract is leading to employment for individuals with barriers to employment. Proposed § 680.730(2) states that the size of the employer is a factor that must be considered; proposed § 680.730(3) states that the quality of employer-provided training and advancement opportunities is a factor that must be considered. Proposed § 680.730(4) states that the Governor or Local Board may consider other factors in determining whether it is appropriate to raise the reimbursement rate. Such other factors may include the number of employees participating, wage and benefit levels of employees both before and after OJT completion, and relation of training to the competitiveness of the participant. Proposed § 680.730(b) requires that the Governor or Local Board must document the factors that they considered when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent. The Department is seeking comments from the public on how the relation of training to the competitiveness of the participant must be analyzed when implementing this provision.

Section 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

Proposed § 680.740(a) clarifies that an OJT contract may be made with a registered apprenticeship program for training participants. OJT contracts are made with the employer, and registered apprenticeships generally involve both classroom and on-the-job instruction. The OJT contract may be made to support the OJT portion of the registered apprenticeship program. The Department also notes that registered apprenticeship programs vary in length, so the OJT may support the entire duration of training while other means

[2] Kleinman, Liu, Mastri, Reed, Reed, Sattar, Ziegler, An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States, Mathematica Policy Research, July 2012, Prepared for the U.S. Department of Labor, Employment and Training Administration.

may support the beginning of the registered apprenticeship training. The Department is seeking comments on what an appropriate maximum amount of time would be for OJT funds to be used to support participants in registered apprenticeships.

Proposed paragraph (b) clarifies that in some instances a registered apprenticeship is operated by the employer and in others it is operated by a training provider with a direct connection to an employer or group of employers. If a participant is in a registered apprenticeship and employed as part of that arrangement, then the OJT must be treated as other OJTs provided for employed workers as described in § 680.710. If a participant is in a registered apprenticeship but is unemployed, the OJT funds may be provided in same manner as other OJTs as described in § 680.700.

Section 680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?

Local areas may use an ITA to support classroom portions of a registered apprenticeship program and OJT funds may be used to support the on-the-job portions of the registered apprenticeship program. This is to ensure local areas have maximum flexibility in serving participants and supporting their placement into registered apprenticeship programs.

Section 680.760 What is customized training?

Proposed § 680.760 explains that customized training is to be used to meet the special requirements of an employer or group of employers, conducted with a commitment by the employer to employ all individuals upon successful completion of training. The employer must pay for a significant share of the cost of the training.

Proposed § 680.760(a) and (b) are unchanged from WIA. In paragraph (c) under WIA employers were required to pay for not less than 50 percent of the cost of the training, WIOA removes the precise figure and says that the employer must pay for a ''significant cost of the training.''

Section 680.770 What are the requirements for customized training for employed workers?

Proposed § 680.770 identifies the eligibility requirements for employed workers to receive customized training. There may be instances where a worker is employed but then receives customized training under contract between the local area and the employer. In order for the employed worker to qualify, the employee must not be earning a self-sufficient wage as determined by Local Board policy, the requirements of customized training in proposed § 680.760 must be met, and the training must incorporate new technologies, processes, or procedures; skills upgrades; workplace literacy; or other appropriate purposes, as identified by the Local Board. Proposed § 680.770 is unchanged from WIA. The Department is interested in comments that discuss how to distinguish customized training from OJT. Should they focus on different service populations, different training strategies, or different types of jobs?

Section 680.780 Who is an ''incumbent worker'' for purposes of statewide and local employment and training activities?

Proposed § 680.780 is designed to update the definition of an incumbent worker from WIA. An incumbent worker is employed with the company when the incumbent worker training starts. The Department is seeking comment on the appropriate amount of time an employee must have worked for the employer before being eligible for incumbent worker training. The Department is proposing a minimum of 6 months, but is seeking substantive comments on this proposal. The Department is also seeking comments on how incumbent worker training should increase the competitiveness of the employee or employer for the purposes of identifying high-quality incumbent worker opportunities.

Section 680.790 What is incumbent worker training?

Proposed § 680.790 discusses the purposes served by and the conditions relating to incumbent worker training as prescribed by WIOA sec. 134(d)(4)(B).

Incumbent worker training is designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment. The employer or group of employers must pay for a portion of the cost of providing the training to incumbent workers.

Section 680.800 What funds may be used for incumbent worker training?

Proposed § 680.800 provides that under WIOA, local areas may use up to 20 percent of their combined total of adult and dislocated worker allotments for incumbent worker training. States may use their statewide activities funds and Rapid Response funds for statewide incumbent worker training activities.

Section 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?

Proposed § 680.810 provides the criteria a Local Board must use when deciding on using funds for incumbent worker training with an employer. Paragraphs (a) through (c) address participant characteristics, the relationship of the training to the competitiveness of the participant and employer, and other factors that the Local Board determines appropriate. These factors may include the number of employees in training, wages and benefits (including post-training increases), and the existence of other training opportunities provided by the employer.

Section 680.820 Are there cost sharing requirements for local area incumbent worker training?

Proposed § 680.820 clarifies that there are cost sharing requirements for employers participating in incumbent worker training to pay for the non-Federal share of the cost of providing training to incumbent workers of the employers.

Section 680.830 What is a transitional job?

Proposed § 680.830 explains that transitional jobs are time-limited work experiences that are subsidized for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history. These jobs may be in the public, private, or non-profit sectors. Transitional jobs can be effective solutions for individuals to gain necessary work experience that they would otherwise not be able to get through training or an OJT contract. The goal is to establish a work history for the individual, demonstrate work success, and develop skills that lead to entry into unsubsidized employment. The difference between a transitional job and an OJT contract is that in a transitional job there is no expectation that the individual will continue his or her hire with the employer after the work experience is complete.

Section 680.840 What funds may be used for transitional jobs?

Proposed § 680.840 states that local areas may reserve up to 10 percent of their combined total of adult and dislocated worker allotments for transitional jobs and must be provided

along with comprehensive career services and supportive services.

Section 680.850 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

Proposed § 680.850 clarifies that there is an explicit prohibition on the use of work-based training funds which includes OJT, customized training, incumbent worker training, transitional jobs or registered apprenticeship for assisting, promoting, or deterring union organizing activities.

8. Subpart G—Supportive Services

Introduction

This section defines the scope and purpose of supportive services and the requirements governing their disbursement. A key principle in WIOA is to provide local areas with the authority to make policy and administrative decisions and the flexibility to tailor the workforce system to the needs of the local community. To ensure maximum flexibility, the regulations provide local areas the discretion to provide the supportive services they deem appropriate subject to the limited conditions prescribed by WIOA. Local Boards must develop policies and procedures to ensure coordination with other entities to ensure non-duplication of resources and services and to establish limits on the amount and duration of such services. Local Boards are encouraged to develop policies and procedures that ensure that supportive services are WIOA-funded only when these services are not available through other agencies and that the services are necessary for the individual to participate in title I activities. Supportive services may be made available to anyone participating in title I activities.

Needs-related payments are designed to provide a participant with resources for the purpose of enabling them to participate in training services. The Department recognizes that many individuals in need of training services may not have the resources available to participate in the training. Needs-related payments can help individuals meet their non-training expenses and help them to complete training successfully. A participant must be enrolled in a training program in order to receive needs-related payments.

Section 680.900 What are supportive services for adults and dislocated workers?

Proposed § 680.900 explains that supportive services are services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in career and training services. Referrals to supportive services are one of the career services that must be made available to adults and dislocated workers through the one-stop delivery system. The proposed section also provides that Local Boards, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy must address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. When developing this policy, the Department encourages Local Boards to consider incorporating local legal aid services. Legal aid is able to reduce barriers to employment and establish employment eligibility such as by helping secure a driver's license, expunging criminal records, and addressing debts or credit reporting issues.

In the context of a coordinated one-stop delivery system envisioned by WIOA, the one-stop needs to take into consideration all of the available supportive service resources so that participants may receive the best supportive services available and to ensure that funds are spent to maximize participants' opportunity to participate in career and training services.

Section 680.910 When may supportive services be provided to participants?

Proposed § 680.910 states that supportive services may only be provided to participants who are in career or training services, unable to obtain supportive services through other programs providing supportive services, and that they must be provided in a manner necessary to enable individuals to participate in career or training services. The proposed rule removes references to ''core'' and ''intensive'' services, terms now characterized as ''career services'' under WIOA.

Section 680.920 Are there limits on the amounts or duration of funds for supportive services?

Proposed § 680.920 provides that Local Boards may establish limits on providing supportive services or allow the one-stop operator to establish limits, including caps on the amount of funding and length of time for supportive services to be made available. The rule text makes no changes from WIA.

Section 680.930 What are needs-related payments?

Proposed § 680.930 defines needs-related payments as financial assistance to a participant for the purpose of enabling the individual to participate in training. Needs-related payments are a type of supportive service that provides direct financial payments to a participant, and unlike other supportive services, the participant must be enrolled in training to receive needs-related payments. The rule text makes no substantive changes from WIA; it provides updated citations to WIOA.

Section 680.940 What are the eligibility requirements for adults to receive needs-related payments?

Proposed § 680.940 clarifies that for an adult to receive a needs-related payment he or she must be unemployed, not qualify for or have ceased to qualify for UC, and be enrolled in a training program.

Section 680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

Proposed § 680.950 provides that dislocated workers may receive needs-related payments if they are unemployed, ceased to qualify for UC or trade readjustment allowance under Trade Adjustment Assistance (TAA), and be enrolled in training by certain deadlines. It makes one clarification from WIA in that it provides that the dislocated worker must be enrolled in training.

Section 680.960 May needs-related payments be paid while a participant is waiting to start training classes?

Proposed § 680.960 states that payments may be provided if the participant has been accepted into a program that will begin within 30 calendar days.

Section 680.970 How is the level of needs-related payments determined?

Proposed § 680.970(a) explains that the needs-related payment level for adults must be established by the Local Board. The Department recognizes the costs of different labor markets and believes that payment levels are best set locally to ensure the needs-related payments meet their purpose of enabling participants to receive training services.

Proposed § 680.970(b) explains how needs-related payments for dislocated workers are calculated. If the participant is a dislocated worker and has established eligibility for UC, the needs-related payment must not exceed the

higher of the weekly level of UC the participant receives or an amount equal to the poverty level for an equivalent time period. If the participant qualifies for dislocated worker services, but not for UC as a result of the qualifying layoff, the needs-related payment must not exceed the higher of the weekly level of UC the participant would receive if she or he had qualified, if the weekly benefit amount that the participant would have received can be determined, or an amount equal to the poverty level for an equivalent time period. Local Boards must adopt policies to adjust the weekly payment level if there are changes in total family income.

*E. Part 681—Youth Activities Under Title I of the Workforce Innovation and Opportunity Act*

1. Introduction

Under WIOA, Federal, State, and local partnerships that put the youths' interests first will help the nation's disconnected youth to succeed. The common performance measures across WIOA core programs, adult and youth programs under WIOA title I, and Adult Education and Vocational Rehabilitation programs under WIOA titles II and IV provide a mechanism to support youth service alignment. WIOA envisions the Department's youth programs, including Job Corps, YouthBuild, and the youth formula-funded program, coordinating to support systems alignment and service delivery for youth. Local and State plans will articulate this vision of youth workforce investment activities and help ensure a long-term supply of skilled workers and leaders in local communities.

WIOA affirms the Department's commitment to providing high quality services for youth and young adults beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training in in-demand industries and occupations, and culminating with a good job along a career pathway or enrollment in post-secondary education. All of the Department's youth-serving programs continue to promote evidence-based strategies that also meet the highest levels of performance, accountability, and quality in preparing young people for the workforce. The Department's focus on performance and accountability is emphasized through the implementation of the new primary indicators of performance for eligible youth across programs and through their use of the primary indicators for program management and decision-making.

WIOA maintains WIA's focus on OSY in Job Corps and YouthBuild, while greatly increasing the focus on OSY in the WIOA youth formula-funded program. The shift in policy to focus on those youth most in need is based on the current state of youth employment. With an estimated 6 million 16–24 year olds in our country not employed or in school, WIOA youth programs provide a continuum of services to help these young people navigate between the educational and workforce systems. The Department, working with its Education and Health and Human Services partners, plans to provide intensive technical assistance around meeting the needs of this population.

WIOA calls for customer-focused services based on the needs of the individual participant. This includes the creation of career pathways for youth in all title I youth programs, including a connection to career pathways as part of a youth's individual service strategy in the youth formula-funded program. In addition, many services under title I youth programs are based on the individual needs of participants. WIOA also calls for this population to be intimately involved in the design and implementation of services so the youth voice is represented and their needs are being met.

This integrated vision also applies to the workforce system's other shared customer-employers. By repositioning youth as an asset to employers with a need for skilled workers, the value of employers engaging the youth workforce system and programs is enhanced. Employers are critical partners that provide meaningful growth opportunities for young people through work experiences that give them the opportunity to learn and apply skills in real-world setting and ultimately jobs that young people are ready to fill given the opportunity.

The Department recognizes that much of this alignment and integration is already happening in local areas and regions across the country. WIOA aims to build upon these existing efforts through an emphasis on system alignment, an increased focus on serving OSY and those most in need, an emphasis on the needs of individual participants, and the prioritization of connections with employers, especially through work experience opportunities. The Department recognizes that WIOA also includes major shifts in approach and is committed to working with the youth workforce investment system to partner in the implementation of these changes through guidance and technical assistance.

WIOA supersedes the youth formula-funded program under title I, subtitle B, chapter 2 Youth Workforce Investment Activities. It further aligns the WIOA youth program with the other ETA youth training programs, including YouthBuild and Job Corps, as well as with titles II and IV of WIOA by requiring common performance measures across all core programs.

WIOA includes a number of significant changes for the youth formula-funded program. The biggest change under WIOA is the shift to focus resources primarily on OSY. WIOA increases the minimum percentage of funds required to be spent on OSY from 30 percent to 75 percent. This intentional shift refocuses the program to serve OSY during a time when large numbers of youth and young adults are out of school and not connected to the labor force. While the Department recognizes this transition to serve more OSY will take time to implement, it is critical that States and local areas begin to incorporate strategies for recruiting and serving more OSY.

These strategies must incorporate strong framework services which must include intake, objective assessments, and the development of individual service strategy, case management, supportive services, and follow-up services. They must also consider how to ensure that American Job Center staff have the requisite knowledge and sensitivity to the needs of OSY to effectively serve them. The Department plans to release subsequent guidance on these matters but also welcomes comments at this time on preferred approaches.

In addition, WIOA includes a major focus on providing youth with work experience opportunities. WIOA prioritizes work experiences with the requirement that local areas must spend a minimum of 20 percent of local area funds on work experience. Under WIOA, work experience becomes the most important of the program elements. WIOA also introduces five new program elements: Financial literacy; entrepreneurial skills training; services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to post-secondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

WIOA enhances the youth program design through an increased emphasis on individual participant needs by adding new components to the objective assessment and individual service strategy. WIOA incorporates career pathways as part of both the objective assessment and development of the individual service strategy. In addition, the individual service strategy must directly link to one or more of the performance indicators. The program design under WIOA also includes effective connections to employers, including small employers, in in-demand industry sectors and occupations.

2. Subpart A—Standing Youth Committees

Section 681.100 What is a standing youth committee?

This proposed section describes a standing youth committee. WIOA eliminates the requirement for Local Boards to establish a youth council; however, the Local Board may choose to establish, ''a standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include CBOs with a demonstrated record of success in serving eligible youth'' (WIOA sec. 107(b)(4)(A)(ii)). The Department recognizes the difficulty under WIA in some local areas in maintaining the required youth council partnerships. The Department encourages Local Boards to consider establishing standing youth committees, taking advantage of the flexibility under WIOA to design standing youth committee membership to meet the local area's needs. Additionally, the law further clarifies that an existing youth council may be designated as the youth standing committee if they are fulfilling the requirements of a standing committee which means that they have members of the Local Board who have the appropriate experience and expertise in youth educational and workforce development (WIOA sec. 107(b)(4)(C)). The Department encourages Local Boards to designate high performing youth councils as standing youth committees if appropriate. Local Boards are responsible for the oversight of youth programs. Under WIA, youth councils were mandated to fulfill this function for the Board. Local Boards now may choose to fulfill the oversight responsibility, or have the discretion to delegate this function to a standing youth committee. If Local Boards choose not to delegate this function to a standing youth committee, they are responsible for conducting oversight of youth workforce investment activities under WIOA sec. 129(c).

Section 681.110 Who is included on a standing youth committee?

This proposed section describes the members of a standing youth committee if the Local Board chooses to establish such a committee based on WIOA secs. 107(b)(4)(A)(ii) and 129(c)(3)(C). The members must include a member of the Local Board, who must chair the committee, members of CBOs with a demonstrated record of success in serving eligible youth and other individuals with appropriate expertise and experience who are not members of the Local Board. The committee may also include parents, participants, and youth. A Local Board may designate an existing entity such as an effective youth council as the standing youth committee if its membership meets the WIOA membership requirements.

Section 681.120 What does a standing youth committee do?

This proposed section describes the duties of a standing youth committee if the Local Board chooses to establish such a committee based on WIOA secs.107(b)(4)(A)(ii) and 129(c)(3)(C). The standing committee's main function is to inform and assist the Local Board in developing and overseeing a comprehensive youth program. The details of its responsibilities are assigned by the Local Board.

3. Subpart B—Eligibility for Youth Services

Section 681.200 Who is eligible for youth services?

This proposed section based on WIOA sec. 3(18) describes eligibility for the WIOA title I youth formula-funded program which includes two groups: In-school youth (ISY) and OSY and establishes specific criteria for each group. The eligible WIOA title I youth population represents youth who face challenges and barriers to success in the labor market.

Section 681.210 Who is an ''out-of-school youth''?

This proposed section describes how one meets the eligibility for an OSY for purposes of the title I WIOA youth program. OSY youth must not attend any school, be between the ages of 16 and 24 at time of enrollment, and meet one or more of a list of eight criteria. With one exception, the WIOA criteria are generally the same as those under WIA. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment they can continue to receive WIOA youth services beyond the age of 24. Unlike under WIA or under the definition of an ISY, low income is not a requirement to meet eligibility for most categories of OSY under WIOA. However, low income is now a part of the criteria for youth who need additional assistance to enter or complete an educational program or to secure or hold employment. Also, WIOA has made youth with a disability a separate eligibility criterion.

In addition, WIOA includes a new criterion: A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent school year calendar quarter. Because school districts differ in what they use for school year quarters, the time period of a school year quarter is based on how a local school district defines its school year quarters. WIOA lists this criterion as the second on the list of eight that satisfy the third of the three primary requirements.

Section 681.220 Who is an ''in-school youth''?

This proposed section describes how one meets the eligibility for an ISY for purposes of the WIOA title I youth program. ISY youth must be attending school, including secondary or post-secondary school, be between the ages of 14 and 21 at time of enrollment, be low-income, and meet one or more of a list of seven criteria. These are essentially the same criteria as under WIA but the disability criterion has been separated from the ''needs additional assistance'' criterion. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment they can continue to receive WIOA youth services beyond the age of 21. WIOA includes a youth as low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*).

Section 681.230 What does ''school'' refer to in the ''not attending or attending any school'' in the out-of-school and in-school definitions?

The term school refers to both secondary and post-secondary school as defined by the applicable State law for secondary and post-secondary institutions. This proposed section provides that for purposes of title I of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild

programs, or Job Corps programs as schools. Therefore, if the only ''school'' the youth attends is adult education provided under title II of WIOA, YouthBuild, or Job Corps, the Department will consider the individual an OSY youth for purposes of title I of WIOA youth program eligibility.

WIOA emphasizes the importance of coordination among Federally-funded employment and training programs, including those authorized under titles I and II. Many disconnected youth age 16 to 24 meet eligibility requirements for both WIOA title I youth activities and WIOA title II adult education. Co-enrollment between these two programs can be very beneficial to disconnected youth as they can receive work experience and occupational skills through title I funding and literacy skills through title II funding. Because the eligibility for title II is similar to that for an OSY under title I, an individual who is not enrolled or required to be enrolled in secondary school under State law, it is consistent to consider such youth already enrolled in title II as an OSY for purposes of title I WIOA youth eligibility.

Section 681.240 When do local youth programs verify dropout status, particularly for youth attending alternative schools?

This proposed section provides that dropout status is determined at the time of enrollment for eligibility as an OSY and that once a youth is enrolled as an OSY, that status continues, for purposes of the 75 percent OSY enrollment requirement, for the duration of the youth's enrollment, even if the youth later returns to a school. Because WIOA does not define the term alternative school, States must develop a definition. The Department advises States to define alternative school consistent with their State education agency alternative school definition. As of September 2014, 43 States and the District of Columbia have formal definitions of alternative education. The intent of WIOA is to serve more OSY who are disconnected from school and work, while continuing to develop strategies and provide services to ISY in collaboration with community partners.

Section 681.250 Who does the low-income eligibility requirement apply to?

This proposed section discusses the low-income eligibility criteria for OSY and ISY. For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low-income. For OSY who are subject to the justice system, homeless, pregnant or parenting, or have a disability, income eligibility documentation is not required by statute. All ISY must be low-income. Under WIOA, there are circumstances when local areas will find documenting low income for youth formula program eligibility less burdensome than it was under the WIA youth program. For example, for ISY a local program can use eligibility for free or reduced price lunch as low-income documentation. For all youth, those living in a high-poverty area are considered low-income. The section also sets out the exception to the low-income requirement that up to 5 percent of youth who meet all the other eligibility requirements need not be low-income. The 5 percent is calculated based on all youth served in the WIOA local youth program in a given PY.

Section 681.260 How does the Department define ''high poverty area'' for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows for youth living in a high-poverty area to automatically meet the low-income criterion that is one of the eligibility criteria for ISY and for some OSY. In order to maintain consistency across the country, the Department proposes that a high-poverty area be defined as a Census tract; a set of contiguous Census tracts; Indian Reservation, tribal land, or Native Alaskan Village; or a county that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data. While there is no standard definition for the term ''high-poverty area'' in Federal programs, the Census Bureau uses two similar concepts. One is ''poverty area,'' that is an area with a poverty rate of at least 20 percent and the other is ''area with concentrated poverty,'' that is an area with a poverty rate of at least 40 percent. The term high-poverty area implies an area that has more poverty than a ''poverty area'' but not as much poverty as an ''area with concentrated poverty.'' In addition, current Department competitive grant programs for ex-offenders define high poverty areas as communities with poverty rates of at least 30 percent. The Department is seeking comments on whether the poverty thresholds the Department is proposing are the most appropriate levels for youth living in a high poverty area.

Section 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes a change from WIA in which a local program can use eligibility for free or reduced price lunch under the Richard B. Russell National School Lunch Act as one of the factors to determine whether a participant meets the low-income criteria for eligibility for the WIOA youth program.

Section 681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?

This proposed section reiterates the WIOA provision that, for an individual with a disability, income level for eligibility purposes is based on his/her own income rather than his/her family's income.

Section 681.290 How does the Department define the ''basic skills deficient'' criterion in this part?

This proposed section reiterates the basic skills deficient criterion that is part of the eligibility criteria for both OSY and ISY, for purposes of title I of WIOA. For the second part of the definition, which reads ''a youth who is unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society,'' the State and/or Local Board must further define how the State or Local Board will determine if a youth is unable to demonstrate these skills well enough to function on the job, in their family, or in society as part of its respective State or local plan. The section also provides that local programs must use valid and reliable assessment instruments and provide reasonable accommodations to youth with disabilities in the assessment process in making this determination.

Section 681.300 How does the Department define the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in this part?

This proposed section allows States and/or local areas to define the ''requires additional assistance . . .'' criterion that is part of the OSY and ISY eligibility. It clarifies that if this criterion is not defined at the State level and a local area uses this criterion in their OSY or ISY eligibility, the local

area must define this criterion in their local plan.

Section 681.310 Must youth participants enroll to participate in the youth program?

This proposed section clarifies that there is no self-service concept for the WIOA youth program and every individual receiving services under WIOA youth must meet ISY or OSY eligibility criteria and formally enroll in the program. It defines enrollment as the collection of information to support an eligibility determination and participation in any one of the 14 program elements. Under WIA the Department received many questions about the point in time that a youth became enrolled in the program. The Department hopes the proposed addition of connecting enrollment to receipt of a program element clarifies the moment at which enrollment occurs. The reference to EO data in the corresponding section under WIA was dropped because all rules related to data collection are covered in § 677 on performance management.

4. Subpart C—Youth Program Design, Elements, and Parameters

Section 681.400 What is the process used to select eligible youth providers?

WIA regulations did not address the process for identifying and selecting eligible youth providers required in WIA sec. 123. The Department has received numerous inquiries asking for clarification on the competitive selection of youth providers and which services must be provided by entities identified in accordance with WIA sec. 123. This proposed regulation clarifies which youth activities may be conducted by the local grant recipient and which services must be provided by entities identified in accordance with WIOA sec. 123. Consistent with § 664.405(a)(4), the competitive selection requirement in WIOA sec. 123 does not apply to framework services if the grant recipient/fiscal agent provides these services. The Department allows this because in some cases the grant recipient/fiscal agent may be best positioned to provide such services. For example, the grant recipient/fiscal agent that provides framework services can ensure continuity of WIOA youth programming as youth service providers change.

Section 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

This proposed section describes the new minimum expenditure requirement under WIOA that States and local areas must expend a minimum of 75 percent of youth funds on OSY. Under WIA, local areas were required to spend at least 30 percent of funds to assist eligible OSY. This represents a significant shift in the focus of the WIOA youth program and the Department recognizes such a shift will require additional technical assistance and guidance, including assistance to other youth-serving programs. This section also describes that the minimum 75 percent OSY expenditure applies to both local area funds and statewide youth activities funds reserved by the Governor. However, only those statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. In addition, local area administrative costs are not subject to the 75 percent OSY minimum expenditure. The OSY expenditure rate is calculated for statewide funds after subtracting out funds that are not spent on direct services to youth. The OSY expenditure rate is calculated for local area funds after subtracting the funds spent on administrative costs. For example, if a local area receives $1 million and spends $100,000 on administrative costs, the remaining $900,000 is subject to the OSY expenditure rate. In this example, the local area would be required to spend at least $675,000 (75 percent) of the $900,000 on OSY.

This section also clarifies the guidelines by which a State that receives a minimum allotment under WIOA sec. 127(b)(1) or under WIOA sec. 132(b)(1) may request an exception to decrease the expenditure percentage to not less than 50 percent. The OSY exception language at WIOA sec. 129(a)(4)(B) references sec. 127(b)(1)(C)(iv) and sec. 132(b)(1)(B)(iv), which includes States that receive 90 percent of the allotment percentage for the preceding year under the youth or adult formula programs (WIOA secs. 127(b)(1)(C)(iv)(I) and 132(b)(1)(B)(iv)(I)) and States that receive the small State minimum allotment under either program (WIOA secs. 127(b)(1)(C)(iv)(II) and 132(b)(1)(B)(iv)(II)). Under WIA this exception was only available to States receiving the small State minimum allotment, and no State submitted a request for the exception. The Department proposes to limit the approval of requests described in WIOA sec. 129(a)(4)(B) to only those States that receive the small State minimum allotment under WIOA secs. 127(b)(1)(C)(iv)(II) and 132(b)(1)(B)(iv)(II). Thus, requests to decrease the percentage of funds to be used to provide activities to OSY will not be granted to States based on their having received 90 percent of the allotment percentage for the preceding year. When the Secretary receives such a request from a State based on having received 90 percent of the allotment percentage for the preceding year, the request will be denied without the Secretary exercising further discretion.

While the list of States receiving the small State minimum allotment is generally consistent, there is an almost complete yearly turnover of the States receiving the 90 percent minimum allotment. Given this continuous turnover, approving a request from these States for an exception to the 75 percent expenditure requirement would cause significant disruption in the operation of local youth programs. In particular, States and local areas would be unable to develop and implement long-term service delivery strategies and plans and would be unable to establish the appropriate infrastructure necessary to meet the 75 percent expenditure requirement. These disruptions would adversely affect the quality of services that could be delivered to youth program participants, particularly OSY, thereby undermining one of the most significant changes in priorities from WIA to WIOA. Given the disruption and harm that would result from approving requests from States receiving the 90 percent minimum allotment for an exception to the 75 percent expenditure requirement, the Department proposes to limit the approval of this exception to States receiving the small State minimum allotment.

Even in those States receiving a small State minimum allotment, it will be very difficult for a State to make an affirmative determination that, after analysis of the local area's youth population, the local area ''will not be able'' to use 75 percent of its funds for OSY, which is a required element of any request.

Section 681.420 How must Local Boards design Workforce Innovation and Opportunity Act youth programs?

This proposed section describes the framework for the WIOA youth program design. The framework includes an objective assessment; an individual service strategy, which programs must update as needed to ensure progression through the program; and general case management; and follow-up services that lead toward successful outcomes for WIOA youth program participants. WIOA makes two significant changes to WIA's requirements for service strategies. One is that the service strategy must be linked to one or more of the indicators of performance in WIOA sec. 116(b)(2)(A)(ii). The other is that the service strategy must identify career pathways that include appropriate education and employment goals. For both objective assessment and individual service strategy, programs may use recently completed assessments or service strategies conducted by another education or training program rather than create new assessments or service strategies if they determine it is appropriate to do so.

This proposed section also describes the requirement that Local Boards must link to youth-serving agencies and adds local human services agencies to the list that WIA required. It provides that Local Boards must provide eligible youth with information about the full array of applicable or appropriate services available through the Local Board or other eligible providers, or one-stop partners. It also provides that Local Boards must refer eligible youth to appropriate services that have the capacity to serve them on a concurrent or sequential basis. The proposed section also provides that eligible providers must refer youth who either do not meet the enrollment requirements for that program or cannot be served by that program for further assessment, if necessary, or to appropriate programs to meet the skills and training needs of the participant. Local Boards must also involve specific members of the community, including parents and youth participants, in designing and implementing the WIOA youth program.

A new provision in WIOA allows the Local Board to use up to 10 percent of their funds to implement pay-for-performance contracts for the program elements described in § 681.460. Pay-for-performance contracts are further described in § 683.500.

Section 681.430 May youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?

This proposed section provides that youth may participate in both the WIOA youth program and the adult program at the same time if they are eligible for both and it is appropriate. If such concurrent enrollment occurs, local programs must track expenditures separately by program. This section eliminated the reference, included in the WIA regulations, to concurrent enrollment in the dislocated worker program because any youth meeting eligibility for the dislocated worker program would have already successfully attained a job and would most likely be more appropriately served under the dislocated worker program. The section also provides that youth who are eligible under both programs may enroll concurrently in WIOA title I and II programs.

Section 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or Workforce Innovation and Opportunity Act adult program?

Individuals aged 18 to 24 are eligible for the WIOA adult and youth programs and local areas must determine whether to serve such individuals in the youth program, adult program, or both. This proposed section provides that a local youth program must determine whether to enroll an 18 to 24 year old in the youth program or adult program based on the individual's career readiness as determined through an objective assessment.

Section 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

The Department proposes this new section because the Department's monitoring of local areas commonly found WIA youth were exited before successfully completing the program due to artificial time constraints or the ending of youth service provider contracts. In order to ensure that youth are not prematurely exited from the WIOA youth program, the Department proposes that youth programs serve participants for the amount of time necessary to ensure they are successfully prepared to enter post-secondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link program participation to a participant's individual service strategy and not the timing of youth service provider contracts or PYs.

Section 681.460 What services must local programs offer to youth participants?

This proposed section lists the 14 program elements, including 5 new youth program elements in WIOA sec. 129(c)(2) that were not included under WIA. These new elements are (1) education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; (2) financial literacy education; (3) entrepreneurial skills training; (4) services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and (5) activities that help youth prepare for and transition to post-secondary education and training. In addition, WIOA has revised some of the WIA program elements. For example, the element on tutoring, study skills training, instruction leading to the completion of secondary school, including dropout prevention strategies, has been revised to provide that the dropout prevention (and recovery) strategies must be evidence-based and to make clear that the completion of secondary school can be accomplished by attainment of a secondary school diploma or its recognized equivalent, including a certificate of attendance or similar document for individuals with disabilities. This change is consistent with WIOA's emphasis on evidence-based programs. WIOA also combines the two WIA elements of summer youth employment programs and work experiences so that summer youth employment programs become one item in a list of work experiences and adds pre-apprenticeship programs to the list of work experiences. Finally, WIOA expands the description of the occupational skill training element to provide for priority consideration for training programs that lead to recognized post-secondary credentials that are aligned with in-demand industry sectors or occupations if the programs meet WIOA's quality criteria. This change is consistent with WIOA's increased emphasis on credential attainment. The section clarifies that while local WIOA youth programs must

make all 14 program elements available to WIOA youth participants, local programs have the discretion to determine which elements to provide to a participant based on the participant's assessment and individual service strategy.

Section 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

This proposed section clarifies that local WIOA youth programs must make all 14 program elements available to youth participants, but not all services must be funded with WIOA youth funds. Local programs may leverage partner resources to provide program elements that are available in the local area. If a local program does not fund an activity with WIOA title I youth funds, the local area must have an agreement in place with the partner to offer the program element and ensure that the activity is closely connected and coordinated with the WIOA youth program if enrolled youth participate in the program element. By closely connected and coordinated, the Department means that case managers must contact and monitor the provider of the non-WIOA-funded activity to ensure the activity is of high quality and beneficial to the youth participant.

Section 681.480 What is a pre-apprenticeship program?

This proposed section defines a pre-apprenticeship program, which is one of the types of work experiences listed under WIOA sec. 129(c)(2)(C). The reference to pre-apprenticeship programs is new in WIOA. The definition is based on TEN No. 13–12 that defined a quality pre-apprenticeship program. Local youth programs must coordinate pre-apprenticeship programs to the maximum extent feasible with registered apprenticeship programs, which are defined in WIOA sec. 171(b)(10), and require at least one documented partnership with a registered apprenticeship program. Quality pre-apprenticeship programs play a valuable role in preparing entrants for registered apprenticeship and contribute to the development of a diverse and skilled workforce. Pre-apprenticeship programs can be adapted to meet the needs of participants, the various employers and sponsors they serve, and the specific employment opportunities available in a local labor market. Pre-apprenticeship training programs have successfully demonstrated that obstacles such as low math skills, poor work habits, lack of access to transportation, and lack of knowledge of sector opportunities can be overcome when coordinated training and support is provided to workers.

Section 681.490 What is adult mentoring?

This proposed section describes the adult mentoring program element. It provides that mentoring must last at least 12 months and defines the mentoring relationship. It clarifies that mentoring must be provided by an adult other than the WIOA youth participant's assigned case manager since mentoring is above and beyond typical case management services. Mentoring may take many forms, but at a minimum must include a youth participant matched with an individual adult mentor other than the participant's case manager. Mentoring services may include group mentoring, mentoring via electronic means, and other forms as long as it also includes individual mentoring from an assigned mentor. Local programs should use evidence-based models of mentoring to design their programs. The Department recommends that programs provide rigorous screening, training, and match support for mentors, and frequent contact with youth and parents as the match progresses.

Section 681.500 What is financial literacy education?

This proposed section describes the financial literacy program element, new under WIOA. Financial literacy is described in the allowable statewide youth activities in WIOA sec. 129(b)(2)(D) and the proposed section reiterates what was stated in the allowable statewide activities section of supporting financial literacy. The Department has added an element on informing participants about identity theft to the list in WIOA sec. 129(b)(2)(D). The Department recognizes the importance of equipping workers with the knowledge and skills they need to achieve long-term financial stability and solicits comments on how best to achieve this goal.

Section 681.510 What is comprehensive guidance and counseling?

This proposed section describes the types of guidance and counseling services that fall under the program element comprehensive guidance and counseling, which includes referral to services provided by partner programs, as appropriate. When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

Section 681.520 What are leadership development opportunities?

This proposed section includes all of the examples of leadership development opportunities included in WIA regulations and adds two new examples of appropriate leadership development opportunities that a local area may consider when providing leadership development opportunities. One new example is civic engagement activities; the other is activities which put the youth in a leadership role.

Section 681.530 What are positive social and civic behaviors?

While WIA included positive social behaviors as part of the description of leadership development opportunities, WIOA adds ''civic behaviors'' to the description of the leadership development program element. This proposed section expands the examples of positive social behaviors to include keeping informed of community affairs and current events.

Section 681.540 What is occupational skills training?

This proposed section provides a definition for the occupational skills training program element. It was not previously defined under WIA. WIOA sec. 129(c)(2)(D) further sharpens the focus on occupational skills training by requiring local areas to give priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industries or occupations in the local area. The Department interprets this requirement to mean that when seeking occupational skills training for a participant, local areas must first seek training programs that lead to recognized post-secondary credentials in in-demand industries or occupations and only if none are available should they refer a participant to a training program that does not lead to a recognized post-secondary credential. The Department has further defined this priority by requiring that such training be outcome oriented and focused on an occupational goal in a participant's individual service strategy and that it be of sufficient duration to impart the skills needed to meet that occupational goal. In all cases, local areas must ensure that the training program meets the quality standards in WIOA sec. 123.

Section 681.550 Are Individual Training Accounts permitted for youth participants?

Prior WIA regulations provide that ITAs are not an authorized use of youth funds. However, more than 30 States received waivers under WIA to use ITAs for older and OSY to: (1) Expand training options; (2) increase program flexibility; (3) enhance customer choice; and (4) reduce tracking, reporting and paperwork that comes with dual enrollment. ITAs have therefore become a critical component in WIA to provide training services to older and OSY. WIOA is silent on the use of ITAs for youth participants.

This proposed section allows ITAs for older OSY aged 18 to 24. This change will enhance individual participant choice in their education and training plans and provide flexibility to service providers. ITAs also reduce the burden for local areas by eliminating duplicative paperwork needed for enrolling older youth in both youth and adult formula programs. ITAs will benefit disconnected youth and reinforce WIOA's emphasis on increasing access to and opportunities for workforce investment services for this population. To the extent possible, local programs must ensure that youth participants are involved in the selection of their educational and training activities. The Department welcomes comments on the proposed allowance of ITAs for older OSY.

Section 681.560 What is entrepreneurial skills training and how is it taught?

This proposed section defines entrepreneurial skills training, a new program element under WIOA. While entrepreneurial skills training was previously listed as an example of a work experience in WIA, under WIOA it is a separate program element. The Department has also provided a list of possible methods of teaching youth entrepreneurial skills training. The Department is specifically seeking comments from stakeholders around developmentally appropriate types and methods of teaching entrepreneurial skills.

Section 681.570 What are supportive services for youth?

This proposed section lists examples of supportive services for youth and includes two additional examples which were not listed in WIA youth regulations. Needs-related payments were listed as an example of an adult supportive service under WIA and also can be critical to youth living on their own who participate in a youth program. WIOA lists needs-related payments as a supportive service at sec. 3(59). In addition, the Department lists assistance with educational testing and accommodations as examples because they are prime example of services that can be necessary to enable an individual to participate in activities authorized by WIOA. For example, assistance with educational testing can provide OSY with the opportunity to take high school equivalency tests, as well as other exams for occupational certifications and credentials, while accommodations may be necessary for youth with disabilities to participate in certain assessments and to have equal access and opportunity to participate in a variety of work-based learning activities.

Section 681.580 What are follow-up services for youth?

This proposed section discusses the importance of follow-up services and lists examples of follow-up services for youth, which WIOA requires be provided for a minimum of 12 months. It clarifies that follow-up services may be different for each individual based on his or her individual needs. It also clarifies that follow-up services are more than a contact attempted or made to gather information for reporting purposes because follow-up services provide the necessary support to ensure the success of youth post-program. Therefore, to meet follow-up requirements, programs must do more than just make an attempt to contact to gather reporting information. The Department seeks comments on whether this section includes reasonable requirements for follow-up services.

Section 681.590 What is the work experience priority?

The proposed section discusses the 20 percent minimum expenditure requirement on the work experience program element in WIOA sec. 129(c)(4). Work experience is a critical WIOA youth program element, arguably the most important program element as signaled by the minimum expenditure requirement. Work experience helps youth understand proper workplace behavior and what is necessary in order to attain and retain employment. Work experience can serve as a stepping stone to unsubsidized employment and is an important step in the process of developing a career pathway for youth. Research shows work experience is correlated with higher high school graduation rates and success in the labor market. This is particularly important for youth with disabilities.

Section 681.600 What are work experiences?

The proposed section defines the work experience program element using language similar to the corresponding WIA regulation and includes the four work experience categories listed in WIOA sec. 129(c)(2)(C). In addition, the section eliminates the language under the corresponding WIA rule that OJT is not an appropriate work experience activity for youth. WIOA sec. 129(c)(2)(C)(4) explicitly enumerates OJT opportunities as one type of work experience.

Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment.

Section 681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?

This proposed section discusses the new requirement under WIOA that a local youth program must use not less than 20 percent of the funds allocated to the local area to provide youth participants, both ISY and OSY, with paid and unpaid work experiences. In order to ensure that local WIOA youth programs meet this requirement, the Department proposes that local WIOA youth programs track program funds spent on paid and unpaid work experiences and report such expenditures as part of the local WIOA youth financial reporting. Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experiences. Like the 75 percent OSY expenditure requirement, local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement. The work experience expenditure rate is calculated for local area funds after subtracting out funds spent on administrative costs and is calculated based on remaining total local area youth funds rather than calculated separately for in-school and OSY.

Section 681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to offer summer employment opportunities in the local youth program?

Under WIOA sec. 129(c)(2)(C), summer employment opportunities are one of four suggested components of the paid and unpaid work experiences

program element. While local WIOA youth programs must provide paid and unpaid work experiences, they may take the form of a number of activities including: summer employment opportunities and employment opportunities available throughout the year, pre-apprenticeship programs, internships and job shadowing, and OJT. While summer employment opportunities are an allowable activity and a type of work experience that counts toward the work experience priority (which requires a minimum of 20 percent of funds allocated to a local area are spent on work experience) they are not a required program element as they previously were under WIA.

Section 681.630 How are summer employment opportunities administered?

Local areas must adhere to the provisions outlined in WIOA sec. 123 for selecting service providers when administering summer employment opportunities. This proposed section discusses that WIOA requires local areas to identify youth providers of youth workforce investment activities, including work experiences such as summer employment opportunities, by awarding grants or contracts on a competitive basis. As provided in WIOA sec. 123, if there is an insufficient number of eligible providers of youth workforce investment activities, Local Boards may award grants or contracts on a sole source basis. This section also clarifies that the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

Section 681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This proposed section describes the new program element at WIOA sec. 129(c)(2)(E): ''education offered concurrently and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.'' The new program element requires integrated education and training to occur concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement. Youth participants will not be required to master basic academic skills before moving on to learning career-specific technical skills. This approach aligns with recent research which found students using an integrated education and training model had better rates of program completion and persistence than a comparison group (Jenkins 2009).

Section 681.650 Does the Department allow incentive payments for youth participants?

This proposed section clarifies that incentives under the WIOA youth program are permitted. The Department has included the reference to 2 CFR 200 to emphasize that while incentive payments are allowable under WIOA, the incentives must be in compliance with the requirements in 2 CFR part 200. This is not a change; under WIA, incentives must have followed the Uniform Administrative Requirements at 29 CFR parts 95 and 97 and the cost principles at 2 CFR parts 220, 225, and 230. The Uniform Administrative Requirements were recently consolidated into 2 CFR part 200. For example, under 2 CFR part 200, Federal funds may not be spent on entertainment costs. Therefore, incentives may not include entertainment, such as movie or sporting event tickets or gift cards to movie theaters or other venues whose sole purpose is entertainment. Additionally, under 2 CFR part 200, there are requirements related to internal controls to safeguard cash which also apply to safeguarding of gift cards, which are essentially cash.

Section 681.660 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

This proposed section discusses the requirement in WIOA sec. 129(c)(3)(C) for the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial. The Department has also included in this proposed section the requirement in WIOA sec. 129(c)(8) that Local Boards must also make opportunities available to successful participants to volunteer to help participants as mentors, tutors, or in other activities.

5. Subpart D—One-Stop Services to Youth

Section 681.700 What is the connection between the youth program and the one-stop service delivery system?

This proposed section reiterates the connections between the youth program and the one-stop system that were provided in the WIA regulations and includes additional examples of such connections including collocating WIOA youth program staff at one-stop centers and/or equipping one-stop centers and staff with the information necessary to advise youth on programming to best fit their needs. The intent behind this section is to encourage staff working with youth under titles I, II, and IV of WIOA to coordinate better services for youth. This could include youth-focused one-stop centers in locations where youth tend to gather and making one-stops more accessible to youth.

Section 681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Consistent with WIA, this proposed section clarifies that Local Boards may provide services to youth through one-stop career centers even if the youth are not eligible for the WIOA youth program.

F. Part 682—Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA provides a reservation of funds for employment and training activities to be undertaken on a statewide basis. These activities are undertaken by the States, rather than by Local Boards. WIOA requires States to undertake certain statewide activities, but authorizes States to undertake a much wider range of activities. These required and allowable activities are addressed by this part of the proposed regulations. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities.

The up to 15 percent funds from the three funding streams may be expended on employment and training activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out statewide youth activities and vice versa. These funds must be used for certain specified activities, such as for State evaluations and for provision of data for Federal evaluations and research. If funds permit, States have authority to provide a variety of other activities. State set-

aside funds allow States to continually improve their comprehensive workforce programs, ensure a national system that meets the needs of job seekers, workers and employers, and contribute to building a body of evidence to improve the effectiveness of services under WIOA.

2. Subpart A—General Description

This subpart describes what is encompassed by the term ''statewide employment and training activities.'' It explains that States have both required and allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. States have significant flexibility in the development of policies and strategies for the use of their statewide funds.

Section 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Proposed § 682.100 provides that there are both required and allowable statewide employment and training activities. States may use up to 15 percent of adult, youth and dislocated worker funds for statewide activities relating to youth, adult, dislocated workers. The States are encouraged to develop policies and strategies for utilizing these funds, and must include descriptions of these activities in their State Plan.

Section 682.110 How are statewide employment and training activities funded?

Proposed § 682.110 does not change how statewide employment and training activities from how such activities were funded under WIA. The Governor has authority to use up to 15 percent of the adult, dislocated worker, and youth funds allocated to the State for statewide activities. The regulation provides that the adult, dislocated worker and youth 15 percent funds may be combined for use on required or allowed statewide activities regardless of the funding source.

3. Subpart B—Required and Allowable Statewide Employment and Training Activities

This subpart first discusses required statewide activities. WIOA continues the activities that were required under WIA, but adds several additional required activities, such as assistance to State entities and agencies described in the State Plan, alignment of data systems, regional planning, implementation of industry or sector partnerships, and cooperation in providing data for Federal evaluation and research projects. Required statewide activities under WIA and continued under WIOA include: Outreach to businesses, dissemination of information on the performance and cost of attendance for programs offered by ETPs, and conducting evaluations.

This subpart also discusses allowable statewide activities. The Department provides States with a significant amount of flexibility in how these funds may be used for statewide activities. States can test and develop promising strategies. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

Section 682.200 What are required statewide employment and training activities?

Proposed § 682.200(a) explains that rapid response activities are a required statewide employment and training activity, as described in § 682.310.

Proposed § 682.200(b) explains the different types of information States are required to disseminate to the workforce system, including ETPLs, providers of work-based training providers, business partnership and outreach information, promising service delivery strategies, performance information about training providers, eligible providers of youth activities, and information about physical and programmatic accessibility for individuals with disabilities.

Proposed § 682.200(c) states that the information listed in § 682.200(b) be made widely available. It explains that this may be achieved by various means, including posting information on State Web sites, physical and electronic handouts for dissemination to one-stop centers, and other appropriate means of sharing information.

Proposed § 682.200(d) explains that under WIOA sec. 134(a)(2)(B)(vi), States are required to use the 15 percent set aside to conduct evaluations in accordance with WIOA sec. 116(e) whose requirements are implemented in § 682.220.

Proposed § 682.200(e) requires States to provide technical assistance to local areas in carrying out activities described in the State Plan.

Proposed § 682.200(f) requires States to assist local areas, one-stop operators, and eligibile providers in providing opportunities for individuals with barriers to employment to enter in-demend industry sectors, and developing exemplary program activities.

Proposed § 682.200(g) and (h) require States to assit local areas carry out the regional planning and service delivery efforts, and provide local areas information on and support for the effective development, convening, and implementation of industry and sector partnerships.

Proposed § 682.200(i) requires the States to provide technical assistance to local areas that fail to meet their performance goals.

Proposed § 682.200(j) requires the State to carry out monitoring and oversight activities of the programs providing services to youth, adults and dislocated workers in WIOA. Under this authority, States may conduct reviews that compare services provided to male and female youth.

Proposed § 682.200(k) clarifies that States may provide additional assistance to local areas that have high concentrations of eligible youth to ensure a transition to education or unsubsidized employment.

Proposed § 682.200(l) requires States to operate a fiscal and management accountability system. This system is vital to ensure high levels in integrity of managing Federal funds and conveying important information on the services being provided to job seekers and employers. As required by WIOA, the Department will consult with a wide range of stakeholders to establish guidelines for this system (see WIOA sec. 116(i)(1)).

Section 682.210 What are allowable statewide employment and training activities?

In addition to the required statewide activities, States are provided with significant flexibility to innovate within the workforce system with various allowable statewide employment and training activities. These allowable activities are vital to ensuring a high quality workforce system, and can be used to ensure continuous improvement throughout the system. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

Proposed § 682.210(a) provides that State administration of the adult, dislocated worker, and youth employment and training activities is an allowable statewide employment and training activity. This proposed section maintains the same 5 percent administrative cost limit that existed under WIA and clarifies that the 5 percent is calculated based on the total allotment received by the State and counts towards the amount reserved for statewide activities.

Proposed § 682.210(b) permits States to use WIOA funds to develop and implement innovative programs and

strategies designed to meet employer needs, including small business needs. The workforce system provides services to dual customers—the job seeker and the employer. The Department values ways in which States can engage businesses with all levels of the workforce system. Under this section, States have authority to carry out a variety of programs identified in WIOA sec. 134(a)(3)(A)(i), such as sectoral and industry cluster strategies, microenterprise and entrepreneurial training, and utilization of business intermediaries.

Proposed § 682.210(c) permits States to develop and implement strategies for serving individuals with barriers to employment and encourages States to partner with other agencies to coordinate services among all the one-stop partners.

Proposed § 682.210(d) and (e) allow the development and identification of education and training programs that respond to real-time labor market analysis, that allow for use of direct or prior assessments, and that provide credit for prior learning, or which have other characteristics identified in WIOA sec. 134(a)(3)(A)(iii). States can also use these funds to increase training for individuals placed in non-traditional employment.

Proposed § 682.210(f) permits States to undertake research and demonstrations related to meeting the education and employment needs of youth, adults and dislocated workers, as stated in WIOA secs. 129(b)(2)(A)(i) and (ii) and sec. 134(a)(3)(A)(ix).

Proposed § 682.210(g) provides that States may utilize statewide funds to support the development of alternative, evidence-based programs, and other activities which increase the choices available to eligible youth and encourage them to reenter and complete secondary education, enroll in post-secondary education and advanced training, progress through a career pathway, and/or enter unsubsidized employment that leads to economic self-sufficiency.

Proposed § 682.210(h) provides that States may utilize statewide funds to support the provision of career services throughout the one-stop delivery system in the State.

Proposed § 682.210(i) provides that States may incorporate a variety of financial literacy identified in WIOA sec. 129(b)(23)(D) activities into the service delivery strategy within the one-stop delivery system. Financial literacy activities are important services for job seekers to receive as part of their career services. The Department encourages States to develop and implement strategies for local areas to utilize to coordinate financial literacy services to participants under this authority and to provide financial literacy activities to youth under § 682.210(i).

Proposed § 682.210(j) allows for States to provide incentive grants to local areas for reaching performance goals. Incentive grants can be an effective way to develop and maintain a culture of continuous improvement throughout the workforce system.

Proposed § 682.210(k) allows for States to provide technical assistance to local areas, CEOs, one-stop operators, one-stop partners, and eligible providers in local areas for the development of exemplary program activities and the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State (WIOA sec. 129(b)(2)(E));

Proposed § 682.210(l) allows States to provide technical assistance to local areas using pay-for-performance contract strategies. Under WIOA, pay-for-performance is an allowable use of funds that could potentially be an effective mechanism to improve participant outcomes. Technical assistance will be of vital importance to ensure these strategies are being implemented effectively. Under this authority, such technical assistance may include providing assistance with data collections, meeting data entry requirements, identifying levels of performance, and conducting evaluations of pay-for-performance strategies.

Proposed § 682.210(m) allows for States to utilize technology to allow for remote access to training services provided through the one-stop delivery system. The Department recognizes that there are many different means by which individuals may get training and that the use of technology may be particularly helpful to participants in rural areas. The Department encourages States to develop and build upon strategies that enable job seekers to connect with the workforce system remotely.

Proposed § 682.210(n) allows States to conduct activities that increase coordination between workforce investment activities and economic development approaches. This proposed regulation also allows States to undertake activities that provide coordination with services provided by other agencies, such as child support services and assistance (provided by State and local agencies carrying out part D of title IV of the SSA (42 U.S.C. 651 *et seq.*)), cooperative extension programs (carried out by the Department of Agriculture), programs in the local areas for individuals with disabilities (including the programs identified in WIOA sec. 134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those carried out by public libraries, and activities in the corrections system to connect ex-offenders reentering the workforce. The Department strongly encourages States to engage in these coordination activities. States are also encouraged to use funds to develop and disseminate workforce and labor market information (WLMI).

Proposed § 682.210(o) allows States to implement promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A).

Proposed § 682.210(p) allows States to develop economic self-sufficiency standards that specify the income needs of families, including the number and ages of children. The Department recognizes that different regions in a State may have different levels of self-sufficiency; therefore the proposed regulation allows for States to take geographical considerations into account in developing self-sufficiency standards.

Proposed § 682.210(q) allows States to develop and disseminate common intake procedures across core and partner programs, including common registration procedures. The Department strongly encourages States to utilize this approach in a customer-focused way. By developing common procedures one-stop staff can reduce duplication and enhance the job seeker experience in the workforce system.

Proposed § 682.210(r) encourages coordinating activities with the child welfare system to facilitate provision of services to children and youth who are eligible for assistance.

Section 682.220 What are States' responsibilities in regard to evaluations and research?

The Department proposes to add rules on new State responsibilities and opportunities in regard to evaluation and research under WIOA sec. 116(e). State and Federal evaluations and research are intended to improve the quality and effectiveness of programs under WIOA, and contribute to an expanding body of knowledge on customers, their needs, existing services, and innovative approaches. Examples of the strategies that might be explored in evaluation and research include, but are not limited to, interventions envisioned in WIOA itself, such as integrated systems, coordinated services, career pathways, and multiple forms of engagement with businesses.

WIOA continues the long-standing support of evaluation and research found in prior law, but strengthens it in several ways, including permitting States to evaluate activities under all of the title I–IV core programs, including adult education and vocational education, and permitting the use of funds from any of these programs for evaluations. WIOA expands coordination and the consultative process regarding evaluations and research beyond the workforce system to State agencies for the other core programs. Further, WIOA now also requires States to coordinate their own studies with evaluations and research projects undertaken by the Departments of Labor and Education, as well as to cooperate in provision of data and information for such Federal evaluations.

Provisions on the Department's role in evaluation and research, now found under WIOA sec. 169 (corresponding to secs. 171 and 172 in WIA), authorize a wide array of studies. Evaluation and research projects, permissible under WIOA sec. 169 include process and outcome studies, pilot and demonstration projects, analyses of programmatic and economic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions, such as random assignment. WIOA also implies that State evaluations are synonymous with multiple forms of research to test various interventions and to examine program services and outcomes in greater depth and over a longer time frame than is typically done for performance accountability purposes for State and local programs.

Section 169 also includes numerous examples of studies to be conducted in collaboration with other Federal Departments. WIOA sec. 169 also requires several research projects (evaluations of title I programs, a study of career pathways in health and child care, and research on equivalent pay), suggests seven research projects (relating to disconnected youth, business needs, nontraditional occupations, performance indicators, public housing assistance recipients, older workers, and credentials for prior learning), and permits studies of Federally-funded employment-related programs and activities under ''other provisions of law.'' An evaluation of Job Corp is also required under WIOA sec. 161.

WIOA recognizes in sec. 116(e) the vital role of States in providing various forms of quantitative and qualitative data and information for Federal evaluations and research. Data, survey responses, and site visit information, from both the State and local levels are essential in Federal research designed to understand and evaluate various existing systems and services as well as new interventions. All of these forms of data and information are needed to understand key participant characteristics, labor market outcomes, the role of decision-makers, how faithfully interventions are implemented, and the quality of the customer experience. Further, there are multiple potential data sources which could include, for example, UI administrative data and wage records, data from other workforce programs, various documents, and individual or focus group interviews with State officials, local program staff and customers.

To assure that data are consistently available from all States, the rules emphasize the need for States to cooperate, to the extent practicable, in data collection activities for evaluations conducted by the Departments of Labor and Education, as related to services under WIOA and to other employment-related programs and activities. The rules also clarify the need for States to provide data from sub-State level and from State and local workforce boards and, further, to encourage provision of data by other partner programs. A method for informing the Department about possible problems in providing the various forms of data and for resolving such problems is also proposed below.

Specifically, the rules include the following:

Proposed § 682.220(a)(1) explains that under WIOA secs. 116(e), 129(b)(1)(A) and 134(a)(2)(B)(vi), States are required to use funds reserved by the Governor for statewide activities (the State set-aside) to conduct evaluations of activities of the core programs. Paragraph (b)(1) requires States to coordinate such evaluations with Federal evaluation and research activities under WIOA secs. 169 and 242(c)(2)(D) (regarding adult education), under the Rehabilitation Act of 1973 and under the Wagner-Peyser Act [29 U.S.C. 49i(b)]. Paragraph (a) delineates the role of evaluations and research in promoting continuous improvement and high performance in existing programs and identifies an additional purpose of evaluation activities: Testing innovative services and strategies.

Proposed § 682.220(a)(2) clarifies that the States may use set-aside funds to conduct other research and demonstration projects that relate to the education and employment needs for youth, adults and dislocated workers. Proposed § 682.220(a)(3) clarifies that States may use funds from other WIOA title II–IV core programs but only as determined through the consultative processes required with State and Local Boards and agencies responsible for the core programs as referenced in paragraph (b)(1). Paragraph 682.220(e) highlights the opportunity for States to use and combine funds from other sources (consistent with Federal and State law, regulation, and guidance). The sources might include other Federal and State grants and contracts, as well as private philanthropic or other sources.

Proposed § 682.220(b) promotes State efforts to conduct evaluations and research, assure they relate to State goals and strategies, and are coordinated and designed in conjunction with State and Local Boards and other agencies responsible for the core programs. The proposed rule also lists some key features that States can include their evaluations and research projects when appropriate and feasible, not as a ''one-size-fits-all'' checklist of requirements for every evaluation and research project. As such, paragraphs (b)(2) through (4) implement WIOA sec. 116(e), but qualifies the requirements for States to include an analysis of customer feedback and of outcome and process measures *when appropriate,* to coordinate with Federal evaluations *to the extent feasible,* and to use the most rigorous analytical and statistical methods *that are reasonably feasible.*

Proposed § 682.220(c) implements sec. 116(e)(3) of WIOA, which requires States to share their evaluations with the public, including through electronic means, such as posting the results of all types of research and evaluations that States conduct on the relevant State Web site.

Proposed § 682.220(d)(1) implements sec. 116(e)(4) of WIOA, which requires States to cooperate, to the extent practicable, in providing data, responding to surveys, and allowing site visits in a timely manner for Federal evaluation, research, and investigation activities conducted by the Secretaries of Labor and Education or their agents under WIOA secs. 169 and 242, the Rehabilitation Act of 1973, and the Wagner-Peyser Act, as listed in § 682.200(d) and above. (The provision of UI data for Federal evaluations and research is subject to regulations found in 20 CFR part 603.) The Department of Labor intends to work with States and the United States Census Bureau (Census) to explore the potential to meet the requirement that States provide UI wage record data for Federal evaluations and research using the wage record data

States currently provide to Census for the Longitudinal Employer-Household Dynamics (LEHD) program. This approach to provision of UI data may reduce burden on State UI infrastructure, while also making the LEHD data set more useful to a broad array of researchers. Since data and survey responses from local subgrantees and State and local workforce boards are often critical in Federal evaluation and research projects, the rule also requires that States provide timely data and survey responses from these entities and that States assure that subgrantees and boards allow timely site visits for Federal evaluations. States are proposed to assume these responsibilities because of their relationship with and support of the boards as well as their role in overseeing the operation of subgrantees. Since States do not set the requirements for other one-stop partners, proposed § 682.220(d)(2) requires States to encourage these partners to cooperate in data provision for the relevant Federal evaluations and research.

Proposed § 682.220(d)(3) requires a Governor to inform the Secretary in writing if a State finds that it is not practicable to participate in timely provision of data, survey responses and site visits for Department of Labor or Department of Education evaluations and research, and, further, to explain why it is not practicable for the State to provide the requested information. This explanation will help the Department to work more effectively with the State to accommodate its concerns and mitigate or overcome any problems preventing the State from providing the information needed for Federal evaluations or research conducted under the various authorities cited in § 682.200(d).

Proposed § 665.220(e) provides that States may use or combine funds, consistent with Federal and State law, regulation, and guidance, from other public or private sources, to conduct evaluations, research, and demonstration projects relating to activities under the WIOA title I–IV core programs. The Department will provide information, technical assistance, and guidance to support States in conducting their own evaluations and research, at the highest levels of quality and integrity, consistent with State goals and priorities, and using methodologies appropriate to the research objectives and the funds available. The technical assistance and guidance will also address how States can coordinate with studies conducted by the Departments of Labor and Education under WIOA and cooperate in providing data and other information for such Federal research.

4. Subpart C—Rapid Response Activities

Introduction

This subpart discusses the important role that rapid response plays in providing customer-focused services both to dislocated workers and employers, thereby ensuring immediate access to affected workers to help them quickly reenter the workforce. The proposed regulations reflect the Department's experience in managing the PYs and lessons learned from the innovations and best practices of various rapid response programs around the country in planning for and meeting the challenges posed by events precipitating substantial increases in the number of unemployed individuals in States, regions and local areas. The proposed regulations provide a comprehensive framework for operating successful rapid response programs in a way that promotes innovation and maintains flexibility to enable States to successfully manage economic transitions.

Section 134(a)(2) of WIOA authorizes the use of reserved funds for statewide activities to plan for and respond to events that precipitate substantial increases in the number of unemployed individuals. Except for a new provision, at sec. 134(a)(2)(A)(ii), that addresses the use of unobligated funds for rapid response activities, WIOA largely replicates the language in sec. 134 of WIA. The proposed regulations provide additional, detailed direction regarding required and optional rapid response activities. The WIA regulations concerning the rapid response program provided substantial flexibility in program design and implementation. This flexibility allowed for customized planning and responses based upon specific factors in a given situation—an important component to delivering effective services. However, some States and local operators did not understand the full range of activities allowable under the program. In crafting the proposed regulations, the Department has worked to maintain the same flexibility that the current regulation allows, while providing more detailed information about appropriate activities, such as layoff aversion, engaging business, and illustrating how these funds can be used.

Our proposed approach is based on the premise that successful rapid response programs are flexible, agile, and focused on promptly delivering comprehensive solutions to businesses and workers in transition. Rapid response, when operated successfully, delivers on the promises that the workforce system makes to businesses, workers, and communities—to provide economically valuable solutions to businesses and critically important services to workers at the time when they are most needed. These proposed regulations are designed to ensure that rapid response programs in all States are capable of meeting those promises, that service levels are consistent in quality yet customized to specific events, and activities are driven always by the goal of preventing or minimizing unemployment. The proposed regulations also focus specifically on anticipating needs and planning for them, rather than only responding to layoff events.

Section 682.300 What is rapid response, and what is its purpose?

Proposed § 682.300 describes the purpose of rapid response—to promote economic development and vitality—and identifies the activities and responsibilities to meet this purpose. Proposed § 682.300(a) identifies as key components of rapid response the strategies and activities necessary to plan for and respond to layoffs or other dislocation events, including natural or other disasters. While many States will provide rapid response services for layoffs of all sizes, some States have restricted rapid response services to layoffs of 50 or more workers, or for which they received a Worker Adjustment and Retraining Notification (WARN) Act notice. While rapid response is required for closures and mass layoffs, the Department's intention is that effective services are provided to as many workers and companies as possible. Most employers have fewer than 50 workers, and thus, a substantial percentage of layoffs do not qualify for WARN coverage; therefore, using either of these criteria as the only triggers for the provision of rapid response assistance means that most companies and workers affected by dislocations will not be provided rapid response services. Establishing a strict threshold is counter to the purpose of rapid response, and prevents many workers and companies from receiving valuable services at a time when they are needed.

Therefore, the proposed regulations do not define any threshold for the size of a layoff for which rapid response services are provided. The regulation does not specifically address plant closures because the Department considers the layoffs associated with closures to be covered under the general principles applicable to layoffs. Based on the fact that most companies employ fewer than 50 workers and the rapid response services provide significant

value to both affected workers and businesses, the Department expects that States and local areas will provide rapid response services to layoffs and closures of all sizes, as practicable. However, for any plant closure or layoff of 50 or more, rapid response services must be provided per the statutory reference to mass layoffs. Additionally, rapid response must be provided for any layoff which receives a WARN notice. State and local area rapid response providers must establish policies and procedures that allow them to serve the most companies and affected workers or to determine the specific scenarios which meet this criterion and for which they will provide rapid response services.

Proposed § 682.300(a) identifies the need to expeditiously deliver services in order to enable dislocated workers to transition quickly to new employment. The two critical phrases in this section—''plan for and respond'' and ''as quickly as possible''—demonstrate that rapid response must include strategic planning and other activities that will ensure that dislocated workers can be reemployed as soon as possible.

Proposed § 682.300(b) explains that the purpose of rapid response is a proactive, strategic set of actions, not simply a response to layoffs. The proposal establishes rapid response as a critical tool in managing economic transition and supporting economic growth in communities. As stated in the proposal, rapid response includes a wide array of strategies and activities of which layoff aversion is a key component. Proposed paragraph (b)(1) describes the direct and informational services rapid response must provide to workers affected by layoffs.

Proposed paragraph (b)(2) describes the services that rapid response must provide to businesses. Building and maintaining relationships with the business community, throughout the growth and decline that characterizes the business cycle, is a critical aspect of rapid response; establishing and maintaining these relationships allows for early knowledge of potential layoffs. This information not only provides time for undertaking actions that may prevent the layoffs from occurring but may also allow affected workers to connect, in a timely manner, with businesses that can use their skills, thereby avoiding unemployment or minimizing its duration.

Engaging with businesses and delivering effective solutions to their needs is critical—to allow rapid response teams to meet and work with individuals affected by layoff, preferably before layoff and on company time, but also to identify companies that are growing and may hire dislocated workers or to deliver services that may prevent workers at those companies from being laid off in the future.

Proposed paragraph (b)(3) describes the role that rapid response must play in developing strong, comprehensive networks of partners and service providers to ensure that all needed services are provided to businesses, workers, and communities.

Proposed paragraph (b)(4) covers the need for rapid response to undertake strategic planning and data gathering to ensure readiness to act appropriately whenever the need arises.

Section 682.310 Who is responsible for carrying out rapid response activities?

Proposed § 682.310 is a new section that was split from § 665.300 under the current regulations. Its text follows the current regulation, § 665.300(b), without substantive change, but it changes the verb used to describe the delivery of rapid response from ''provide'' to ''carry out'' to track the language used in WIOA sec. 134(a)(2).

Section 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

Proposed § 682.315 significantly enhances the required activities from those set forth in the current regulation. Rapid response experience under WIA has shown the importance of layoff aversion as a critical component of a successful rapid response program, to be used by States and Local Boards to prevent or minimize layoffs. This section describes strategies and activities which are designed to prevent or minimize the duration of unemployment.

Layoff aversion is a comprehensive approach requiring the integration of data, relationships, partnerships, and policies and procedures to allow an assessment of the economic situation that exists within a given area. This approach enables the development of a plan that may be applied, at any time, to intervene and manage transition that occurs within that area. Layoff aversion strategies and activities are customized to specific needs, quickly deployable, informed by economic data, and designed and coordinated with partners as necessary. This proposed section describes examples of these strategies and activities.

Proposed § 682.315 provides a definition for layoff aversion, which has been adapted from TEGL 30–09, and describes a number of potential layoff aversion strategies and activities that rapid response programs must include, many of which were first described in (*TEN) 9–12.*

Section 682.330 What rapid response activities are required?

Proposed § 682.330 describes rapid response activities that are required to be carried out with rapid response funds. The elements include activities that have been previously discussed in guidance and through technical assistance; elements that are required by the current regulation; and elements that were previously allowable, but which are now required. In particular, the regulation now specifically identifies layoff aversion activities and the provision of additional assistance to local areas experiencing increased dislocation events as required rapid response activity (paragraphs (a) and (i)) and adds new responsibilities in paragraphs (g) through (k). The Department's experience under WIA has shown that such activities are critical for a successful rapid response program. To meet the needs of affected workers and businesses, a rapid response program must be proactive, data-driven, engaged with businesses, and focused on preventing layoffs or minimizing their negative impacts. Substantially increasing the level of required activities under rapid response is designed to drive those outcomes. By undertaking these activities, the State and local areas will be able to effectively manage, review and evaluate rapid response and layoff aversion efforts.

Proposed § 682.330(a) describes layoff aversion as a required rapid response activity. Layoff aversion strategies and activities are described in proposed § 682.315. The proposal requires that States and local areas have the capability to conduct layoff aversion; however, it is left to the discretion of the operators of rapid response programs to determine which strategies and activities are applicable in a given situation, based upon specific needs, policies, and procedures within the State and operating areas. The current regulation requires rapid response operators to assess the potential for averting layoffs; this proposal expands on this requirement by listing a number of specific strategies and activities that are critical to maintaining readiness and ensuring the ability to capitalize on opportunities that will prevent, or minimize the duration of, unemployment.

Proposed § 682.330(b) through (e) are consistent with the current regulations; these activities are retained as required under the proposed WIOA regulations.

This proposed regulation does not define the term ''emergency services'' as

used in proposed § 682.330(f); however, in the past States and local areas have used rapid response teams and resources for a wide array of activities in response to disaster situations. Such activities have included outreach, support, and assistance for impacted individuals with accessing UI or disaster unemployment assistance; acquisition of and support for mobile one-stop units; demographic information gathering for potential emergency grant applications; and coordination with Federal Emergency Management Agency (FEMA) or other disaster-response organizations. State and local area rapid response providers must work closely with other State and local agencies and other critical partners through strategic planning processes to ensure effective and immediate responses can be undertaken when the need arises.

Proposed § 682.330(g) discusses the requirement that State or local rapid response programs collect and utilize data as a core component of their work. Proposed § 682.330(g)(1) requires States and/or local areas to identify sources of information that will provide early warning of potential layoffs, and to gather this data in a manner that best suits their needs. Proposed § 682.330(g)(2) requires the processing and analysis of a range of economic data and information to ensure the best possible services are delivered to businesses and workers at the appropriate time. Proposed § 682.330(g)(3) requires that States and/or local areas track data and other information related to the activities and outcomes of the rapid response program, so as to provide an adequate basis for effective program management, review, and evaluation of rapid response and layoff aversion efforts.

Proposed § 682.330(h) highlights the need for strategic and operational partnerships. Rapid response operators must develop and maintain partnerships with a wide range of partners to ensure the capability to deliver needed services and resources to businesses, workers, and communities whenever the need arises. The proposal provides some examples of organizations with which to partner, but States and local areas should establish partnerships with those organizations that are necessary to ensure the successful functioning of their rapid response program. Proposed § 682.330(h)(1) discusses the use of these partnerships to conduct strategic planning and to ensure that assistance provided to companies, workers, and communities is comprehensive. Proposed § 682.330(h)(2) requires that the partnerships developed to support rapid response programs actively share information on resources available on a regular basis to ensure that the needs of businesses, workers, and communities will be met at the time they are needed.

Proposed § 682.330(i) requires rapid response services to be provided to workers upon the filing of a petition for TAA. If the Department no longer processes TAA petitions due to an expiration or termination of the program, there will be no explicit requirement pertaining to TAA participants. However, such individuals, as dislocated workers, will continue to receive rapid response services upon notification of layoff consistent with State or local area procedure.

Proposed § 682.330(j) requires States to provide additional assistance to local areas that experience an event that causes significant layoffs that exceed the capacity of the local area to respond to with existing formula resources. This requirement is found in the current regulation at § 665.300(b); the Department has made slight wording changes and moved it to this part. The additional assistance is required by WIOA sec. 134(a)(2)(A)(II). Proposed § 682.330(j) establishes the requirement that such assistance be provided; proposed § 682.350 defines and describes what additional assistance entails.

Proposed § 682.330(k) describes the role of rapid response in organizing or supporting labor management committees. This proposed paragraph uses the language from the current regulation that addresses this point, 20 CFR 655.310(c)(1) and (2). This support is required by WIOA sec. 3(51), as it was under WIA sec. 101(38), where labor and management voluntarily agree that the establishment of such a committee is appropriate. It has been the Department's experience that in some circumstances such committees have proven ineffective; therefore, their establishment is not a required rapid response activity. However, where labor and management desire to establish such a committee, guidance and financial support must be provided by rapid response.

The proposal does not include the requirement, now in 20 CFR 655.310(c)(3), that a neutral chairperson be appointed for such a committee. Based on feedback received regarding the difficulties involved in obtaining a neutral chairperson who is familiar with the immediate problem, the leadership of such a committee is better left to the discretion of the parties involved.

The proposal does not include the language in the current regulation referring to ''workforce transition committees''—the Department now refers to these as groups as ''community transition teams.'' Their role is explained in proposed § 682.340.

Section 682.340 May other activities be undertaken as part of rapid response?

Proposed § 682.340 identifies additional activities that may be undertaken as part of the rapid response program. Proposed § 682.340(a) is designed to allow for innovative approaches and to ensure additional flexibility to prepare for and respond to layoffs, and to react to unusual or unforeseeable situations. Although the proposal leaves considerable discretion, any allowable activities must be designed to prevent or minimize the duration of unemployment, or to develop strategies or activities that will lead to better programmatic outcomes.

Proposed § 682.340(b) provides for the creation and operation of community transition teams. Community transition teams are designed to expand the ability of the public workforce system to enlist partners, community organizations, and others to provide services and resources in communities or areas in response to major layoffs or other events that have caused significant impact that are beyond the capacity of the public workforce system to address. Rapid response funds may be used to organize or sustain community transition teams that are organized to provide relief to impacted communities.

Section 682.350 What is meant by ''provision of additional assistance'' in Workforce Innovation and Opportunity Act?

Section 665.330 of the current regulations is not maintained in the proposed regulations. The North American Free Trade Agreement (NAFTA) program to which it refers has ended. Proposed § 682.350, which describes the provision of ''additional assistance'' to local areas, has been largely maintained from the existing WIA regulations. The Department has made a slight change to the language in the existing regulations for clarity, but the concept has not changed. While the provision of additional assistance is required, as described in proposed § 682.330(i), the mechanisms by which such assistance may be provided are left to the discretion of the States.

Section 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

Proposed § 682.360 does not appear in the current regulations; it requires that States report information about the receipt of rapid response services by individuals enrolled as dislocated workers. This information is currently required under WIA reporting guidelines. The Department also reserves authority to issue further guidance on the reporting of rapid response activities. Should such reporting become required, the Department will work with States and local areas to ensure that reporting burdens are minimized while still meeting program reporting goals.

Section 682.370 What are ''allowable statewide activities'' for which rapid response funds remaining unspent at the end of the year of obligation may be recaptured by the State?

Proposed § 682.370 addresses the WIOA provision at sec. 134(a)(2)(B) that allows a State to ''recapture'' any funds reserved for rapid response that remain unspent at the end of the PY of obligation and utilize them for State set-aside activities. The Department has provided further definition around required and allowable activities under the rapid response provisions of the WIOA, which may support States to more fully utilize rapid response funds while better serving businesses and workers.

*G. Part 683—Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act*

1. Introduction

This proposed part establishes the administrative provisions that apply to formula and discretionary grants and cooperative agreements authorized under title I of WIOA. Some administrative provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of this part. The remaining Wagner-Peyser Act administrative rules are still located in 20 CFR part 658. Wagner-Peyser grants are included in this part to ensure consistent application of the common administrative provisions that apply to all grants awarded under title I of WIOA and the Wagner-Peyser Act. For instance, the audit requirements for discretionary and formula grantees for title I and Wagner-Peyser Act funds can be found in one section. The internal control requirements for both programs can be found in this part as well. However, contracts, rather than grants or cooperative agreements, are used to award most funds authorized for Job Corps. As such, the administrative provisions for Job Corps (subtitle C of title I of WIOA) will be addressed separately in 20 CFR part 686.

Many of the proposed requirements in this part 683 are impacted by the Department's new rule ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule,'' at 2 CFR part 2900 published on December 19, 2014, and OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule, dated December 26, 2013 found at 2 CFR part 200 (''Uniform Guidance'' or ''2 CFR part 200''). The Uniform Guidance, which can be found at *http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf*, streamlines and consolidates OMB Circulars A–21 (2 CFR part 220), A–50, A–87 (2 CFR part 225), A–89, A–102 (29 CFR part 97), A–110 (29 CFR part 95), A–122 (2 CFR part 230), and A–133 (29 CFR part 96) into a single document. The Uniform Guidance standardizes the administrative, cost, and audit provisions for nearly all grants across the Federal government including those awarded by the Department's WIOA Federal partners, including ED, HHS, and the Department of Agriculture. Federal agencies were allowed to submit exceptions, as defined at 2 CFR 200.102, that deviate from the Uniform Guidance. The list of the Department's exceptions to the Uniform Guidance is available at 2 CFR part 2900. Requirements of this Uniform Guidance, including the Department's exceptions, apply to all grants and cooperative agreements provided under this part.

In this proposed part, the Department hopes to strengthen its administration of grants and enhance program results by providing consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication.

2. Subpart A—Funding and Closeout

This subpart addresses the grant life cycle from fund availability to closeout for formula grants awarded to States under WIOA title I, subtitle B, and the Wagner-Peyser Act, and the grant life cycle for discretionary or competitive WIOA grants, awarded under subtitle D of title I. This subpart identifies the three financial assistance instruments that will be used to award funds under title I of WIOA and Wagner-Peyser: Contracts, grant agreements, and cooperative agreements. One shift from WIA to WIOA is that the Secretary will no longer use the Governor/Secretary agreements used under WIA. In compliance with the Uniform Guidance, the Department will use Notices of Award as the funding instrument for all grants, both formula and discretionary. Another shift to promote full expenditure of funds is to require that recipients expend the funds with the shortest period of performance before expending other funds. This proposed subpart also implements the WIOA statute's flexibility in allowing a Local Board to transfer up to 100 percent of a PY allocation between the adult and dislocated workers funding streams subject to the Governor's approval. Additionally, the subpart proposes processes on the handling of unobligated rapid response funds and ETA's role in the annual reallotment process that takes place between the States and the Department after each PY. The proposed responsibility review provisions are also different from those under WIA to reflect the new requirements in the Uniform Guidance. Lastly, this subpart outlines the closeout procedures for title I of WIOA and Wagner-Peyser awards.

Section 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

This proposed section describes the statutory requirements for the Department's release of formula funds under title I of WIOA and the Wagner-Peyser Act. WIOA youth funds may be released earlier than other formula funds, as early as April, to assist States and locals in planning youth activities. Adult and dislocated worker funds will be awarded on a PY basis in two payments: In July after the beginning of the PY and a second release of funds in October of each PY. Wagner-Peyser funds will also be released on a PY basis, in July of each fiscal year. The availability of funds awarded on a competitive or discretionary basis will be dependent on the annual appropriation and on the grant or cooperative agreement.

Section 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section recognizes the use of the three funding instruments that conform with the Uniform Guidance: Grant agreements, cooperative agreements, and contracts. The Department will no longer use the Governor/Secretary agreement, used under WIA, as a

funding instrument because it is not consistent with the Uniform Guidance. Proposed paragraphs (b) through (e) of this section specify the type of funding instruments that will be used for different WIOA programs. Proposed paragraph (e)(3) implements WIOA sec. 169(b)(6)(B), which states that the Department may not award a contract or grant for research, studies, or multi-State projects ''to the same organization for more than 3 consecutive years unless such grant or contract is competitively reevaluated within such period.'' The Department interprets the central purpose of this provision to promote competition—it prohibits the Department from awarding lengthy contracts or grants on a non-competitive basis to the same organization. However, as long as the contract or grant is awarded on a competitive basis, the project (and therefore the award) may span over a period of more than 3 years. This is consistent with the Department's need to conduct lengthy research and other projects and with the new flexibility to incrementally fund evaluations, research, and other projects, provided in sec. 189(g)(2)(B)(ii) of WIOA. Finally, proposed paragraph (f) of § 683.105 makes clear that all three funding instruments are subject to the closeout procedures in the Uniform Guidance.

Section 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section describes the period of performance for different types of WIOA title I and Wagner-Peyser Act grant awards. Proposed paragraph (a) provides a general explanation about expenditure periods. Specifically, the period of performance for grants is the statutory period of availability for expenditure, unless otherwise provided in the grant agreement. Funds must be spent in a timely manner; if they are not expended by the end of the performance period, they risk losing their availability. Grantees must expend funds with the shortest period of availability first, unless otherwise authorized in the agreement or in a subsequent modification. The proposed paragraph includes a sentence encouraging grantees to follow this rule, so that they use funds expeditiously and effectively. This approach should help reduce unexpended funds at the end of a grant's period of performance

Proposed § 683.110(b) through (h) restate the applicable periods of performance for WIOA and the Wagner-Peyser Act grants. WIOA did not change these periods for formula funds—adult/dislocated worker and youth formula funds allotted during any PY are available for expenditure by the State only during that PY and the 2 succeeding PYs; funds allocated by the State to a local area for any PY are available for expenditure only during that PY and the succeeding PY (WIOA sec. 189(g)(2)). Proposed paragraph (c)(2) also requires that funds unexpended by a local area in the 2 year period be returned to the State and be used for specific purposes. This is unchanged from the WIA regulation at 20 CFR 667.107. However, proposed paragraph (c)(1)(ii) notes an exception to the 2-year performance period for local areas in the case of WIOA Pay-for-Performance contracting strategies, a new option added by secs. 129(c)(1)(D) and 134(d)(1)(iii) of WIOA and more fully discussed in proposed subpart E. Under this paragraph, and in accordance with sec. 189(g)(2)(D) of WIOA, funds used by local areas to carry out WIOA Pay-for-Performance contract strategies remain available until expended. Additional information on this provision is explained below in the discussion of proposed § 683.530. Proposed paragraph (h) also implements sec. 5(c) of the Wagner-Peyser Act, and explains that funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any PY are available for expenditure by the State receiving the funds only during that PY and the 2 succeeding PYs.

Proposed paragraphs (d) and (e) provide the expenditure period for the Native American programs and MSFW programs under secs. 166(c) and 167(a) of WIOA, respectively. In both programs, WIOA requires the Secretary to enter into grants or contracts with eligible entities every 4 years. Accordingly, the proposed paragraphs explain that funds awarded by the Department under these programs are available for expenditure during the period identified in the award document, which will not exceed 4 years.

For grants awarded for research or evaluations under WIOA sec. 169, funds remain available until expended, in accordance with sec. 189(g)(2)(B)(i) of WIOA, or for the period of performance specified in the terms and conditions of the award. The Secretary has the authority to limit the period of expenditure of these funds in the terms and conditions of the grant award.

Finally, proposed paragraph (f) explains that funds allotted for other programs under title I of WIOA, including secs. 170 (National Dislocated Worker Grants (NDWGs) and 171 (Youthbuild program), are available for expenditure for the period of performance identified in the grant or contract.

Section 683.115 What planning information must a State submit in order to receive a formula grant?

This proposed section implements the statutory requirement that an approved Unified State Plan or Combined State Plan be submitted before formula funds under title I, subtitle B, of WIOA and Wagner-Peyser can be issued. As discussed in the preamble discussion of part 676, WIOA is apparently inconsistent as to whether outlying areas must submit a Unified or Combined State Plan to receive funding under title I. The preamble discussion of part 676 details the apparent inconsistency and identifies potential options to resolve the inconsistency.

Section 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

This proposed section describes the timeframe and formula factors a Governor must employ when allocating funds to local areas under secs. 128 and 133. It also specifies the steps a Governor must take when issuing allocations, including consulting with Local Boards and elected officials prior to issuing the allocation. The Governors must issue the funds to the local areas in a timely manner to allow for an adequate planning process.

This section also adopts the provision in sec. 134(2)(A)(ii) of WIOA that allows States to use unobligated rapid response funds, after the completion of the PY, for statewide activities.

Section 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

This proposed section addresses the minimum funding thresholds for States funded under subtitle B of title I of WIOA. Minimum funding thresholds are established to offset the impact of fluctuations in the formula factors that result from shifts in the economy that may be compounded by additional downturns in a particular industry or market in a particular State. Sections 128(b)(2)(A) and 133(b)(2)(A) of WIOA contain these minimum funding requirements to avoid significant swings in the amount of funding a State receives from 1 year to the next and to avoid any disruption of services or planning.

Section 683.130 Does a Local Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

This proposed section provides flexibility to local areas to provide services in the areas of greatest need by allowing fund transfers of up to 100 percent of a PY allocation between the local adult and local dislocated worker allocations. Proposed § 683.130(b) requires a Local Board to obtain written approval of the Governor before making such a transfer. This flexibility to transfer funds is contained in sec. 133(b)(4) of WIOA.

Section 683.135 What reallotment procedures does the Secretary use?

This proposed section implements secs. 127(c) and 132(c) of WIOA, and explains the Department's process for recapture and reallotment of formula funds awarded to the States under title I. The proposed rule requires the Secretary to make the determination about whether the State has obligated 80 percent of the funds during the second quarter of each PY, rather than the first quarter. The procedures are the same as those in the WIA regulation at 20 CFR 667.150, with a few exceptions. The Department proposes to make the determination during the second quarter because State financial reports for the end of the PY period are not locked for modification until the next quarter's reports are submitted, which is during the second quarter of the PY. The Department also uses the term ''each'' to make it clear that the Department performs the reallotment procedures every PY with respect to the prior PY. Further, the section clarifies that the amount subject to recapture is based on the unobligated balance of the prior ''program'' year, in accordance with secs. 127(c)(2) and 132(c)(2) of the statute. Finally, the proposed section clarifies the language that the recapture amount, if any, is determined separately for each funding stream.

Proposed § 683.135(c) defines the term ''obligation'' in accordance with the new OMB Administrative Requirements at 2 CFR 200.71 (''[w]hen used in connection with a non-Federal entity's utilization of funds under a Federal award, obligations means orders placed for property and services, contracts, and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.''). The Department is using this definition to be consistent in our application of 2 CFR part 200, which is applicable to all funds awarded as grants or cooperative agreements. The proposed rule includes the same additions to the definition of ''obligation'' that are in the WIA regulation at 20 CFR 667.150(d)(1) and (2). The Department will continue to recognize the monies allocated to the local areas through the formula process under subtitle B of title I as obligated by the States for the purposes of this section, and the Department has clarified this by adding the words ''to the local area'' in proposed paragraph (c)(1). Because of this, local transfers between the adult and dislocated worker funding streams do not impact the Department's recapture calculation for reallotment among the States. Similarly, the fact that up to 10 percent of local funds may be reserved for administrative costs does not affect the calculation. Recapture and reallotment of funds among States will occur during PY 2015 based on obligations in PY 2014, because the procedures for realloting funds did not change from WIA to WIOA.

New in WIOA, sec. 134(a)(2)(A)(ii) permits the Governor to use rapid response funds that remain unobligated after the first PY for which they were allotted to carry out statewide employment and training activities. The rapid response funds will be included in the calculation of unobligated funding to determine if a State is subject to reallotment. Sections 127(c) and 132(c) of WIOA do not except rapid response funds from recapture—a tool which provides a strong incentive for States to expeditiously expend funds.

Excepting rapid response funds from the reallotment calculation would effectively remove the reallotment provision out of the statute. The Department generally is able to recapture and reallot only dislocated worker funds, because States immediately obligate 85 percent of their adult and youth program funds by allocating them to the local areas through the formula process. Because sec. 133(a)(2) of WIOA allows the Governor to reserve up to 25 percent of dislocated worker funds for rapid response activities, there may never be a situation where 80 percent of the remaining dislocated worker funds have not been obligated. Therefore, the Department includes rapid response funds in the calculation of a State's unobligated funding to determine if the State is subject to recapture and reallotment.

However, even if a State is subject to reallotment, the Governor may use the unobligated rapid response funds described in WIOA sec. 134(a)(2)(A)(ii) that remain available after reallotment to carry out statewide employment and training activities (in addition to rapid response activities). This preserves the additional flexibility provided to the Governors in WIOA sec. 134, by permitting Governors to use rapid response funds for statewide employment and training activities if not expended in the first year of availability. The Department welcomes comments on the proposed reallotment approach and potential impact on States, including the transfer flexibility.

§ 683.140 What reallocation procedures must the Governors use?

This proposed section describes the procedures for reallocating youth, adult, and dislocated worker funds among local areas in the State, in accordance with secs. 128(c) and 133(c) of WIOA, and is unchanged from the WIA regulation at 20 CFR 667.160 except that proposed paragraph (a) requires the Governor to consult with the State Board before reallocating, as required by secs. 128(c)(1) and 133(c)(1) of WIOA. Proposed paragraph (b) clarifies that the amount to be recaptured, if any, must be separately determined for each funding stream, and the calculations of unobligated balances in each stream must be adjusted to account for any funds that are transferred between funding streams under proposed § 683.130. The Department also notes that States and local areas are required to adhere to the definition of ''obligations'' in 2 CFR 200.71.

Section 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

This proposed section includes new requirements mandated by the Uniform Guidance. First, there is a requirement for the use of merit review as a means to ensure that discretionary or competitive grants and cooperative agreements are awarded through a competitive, merit-based process. Second, this section incorporates the Uniform Guidance requirement, found at 2 CFR 200.205, that an agency must have ''a framework for evaluating the risks posed by applicants before they receive Federal Awards.'' The factors the Grant Officer will consider are listed in this section and drawn from 2 CFR 200.205. Additional guidance will be issued to further specify how the Grant Officer will evaluate these factors in determining whether the applicant

should be precluded from receipt of Federal financial assistance.

Section 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section is new; there is not one like it in the WIA regulations. It addresses closeout, which is an important component to complete the grant life cycle. This section paraphrases the Uniform Administrative requirement sections on closeout and post-closeout adjustments (2 CFR 200.343–344). Specifically, when the period of performance ends, the Department will close out the Federal award after determining that all administrative actions and required work have been completed by the grant recipient. The grant recipient must submit all required reports and liquidate all obligations and/or accrued expenditures within 90 days of the end of the performance period. The Department will promptly reimburse the grant recipient for allowable reimbursable costs under the Federal award being closed out. The non-Federal entity must promptly refund any balanced of unobligated cash that is owed to the Department. The Department will settle for any upward or downward adjustments to the Federal share of costs after closeout reports are received. The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government. The Department must complete all closeout actions no later than 1 year after receiving and accepting all required final reports; however, closeout does not affect the Department's right to disallow costs and recover funds, or obligations of the grantee, including audit, property management, and records retention requirements. After award closeout, a relationship created under the award may be modified or ended. Grant recipients that award funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with this section.

3. Subpart B—Administrative Rules, Costs and Limitations

*Financial and Administrative Rules.* These proposed regulations provide the rules applicable to WIOA grants in the areas of fiscal and administrative requirements, audit requirements, and allowable cost/cost principles, and includes changes as the result of the Uniform Guidance at 2 CFR part 200 and any exceptions to 2 CFR part 200 that have been released by the Department under 2 CFR part 2900. To support the fiscal integrity of the grant process, proposed § 683.220 requires recipients and subprecipients of WIOA or Wagner-Peyser Act funds to have an internal control structure in place that provides safeguards to protect personally identifiable information and other sensitive information. This section is new to WIOA; there is no corresponding section in the WIA regulations. Another new section provides rules for using real property with Federal equity. Under this provision, Federal equity acquired in real property through grants to States awarded under title III of the SSA or the Wagner-Peyser Act is transferred to the States that used the grant to acquire the equity; the portion of the equity transferred must be used to carryout activities authorized under these programs and/or WIOA. The new section also provides instructions on using properties funded with Reed Act equity or the Job Training Partnership Act (JTPA).

*Costs and Limitations.* This proposed regulation in § 683.205 delineates activities and functions associated with the cost of administration as well as cost limitations (discussed in proposed § 683.205). The intent continues to be that the function and intended purpose of an activity should be used to determine whether the costs are administrative or programmatic. There is a new section on salary and bonus limitations, which prescribes limits on salaries and bonuses in both WIOA and Wagner-Peyser programs. The proposed subpart also describes activities that are prohibited under WIOA, such as employment generating activities and activities that encourage business relocation.

*Responsibilities toward participants and employees.* These proposed regulations provide rules on employee displacement, wage and labor standards, health and safety standards, and non-discrimination.

*Other rules.* There is a new section addressing the allowability of earning under WIOA grants.

Section 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

This proposed section describes the application of the Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all grant recipients and subrecipients, including for-profit organizations and foreign entities. It references the cost principles, discusses when prior approval for certain expenditures is required, and highlights a number of specific requirements in the Uniform Guidance and the WIOA statute. For example, this section addresses the requirement that interest income be disposed of using the addition method and requires an entity to provide additional program services with those funds. This section also addresses times when income is earned and how it is recognized, reported, and applied to the program. It outlines the code of conduct and conflict of interest requirements that must be implemented under 2 CFR part 200, as well as certain restrictions imposed on grant recipients and subrecipients when using WIOA and Wagner-Peyser funds, including the Buy-American provision in sec. 502 of WIOA. Likewise, this section requires adherence to the mandatory disclosure requirements found in 2 CFR part 200 on all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Additional disclosures on lobbying, drug-free workplace, debarment, and suspension continue to be required as well. Such disclosures must be timely and in writing. Failure to make the required disclosures can result in any of the remedies described in § 200.338, remedies for noncompliance, including suspension or debarment.

Section 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

This proposed section specifies the statutory administrative cost limitations on title I grant funds. States receiving formula WIOA funds are limited to spending no more than 5 percent of their annual allotment on administrative costs. Local areas are limited to spending no more than 10 percent of their annual allocation on administrative costs. Flexibility is provided to States and local areas in the statute by allowing administrative funds from the three formula funding streams awarded under subtitle B to be pooled and used together for administrative costs for any of the three programs, at the State and locals' discretion. For other WIOA title I and Wagner-Peyser funding, the administrative cost limits can be found in the grant agreement and are subject to the Uniform Guidance.

Section 683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and title III funds?

This proposed section specifies the audit requirements for all grant recipients and subrecipients of WIOA funds that expend more than $750,000 in Federal funds during the fiscal year, including for-profit entities that are grant recipients or subrecipients of WIOA title I or Wagner-Peyser funds. As this proposed section notes, the audit requirements do not normally pass through to contractors, but will in some situations, such as where the payments are found to constitute a Federal award rather than a payment for goods and services. This section seeks to implement the requirements of the Uniform Guidance.

Section 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

The proposed section defines the functions and activities that constitute administration in accordance with sec. 3(1) of WIOA, and therefore are subject to the administrative cost limitations discussed in proposed § 683.205. The Department notes that this proposed section applies to activities performed under all grants awarded under title I of WIOA. It does not apply to activities funded through contracts, such as operation of Job Corps centers. The proposed rule is the same as the WIA regulation at 20 CFR 667.220 with a few exceptions. For clarification, fiscal agent responsibilities are now included in the list of enumerated administrative costs. Regions are also included in the list of entities that can incur administrative costs, consistent with sec. 106 of WIOA. The Department made these enhancements because services can be integrated and streamlined through regions that may cross geographical boundaries or local economic areas. Additionally, the section refers to ''contractors'' instead of ''vendors'' to be consistent with the Uniform Guidance, which replaces vendor with contractor and defines ''contractor'' at 2 CFR 200.23.

Proposed § 683.215(c) describes some activities that can be administrative, programmatic, or both, depending on whether the underlying functions which they support are classified as programmatic or administrative. These include costs of activities such as information systems development and operation, travel, and continuous improvement. For example, the costs of developing an information system, which serves both administrative functions, and the tracking and monitoring of participants, would be allocated between program costs and administrative costs in proportion to the use of the system for each intended purpose.

On the other hand, preparing program-level budgets and program plans are classified as program costs. The negotiation of MOUs and one-stop infrastructure agreements, and certifications of one-stop centers are also program costs, because they build or support the one-stop delivery system and services to participants.

The Department welcomes comments regarding whether it is more advantageous to issue the proposed list of administrative costs in § 683.215(b) as a regulation, or to provide a general description of administrative costs similar to the definition in sec. 3(1) of WIOA and provide a rationale for why such an approach is advantageous. The Department also seeks comment on whether this list will need to be flexible, and subject to review and change periodically, or whether it is anticipated to be stable. Additionally, the Department seeks comment as to whether indirect costs should be included as programmatic or administrative.

Finally, proposed § 683.215(d) requires entities to make efforts to streamline administrative services and reduce administrative costs by minimizing duplication and effectively using information technology to improve services. The Department expects that streamlining the administration of the program will minimize duplication of multiple systems at different levels of grant administration so that more funds will be available for program activities.

Section 683.220 What are the internal control requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed new section describes the internal controls that recipients and subrecipients must install and have in place when expending WIOA and Wagner-Peyser Act funds, and is based on 2 CFR 200.303. The controls include having a structure and policies in place to protect personally identifiable and sensitive information, including information that the Department considers to be sensitive, and providing reasonable assurances that the recipient or subrecipient is managing the award in compliance with Federal law and the terms of the award, complying with Federal law and the conditions of the award, evaluating and monitoring the recipient's or subrecipient's compliance with Federal law and award terms, and taking prompt action when noncompliance is identified. The internal controls must meet the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework. The framework established has been used in the private sector for numerous years and provides standards to achieve reasonable assurance in the achievement of the following: Effectiveness and efficiency of operations; reliability of financial reporting; compliance with applicable laws and regulations; and safeguarding of assets. Complying with the internal control requirements will increase accountability and transparency in the use of WIOA and Wagner-Peyser Act funds. Through past monitoring and oversight, the Department discovered that some grantees did not have the tools or access to resources to build a strong internal control structure. The Department will work with States and discretionary grantees to provide tools and assistance to achieve better results through its internal control structure. Direct grant recipients must assist their subrecipients in achieving an internal control structure framework consistent with 2 CFR part 200 and COSO.

Section 683.225 What requirements relate to the enforcement of the Military Selective Service Act?

This proposed section specifies the requirements of the Military Selective Service Act for programs and activities authorized under title I of WIOA and found in sec. 189(h) of WIOA. This proposed section is substantively the same as the WIA regulation at 20 CFR 667.250.

Section 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

This proposed section addresses the laws governing the determination of eligibility for veterans and their spouses for WIOA funded services with income qualification requirements. The parameters for the exclusion of certain income from the eligibility determination process are outlined in this section. This section also states that the same method of excluding certain income of veterans must also be used when a local area imposes a priority of service threshold when funding for program services is limited.

Section 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

This proposed section is different from the WIA regulations at 20 CFR 667.260. It is based on the requirements in the Uniform Guidance at 2 CFR 200.439(b)(3). The proposed text states that WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval of the Secretary. Under the statute, WIOA title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects under WIOA sec. 170(d), YouthBuild programs under WIOA sec. 171(c)(2)(A)(i), and for other projects that the Secretary determines necessary to carry out WIOA, as described by under sec. 189(c) of WIOA. The proposed regulatory text is meant to include all these situations, but not offer an exclusive list to ensure that the Secretary is able to use the funds for construction in any situation where it might be necessary.

Section 683.240 What are the instructions for using real property with Federal Equity?

The proposed section provides rules on State Employee Security Act (SESA) properties, Reed Act-funded properties, and JTPA-funded properties. The proposed section provides guidance on these different properties because the use of these properties can play an integral part in WIOA's intent to align Federal investments to support jobs seekers and employers. Such efforts are not only achieved through strategic coordination among one-stop partners, but through physical presence at offices in the one-stop delivery system. Many buildings that have existing Federal equity currently house Wagner-Peyser programs, and it seems logical to use these facilities as American Job Centers if they are accessible and available and can support the requirements for colocation outlined in proposed §§ 678.310 through 678.320. Properties with Reed Act equity may also play a role in the American Job Center System. Lastly, the Department is aware that many local workforce development areas that were previously known as service delivery areas (SDAs) continue to be used as facilities for WIA programs, and they should continue to be used for the one-stop delivery service system under WIOA. The Department welcomes feedback on these provisions. Making use of these properties for the one-stop delivery system in accordance with statutory requirements will maximize the investments already made in these buildings and help to achieve the goals of WIOA.

With respect to Federal equity in SESA properties, the proposed section restates the requirements of sec. 192 of WIOA, and explains that Federal equity acquired in real property through grants to States awarded under title III of the SSA or the Wagner-Peyser Act is transferred to the States that used the grant to acquire the equity. The portion of the real property attributable to the Federal equity transferred must be used to carry out activities authorized under WIOA, title III of the SSA, or the Wagner-Peyser Act. When the property is no longer needed to carry out those activities, the States are directed to request disposition instructions from the Grant Officer. Proceeds from the disposition must be used to carry out activities authorized under WIOA, title III of the SSA, or the Wagner-Peyser Act.

The statutory limitation in sec. 192(b) of WIOA is provided as well. States are not permitted to use funds awarded under WIOA, title III of the Social Security, or the Wagner-Peyser Act to amortize the costs of the real property that is purchased by any State after February 15, 2007.

The Department has also included the new requirement from sec. 121(e)(3) of WIOA and sec. 3(d) of the Wagner-Peyser Act that properties occupied by Wagner-Peyser ESs be collocated with one-stop centers.

With respect to Reed Act-funded properties, the proposed rule states that properties with Reed Act equity may be used for the one-stop delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Wagner-Peyser and UC programs. However, subject to conditions specified in sec. 903(c)(2) of the SSA and any appropriations limitations, a State is permitted, at its discretion, to use Reed Act funds for ''the administration of its UC law and public employment offices.'' When the property is no longer needed for these activities, the State must request disposition instructions from the Grant Officer prior to sale. Because Reed Act funded properties are different than other Federal equity properties, disposition instructions will include a requirement to return the funds attributable to the Reed Act equity to the State's account in the Unemployment Trust fund. See discussion in TEGL 3–07 ''Transfer of Federal Equity in State Real Property to the States.'' It is expected that additional guidance will be issued to update the guidance contained in TEGL 3–07, which will include instructions on the handling of such properties when considering colocation of Wagner-Peyser, as required in sec. 121(e)(3) of WIOA and sec. 3(d) of the Wagner-Peyser Act (as added by the amendments in title III of WIOA).

For JTPA funded properties, the proposed rule states that real property that was purchased with JTPA funds and transferred to WIA, is now transferred to the WIOA title I programs and may be used for WIOA purposes. It is the Department's position that the Federal equity remains with the property while in use. Many properties that were purchased with JTPA funds continue to be locations that house and serve individuals and staff persons under WIA, and as such, those same buildings must continue to be used for the purposes of WIOA. If JTPA properties that were being used for WIA activities will not be used for WIOA programs, disposal of the property must occur. When the real property is no longer needed for the WIOA activities, the recipient must seek instructions from the Grant Officer prior to disposition or sale. A subrecipient would seek instructions from the State. Such instructions must be consistent with 2 CFR part 200. The Department welcomes any feedback from the workforce development system that promotes the use of these properties and streamlines the disposition process.

Section 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

This proposed section implements sec. 181(e) of WIOA, which restricts the use of WIOA funds for employment generating activities except where the activities are directly related to training for eligible individuals. The proposed section states that employer outreach and job development activities are considered to be directly related to training for eligible individuals, and it lists a number of examples of acceptable activities. The section also describes the conditions in which WIOA funds can be used for employer outreach.

Section 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes other activities that are expressly prohibited

in title I of WIOA, including foreign travel paid for by WIOA formula funds (sec. 181(e) of WIOA) payment of wages of incumbent workers participating in economic development activities (sec. 181(b) of WIOA), contracts with persons falsely labeling products as made in America (sec. 502(c) of WIOA), and others.

Section 683.255 What are the limitations related to religious activities in title I of the Workforce Innovation and Opportunity Act?

This proposed section describes the limitations related to using WIOA funds to support religious activities, including the preclusion on employment of participants for the construction, operation, or maintenance of facilities used for sectarian purposes or worship, which is contained in sec. 188(a)(3) of WIOA. This section also references 29 CFR part 2, subpart D, which describes other limitations in detail, along with certain exceptions. This proposed section contains similar requirements as the WIA regulations at 20 CFR 667.266.

Section 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

This proposed section describes the prohibitions on the use of WIOA title I funds to encourage business relocation, including specific timeframes when entities can begin working with such businesses. This section also describes the States' obligation to develop procedures to implement these rules. These provisions implement the requirements of sec 181(d) of WIOA. This proposed section contains the same requirements as the WIA regulations at 20 CFR 667.268.

Section 683.265 What procedures and sanctions apply to violations of this part?

This proposed section lists the provisions that provide for sanctions resulting from the violation of §§ 683.235–260.

Section 683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?

This proposed section outlines conditions and safeguards to ensure that any WIOA title I participant does not displace an existing employee by participating in a WIOA title I program or activity. It also states that an employee can file a complaint alleging displacement. Section 181(b)(2) of WIOA did not change the WIA displacement requirements at sec. 181(b)(2) of WIA. Accordingly, this regulation is unchanged from the WIA regulation at 20 CFR 667. 270.

Section 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

This proposed section describes the wage and labor standards that apply to WIOA title I participants, including the requirements under the Federal Fair Labor Standards Act (FLSA) and State and local minimum wage laws. The regulation is unchanged from the WIA regulations at 20 CFR 667.272, except that it includes two additional provisions from sec. 181 of WIOA. The first is that the reference to the FLSA minimum wage requirement does not apply to territorial jurisdictions in which the minimum wage requirement does not apply (WIOA sec. 181(a)(1)(B)), and the second is that WIOA title I funds must not be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce delivery system (WIOA sec. 181(b)(1)). This requirement is also found in proposed § 683.250(a)(1), but it is included here as well to give a complete list of the wage standards that apply to WIOA participants.

Section 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

The proposed section explains what health and safety standards and workers compensation laws apply to WIOA title I participants. The standards in WIOA are the same as those in WIA, so the regulation is unchanged from the WIA regulation at 20 CFR 667.274.

Section 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

This proposed section describes the nondiscrimination, equal opportunity, and religious activities requirements that recipients, as defined in WIOA sec. 188 and at 29 CFR part 37, must adhere to when using WIOA title I funds. WIOA did not change these requirements, so the proposed section contains the same requirements as the WIA regulation at 20 CFR 667.275, with a few exceptions. Accordingly, paragraph (a)(1) of the proposed rule refers to ''Job Corps contractors,'' instead of ''vendors,'' to conform with 29 CFR part 37. Additionally, proposed § 683.285(a)(4) implements sec. 188(a)(4) of WIOA, which prohibits discriminating against an individual because of that person's status as a WIOA title I participant. Proposed § 683.285(a)(5) also implements the requirement at sec. 188(a)(5) of WIOA that participation in WIOA title I programs and activities be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States. Finally, the proposed section includes the Wagner-Peyser program as an example of a Department program that is covered by 29 CFR part 2, subpart D.

Section 683.290 Are there salary and bonus restrictions in place for the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This proposed section implements the requirements of sec. 194(15) of WIOA related to salary and bonus restrictions that apply to recipients or subrecipients. Although the statute applies the restrictions to WIOA title I funding, the Department expanded application to Wagner-Peyser Act recipients and subrecipients. The appropriations acts for the last 9 years (Pub. L. 109–234 June 15, 2006) have applied the limitation to all ETA-funded programs; thus, interpreting the provision as applying to Wagner-Peyser funded activities is appropriate. Additionally, it is the Department's policy to ensure that funding is directed to substantive workforce employment and training activities to the greatest extent possible, rather than to administrative costs.

The proposed section restates the WIOA statutory provisions. Specifically, it prohibits recipients and subrecipients from paying the salary and bonuses of an individual, either as direct or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313. Additionally, the limitation does not apply to contractors providing goods and services as defined in OMB's Uniform Administrative requirements (which supersedes OMB Circular A–133 cited in the statute). The Department has used the term ''contractors'' instead of the statutory term ''vendor'' to be consistent with the term used in the Uniform Guidance. The proposed rule also explains the provision at WIOA sec. 194(15)(B) that a State may establish a lower limit for salaries and bonuses.

Finally, the Department has provided direction for scenarios in which an employee may be funded by various

programs or work for multiple offices. If funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the employee's salary or bonus, the WIOA title I or Wagner-Peyer Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. This restriction applies to the sum of salary and bonus payments made to an individual whether they are charged as direct costs or indirect costs under title I of WIOA and Wagner-Peyer. When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus payments does not exceed the prescribed limitation. These clarifications will help to ensure that WIOA and Wagner-Peyser Act funds are not overcharged for salary and bonus payments and that there are no ''loopholes'' in applying the limitation.

Section 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

This proposed section addresses earning profit under WIOA. As the network of training services and one-stop operators has changed over the years, the Department is including the proposed section to address working with for-profit entities and the earning of profit by these entities. Proposed § 683.295(a)(2) includes a requirement for grants and other Federal financial assistance awarded under secs. 121(d) and 134(b) of WIOA, which states that where a Federal financial assistance award authorizes one-stop operators, service providers, or ETPs to earn profit, the pass through entity must follow 2 CFR 200.323 to ensure that the entities' charges are reasonable and fair. The requirement in 2 CFR 200.323 that profit be negotiated as a separate element of the price will provide greater transparency as to the amount of profit earned by for-profit entities whether they are subrecipients or subcontractors. This paragraph (a)(2) describes an exception to the general rule that for-profit entities acting under a contract are allowed to earn profit. When the for-profit entity is a recipient of a grant or other Federal financial assistance, the entities will now be covered by the Uniform Guidance rather than the Federal Acquisition Regulations. The general rule, for when for-profit entities are working as contractors, is included in proposed § 683.295(a)(3). The paragraph notes that the profit is allowable provided that the contractor abides by the requirements of 2 CFR 200.323. Proposed § 683.295(b) states that for programs authorized by other sections of WIOA, profit will be prohibited unless authorized by the terms and conditions of the Federal award.

4. Subpart C—Reporting Requirements

This subpart provides guidance for reporting that will promote transparency and accountability at the grant recipient level. With today's demand for data in an open and transparent environment, the Federal government meets the challenges with initiatives such as the Digital Accountability and Transparency Act, requiring the Department to open access to data and use common data metrics. Performance and financial data, when made available, can lead to innovation. Not only does the Secretary seek to employ fresh and innovative approaches in serving job seekers and employers, the Department wants to utilize our resources and reporting portals to provide to the public visualizations rich in data and metrics to assist in better understanding of the employment environment. It is the Department's intent to use data collected from the financial, performance, and annual reports to empower our workforce system while providing transparency and accountability to our stakeholders. This subpart seeks to promote the government's initiative to manage information as an asset to increase operational efficiencies, reduce costs, improve services, support mission needs, safeguard personal information, and increase public access. One way to promote this initiative is through the collection and transmission of data, using machine readable formats whenever possible. To safeguard personally identifiable information, recipients and subrecipients must limit the collection and transmission of such data and use encrypted transmission software. To increase operational efficiencies and reduce costs, the Department and its grantees work together to find solutions that allow for the streamlining of reporting and the reduction of duplication of systems and efforts. The Department's existing financial expenditure form (ETA–9130) will be modified to reflect new reporting requirements. The Secretary will issue additional guidance on this topic.

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

To continue with efforts for accountability and transparency as well as to provide data to our stakeholders, the Department requires its recipients to submit financial and performance reports, as well as an annual performance report. The data contained in these reports must be generated and processed in formats that are compatible with other commonly used data systems and be in machine readable formats. This proposed section specifies the reporting requirements for grant recipients and the deadlines for such reports. This section also sets forth recipients' responsibility to collect data from subrecipients. Pargraphs (b), (d), and (e) separately describe the performance reporting requirements for the core programs under sec. 116 of WIOA and part 677 and other grant programs authorized under title I of WIOA.

5. Subpart D—Oversight and Resolution of Findings

This proposed subpart addressees the oversight and resolution responsibilities of the Department and grant recipients of WIOA funds. Oversight and monitoring is a valuable tool in effectively managing grants and this subpart emphasizes the need for careful application of these requirements by the Department and by recipients.

*Oversight.* These regulations which provide for oversight and resolution responsibilities of the Department and its grant recipients are an important part of the Department's overall strategy to improve grant administration and to promote the vision of WIOA. As in WIA, States will review their subrecipients and validate their compliance with the Uniform Guidance on an annual basis and certify compliance to the Secretary every 2 years. The States and grant recipients must also install a monitoring system that meets the requirements of the Uniform Guidance and includes the examination of such items as performance, program goals, non-discrimination, conflict of interest, and mandatory disclosures.

*Resolution.* The resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process is specified in this proposed subpart. It also provides clarification on the effect of the Uniform Guidance on the resolution process at the subrecipient level. When action to resolve findings is inadequate, the Department will take additional action

against the State or other direct grant recipient to reach resolution. Such action will include the Grant Officer resolution process, including the initial and final determination process, as described in proposed § 683.440.

§ 683.400 What are the Federal and State monitoring and oversight responsibilities?

This proposed section identifies the requirements of the Department in performing oversight and monitoring of its grant recipients and of the Department's grant recipients' responsibility for subrecipients. Proposed § 683.400(c) describes the requirements WIOA has placed on the States to create a monitoring system for their subrecipients. Proposed paragraph (d) also requires the retention of evidence related to monitoring functions and resolution actions. This section also covers the new requirements under the Uniform Guidance which requires an examination of recipient and subrecipient non-discrimination and conflict of interest policies, mandatory disclosures of all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Section 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?

This proposed section defines the roles and areas in which oversight must be conducted by the recipients and subrecipients, including ensuring compliance with relevant rules and developing a monitoring system. Proposed paragraph (b) of the section also discusses a number of requirements for the States' monitoring systems and the Governor's biannual certification. The Department has always placed significant emphasis on monitoring as a tool in providing effective grants managements and this emphasis is further supported by the inclusion of monitoring in the Uniform Guidance. Monitoring and oversight also helps in identifying technical assistance needs, areas for improvement, and best practices.

Section 683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?

Proposed § 683.420(a) describes the steps and procedures that must be taken by grant recipients to resolve findings at the subrecipient level. For formula funds, sec. 184(a) of WIOA requires States to use the procedures they have in place for other Federal grant programs or, in the absence of such procedures, write standards for this program. Paragraph (a)(2) states that non-formula grant recipients must have written monitoring and resolutions procedures that adhere to the Uniform Guidance governing monitoring of subrecipients. All recipients must ensure that the rules governing the use of WIOA funds are being followed, including adherence to cost categories and cost limitations. Proposed § 683.420(b) also describes the processes the Department will use to resolve findings of its direct grant recipients, and proposed paragraph (c) describes the processes to resolve findings regarding the non-discrimination provisions in sec. 188 of WIOA.

Section 683.430 How does the Secretary resolve investigative and monitoring findings?

This proposed section describes the actions the Secretary will take to resolve findings. This section also describes the process when the Grant Officer agrees that the recipient's actions are sufficient to resolve a finding and when they are not satisfactory. This proposed section implements the requirements of sec. 184(a)(7) of WIOA. Proposed § 683.430(b) states that audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process described in proposed § 683.440.

Section 683.440 What is the Grant Officer resolution process?

This proposed section describes the Grant Officer's resolution process when dissatisfied with the actions taken by the grant recipient to resolve findings. This process involves the issuance of an Initial Determination followed by a period for informal resolution which allows the recipient to work with the Department to provide the necessary documentation or take certain action to reach a resolution. At the end of that period, the Grant Officer issues a Final Determination with findings listing any unresolved issues, establishing any debts, and listing required corrective actions, as well as offering the opportunity for a hearing. This process is unchanged from the process under WIA.

6. Subpart E—Pay-for-Performance Contract Strategies

Introduction

WIOA's Pay-for-Performance provisions were designed to provide flexibility at the local level in an effort to infuse the system with more innovation, improve results for participants, and reward providers who deliver outstanding results. This regulatory proposal builds on the Department's experience with innovations and evidence-based work funded under the Workforce Innovation Fund and other Federally authorized activities. Moreover, the statute authorizes States to use non-Federal funds to establish incentives for Local Boards to implement WIOA Pay-for-Performance contract strategies. We encourage States to adopt evidence-based approaches and innovate in the way they deliver services to participants in order to improve outcomes, and recognize that WIOA Pay-for-Performance contracting strategies, while still experimental, are one promising method to do so.

A performance-based contract is a contracting strategy that establishes specific benchmarks that must be achieved in order for the contractor to receive payment. The WIOA Pay-for-Performance contracts are a specific form of contracting that, as authorized by WIOA, have six distinct characteristics: (1) They must provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA; (2) they must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA within a defined timetable; (3) the performance outcomes achieved must be independently validated using high-quality, reliable, and verified data; (4) outcomes must be reported in accordance with sec. 116(d)(2)(K) of WIOA; (5) pursuant to sec. 3(47)(A) of WIOA, bonuses may be built into WIOA Pay-for-Performance contracts so long as such bonuses are used to expand the contractor's capacity to provide effective training; and (6) there may be an extended period of availability to expend funds under Pay-for-Performance contract strategies. Additionally, the funds obligated for WIOA Pay-for-Performance contract strategies are limited to 10 percent of the total of the local adult and dislocated worker allotments provided under sec. 133(b) of WIOA, and 10 percent of the local youth allotment provided under sec. 128(b) of WIOA.

The WIOA Pay-for-Performance contract strategy is one of several innovative strategies WIOA adopts to place a higher emphasis on performance outcomes and provider accountability, drive better results, and incorporate rigorous evaluation and evidence-based practice into the delivery of workforce

services. The Department intends to support this contracting approach by incorporating WIOA Pay-for-Performance into its WIOA performance reporting requirements for States in which local areas are adopting such a contracting approach.

The WIOA Pay-for-Performance contract strategy can benefit local areas, job seekers, and business customers when used to support interventions that have a high probability of success based on prior evidence; have measurable outcomes supported with authoritative data and strong evaluation methodologies; and are overseen by experienced managers that have flexibility to adjust their approach.

Given the heavy emphasis that WIOA Pay-For-Performance authorities place on outcome-based payment and independent validation, the quality of local area data and data systems should be of high enough quality to be able to (1) reliably and validly establish appropriate performance benchmarks for the target population, and (2) support independent validation of actual performance outcomes.

In particular, in order for these contracting mechanisms to work effectively and efficiently, they must incorporate measures to prevent or account for potential ''creaming'' by service providers, and strong data systems are essential to this function. The use of outcome data from comparison groups—substantially similar populations who are not receiving services through the provider—is one potential method to minimize creaming. Another potential method adopted by WIOA to address creaming is the use of a statistical adjustment model for (1) the establishment of performance targets, and (2) the adjustment of actual performance based on economic conditions and the characteristics of the participants. In either case, the use of valid and reliable baseline data will help to inform appropriate performance targets and that strong data systems are necessary to support this approach.

Additionally, it is important to engage in a feasibility analysis before engaging in a WIOA Pay-for-Performance contract, and that these analysis should be built into a WIOA Pay-for-Performance contract strategy. Such a feasibility analysis could include items like assessing the availability and quality of necessary data, including the source and cost of such data; determining the target population to be served; determining the availability of competent providers; whether any other additional professional services are required to support the execution of the contract; and reviewing other operational factors that would affect the feasibility of the contract.

The Department is soliciting comments on the appropriate strategies to implement different varieties of Pay for Performance contracts, including issues involving what components should be included in a Pay-for-Performance contracting strategy; what factors should be considered in a feasibility analysis; which entities should be eligible to enter into these contracts; how different varieties of contracts should be structured; how to best establish baseline performance information for target populations served; how best to prevent or account for creaming; the best methods to account for the relative and absolute risk to government, the contractor, and other stakeholders when setting payment terms; how best to balance the total cost to government against bonus and incentive payments included in the contract and potential outcome improvements for participants; how comprehensive services can be provided in a Pay-for-Performance contract context; and how to facilitate the participation of small service providers.

Because of the requirements contained in statute, the Department is considering how best to incorporate reporting into performance and fiscal information collection requests, which will be included in the performance and fiscal PRA packages, or whether a separate information collection is needed. We welcome comments regarding the burden of additional reporting requirements, such as specifics about local areas utilizing pay-for-performance contract strategies; the service providers, the amount of contracts, duration, and monitoring and evaluation findings. The Department expects to put performance and implementation requirements in place in the future.

Section 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

This proposed section describes the components of a WIOA Pay-for-Performance contract strategy and describes WIOA Pay-for-Performance contract as a specific type of performance-based contract. It draws a distinction between the WIOA Pay-for-Performance contract itself and the broader goals and strategies surrounding it, which are the contracting strategy.

Local area WIOA Pay-for-Performance contract strategies must include: (1) Identification of the problem space and target populations for which a local area will pursue a WIOA Pay-for-Performance contract; (2) the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; (3) the acceptable cost associated with implementing such a strategy; (4) a feasibility study to determine whether the service delivery strategy to be funded is suitable for a WIOA Pay-for-Performance contracting strategy; (5) independent validation of the performance outcomes achieved under each contract within the strategy prior to payment occurring; and (6) a description of how the local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

The Department will issue additional guidance to both State and local areas on the development of the broader Pay-for-Performance contract strategy, including the scope and minimum requirements of the required feasibility study.

Section 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

This proposed section defines the requirements associated with a WIOA Pay-for-Performance contract, which would be awarded under a WIOA Pay-for-Performance contract strategy.

Paragraph (a) identifies a WIOA Pay-for-Performance contract strategy as a type of performance-based contract. A performance-based contract is a contracting mechanism that establishes specific benchmarks that must be achieved in order for the contractor to receive payment. Performance-based contracting in general is defined and discussed in subpart 37.6 of the Federal Acquisition Regulation.

Paragraph (b) articulates that WIOA Pay-for-Performance contracts can only be used when they are part of a broader WIOA Pay-for-Performance Contract Strategy described in § 683.500.

To be consistent with past practice and with the Uniform Guidance at 2 CFR part 200, proposed paragraph (c) prohibits the use of cost-plus percentage contracts in WIOA Pay-for-Performance contracts.

The specifications in proposed paragraphs (d) through (f) regarding eligible service providers, structure of payments, target populations, and program elements are derived directly from the statute, at WIOA secs. 3(47), 129(c)(1)(D), 129(c)(2), 134(c)(3), and 134(d)(1)(iii). Proposed paragraph (e) specifically requires that the performance elements that must be included in any WIOA Pay-for-

Performance contract are the primary indicators of performance described in sec. 116(b)(2)(A) of WIOA and further defined in proposed § 677.155. These include:

i. The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

ii. the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

iii. the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

iv. the percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to sec. 116(b)(iii) of WIOA), during participation in or within 1 year after exit from the program;

v. the percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

vi. the indicators of effectiveness in serving employers established pursuant to sec. 116(b)(iv) of WIOA.

Proposed paragraph (h) states that under WIOA Pay-for-Performance contracts, bonus payments and/or incentive payments are authorized to be paid to the service providers who enter into the WIOA Pay-for-Performance contracts. Such bonus payments must be used to expand the contractor's capacity to provide effective training. These payments are authorized by sec. 3(47)(A) of WIOA. Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulation. WIOA Pay-For-Performance contracts may also utilize positive and negative incentives to other forms of performance-based contracts. To be consistent with performance-based contracting and in alignment with WIOA Pay-for-Performance contract characteristics, such as recognizing high performers and providing boards with flexibility to make adjustments, incentive payments should be based on the total and relative amount of risk incurred by the service provider or contractor versus that incurred by the local area or other stakeholders.

Because the Department is responsible for reporting on local outcomes annually to Congress, as well as providing recommendations for improvements in and adjustments to WIOA Pay-for-Performance contract strategies, proposed paragraph (i) requires specific reporting by the local areas to the State regarding the performance outcomes achieved by the service providers that enter into WIOA Pay-for-Performance contracts. Additionally, proposed paragraph (j) requires independent validation of a contractor's achievement of performance benchmarks under a WIOA Pay-for-Performance contract, as required by sec. 3(47)(B) of WIOA, and requires that this validation be based on high-quality, reliable, and verified data. The Secretary will issue guidance related to standards for independent evaluation as part of its Pay-for-Performance guidance to States and local areas.

Paragraph (k) indicates that the Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

Under WIA, many Workforce Development Boards utilized elements of performance-based contracts with training providers. These contracts incorporated performance outcomes that contractors were required to meet to obtain payment. However, these contracts did not contain required elements of a WIOA Pay-for-Performance contract articulated in this section. The Department encourages local areas to refocus these traditional performance-based contracts to place an emphasis on the contractor achieving outcomes like participants obtaining and retaining good jobs, rather than outputs like the number of people served. Also, the provision for the inclusion of bonus payments is limited to WIOA Pay-For-Performance contracts. Contracts that are not executed under the WIOA Pay-For-Performance contracting authority may continue to include performance incentives, either positive or negative or both, in compliance with the Federal Acquisition Regulation. Workforce Development Boards may continue to use performance-based contracts that are not WIOA Pay-for-Performance contracts. The 10 percent limitation provisions in secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA only apply to WIOA Pay-for-Performance contract strategies, including WIOA Pay-for-Performance contracts.

Section 683.520 What funds can be used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This proposed section restates the WIOA requirements that funds allocated under secs. 133(b)(2) and (3) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing adults and dislocated worker training, and funds allocated under sec. 128(b) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing youth activities. No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1) and (c)(2) of WIOA. There is no limit on the use of funds for typical performance-based contracts, as defined in the Federal Acquisition Regulation. The 10 percent limits apply only to those performance-based contracts that are WIOA Pay-for-Performance contract strategies as defined above.

Section 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA specifies that funds used for WIOA Pay-for-Performance contract strategies are available until expended. This allows local areas to structure contracts that include time-intensive service delivery strategies and/or that structure payments based on outcomes that may take longer to achieve, measure, and validate than the typical 2-year funding availability of local area funds. Funds that are obligated but not expended due to contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. This also allows the local area to realize one of the benefits of performance-based contracting strategies—the local area does not pay a financial penalty for contracted services that do not achieve the stated outcomes. This provision gives the local area the discretion to choose whether to use the funds for these strategies, and if the local area so chooses, the funds will remain available until expended. This will require new grant management practices for local areas that choose to carry out WIOA Pay-for-Performance strategies. The Department will issue guidance to explain these new practices and we welcome comments with suggestions on how to maximize the use of these contract strategies and the expanded availability of the funds.

Section 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This proposed section describes both allowable and required State activities related to WIOA Pay-for-Performance contract strategies. The section indicates that States may provide technical assistance to local areas, including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance. This technical assistance can help local areas move forward in using this contracting strategy. Additionally, the State may either conduct evaluations of such strategies and/or provide technical assistance to locals regarding the importance of evaluation of Pay-for-Performance contract strategies. The State and local areas may conduct their own evaluations of the WIOA Pay-for-Performance contracts, or procure an independent evaluator. The Department welcomes comments regarding use of independent evaluators and whether the cost of such evaluations is feasible within the amount of funds available to local areas for pay-for-performance contracts. The Department also seeks comments on how the Department might facilitate local areas' ability to conduct evaluations. Further, sec. 116(h) of WIOA authorizes States to use non-Federal funds to incentivize use of WIOA Pay-for-Performance contract strategies for the delivery of training services or youth activities by Local Boards.

This section also identifies required activities States must undertake if a local area implements at WIOA Pay-for-Performance contract strategy. Because of the unique reporting requirements in sec. 116(d)(2)(K) for WIOA Pay-for-Performance contracts, the performance section of this proposed rule, as well as the forthcoming Information Collection Request package, will clearly articulate the State's responsibility to track and report data on the primary indicators of performance as well as the State and local evaluations of the design of the programs and performance of WIOA Pay-for-Performance contract strategies and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies.

The State must also monitor local areas' use of WIOA Pay-for-Performance contracts to ensure compliance with the following: The required elements listed in § 683.500, the contract specifications in § 683.510, State procurement policies, the 10 percent limitations, and achievement of performance benchmarks.

7. Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

This subpart provides regulations governing the grievance, complaint, and appeals procedures that apply at the State and local level and to discretionary grantees under WIOA, as well as appeals to the Secretary. Providing clear rules for resolving complaints and filing appeals promotes transparency and fairness, which are fundamental requirements of the workforce investment system grant process. Included are rules governing the appeals of local area non-designation, denial or termination of training provider eligibility, and appeals of formula program participants who are tested or sanctioned for the use of controlled substances. Appeals of the Governor's imposition of sanctions for substantial violations of fiscal or other substantive requirements or performance failures under WIOA title I are also addressed. Finally, this subpart explains the process of reporting information and complaints involving criminal fraud, waste, abuse, or other criminal activity under WIOA.

Section 683.600 What local area, State and direct recipient grievance procedures must be established?

This proposed section requires local areas, States, outlying areas, and direct grant recipients of WIOA title I funds to establish and maintain a procedure for grievances and complaints, including appeals as appropriate, and describes what the procedure much include, as required by WIOA sec. 181(c)(1). While this section of WIOA does not require outlying areas or direct grant recipients to establish such procedures, the Department has included them in this section to ensure that all participants receiving services under title I of WIOA have the same opportunity to report and receive relief from the negative actions of the WIOA funded grantees.

This proposed section also clarifies that allegations of violations of the non-discrimination provisions of WIOA are subject to the policies and procedures described in 29 CFR part 37, which is administered by the Department's Civil Rights Center, and that complaint and grievance procedures related to Job Corps are in part 686 of this title. This section retains the same requirements found at 20 CFR 667.600.

Section 683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?

This proposed section describes the situations in which the Department will review allegations, and the procedures that the Secretary will use, that arise through local, State, and other direct recipient grievance procedures in accordance with WIOA sec. 184(c)(2). This section retains the same requirements found at 20 CFR 667.610.

Section 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

This proposed section provides the requirements for reporting information and complaints involving non-criminal complaints and criminal fraud, waste, abuse or other criminal activity through the Department's Incident Reporting System to the Department's Office of the Inspector General. This section retains the same requirements found at 20 CFR 667.630.

Section 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

This proposed section describes the processes and systems that a State must establish to hear appeals of: Entities that are denied initial or subsequent designation as a local area; training service providers that are denied eligibility as providers of training services; and WIOA title I subtitle B participants who are subject to testing or sanctions for the use of controlled substances. The section restates the WIOA appeal requirements in secs. 106(b)(5) (local area non-designation), 122 (training provider eligibility denial or termination); 181(f) (participant testing and sanctioning for use of controlled substances).

Section 683.640 What procedures apply to the appeals of non-designation of local areas?

This proposed section describes the procedures that apply when a State Board denies an appeal for initial or subsequent designation of a local area made by a unit of local government or grant recipient under § 683.630(a). This section restates and implements the appeal requirements required by WIOA sec. 106(b)(5).

Section 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

This proposed section describes the procedures that apply to appeals of the Governor's imposition of sanctions for substantial violations of fiscal or other substantive requirements of title I of WIOA or of performance failures by local areas.

8. Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

While technical assistance, oversight, and monitoring are tools to ensure compliance with program and funding requirements, sanctions and corrective action plans are necessary where those tools fail. This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision. Of particular note in this subpart are the procedures for allowing a waiver of liability or an offset from other funds owed to the recipient. The statutory provisions are largely unchanged from those under WIA, though the Uniform Guidance has resulted in some changes to this subpart.

Section 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

This proposed section describes the procedures and circumstances under which the Department will impose sanctions or take corrective actions, as described in sec. 184(b) and (e), against States, local areas, and grant recipients and subrecipients. For actions other than those under WIOA sec. 188(a), the process outlined in § 683.440 will be used before corrective actions or sanctions are taken against direct recipients. This section also gives the Grant Officer the authority to take direct action against local areas or other subrecipients, which will also be done using the process in § 683.440. This section also clarifies that the procedures described at 20 CFR part 677 will be used to impose a sanction or corrective action for a violation of sec. 116 of WIOA. This section generally implements sec. 184 of WIOA and retains the same requirements found at 20 CFR 667.700. The Department seeks comments on appropriate sanctions and corrective actions in a variety of circumstances.

Section 683.710 Who is responsible for funds provided under title I and Wagner-Peyser?

This proposed section identifies the recipient as the responsible party for title I and Wagner-Peyser funds. For local areas receiving funds, this section explains how to identify the responsible party. Where a planning region includes two separate units of local government, the CEO of each unit of local government would be the responsible party. The general rule of recipient responsibility arises from the Uniform Guidance, while the rules pertaining to local areas come from WIOA sec. 184.

Section 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

This proposed section requires the Governor to take corrective action and impose sanctions on a local area if it fails to comply with the requirements described in the section. This section also describes the local area's appeal rights and actions the Secretary may take if the Governor fails to monitor and certify local areas' compliance or promptly take corrective action to bring the local area into compliance. The requirements in this section are taken from WIOA sec. 184.

Section 683.730 When can the Secretary waive the imposition of sanctions?

This proposed section permits a recipient to request a waiver of liability, and describes the factors the Grant Officer will consider when determining whether to grant the request. This provision implements sec. 184(d) of WIOA and retains the same requirements found at 20 CFR 667.720.

Section 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?

This proposed section describes the procedures which a recipient must use to request advance approval of corrective action from the Department. It describes the factors the Grant Officer will consider and when advance approval may be appropriate. This provision implements sec. 184(d) of WIOA and retains the same requirements found at 20 CFR 667.730.

Section 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

This proposed section outlines the steps that must be taken in order for the Department to consider and allow an offset or deduction of a debt, including the offset rules for direct recipients and the rule for a State making a deduction from a subrecipient's PY allocation. This section implements the requirements of WIOA sec. 184(c)(2).

9. Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judges (OALJ), and the rules of procedure and timing of decisions for OALJ hearings as well as the process for judicial review by a United States Circuit Court of Appeals. This subpart is similar to that currently in effect under WIA because the WIOA statute itself had only minor changes to the requirements in this subpart.

Section 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

This proposed section outlines the actions that can be appealed through an Administrative Law Judge (ALJ) under WIOA sec. 186(a), including a determination to not award financial assistance or a corrective action or sanction against a recipient or subrecipient. This section describes the appeal deadlines and the contents that an applicant is required to include in its appeal request. Paragraph (e) states that these procedures also apply when parties fail to reach resolution through the process described in § 683.840.

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

This proposed section adopts the rules of procedure for hearings conducted before the OALJ found at 29 CFR part 18, with some clarifications. This section also describes the Secretary's subpoena authority under WIOA. Finally, this section sets forth the burdens of production and persuasion in hearings conducted under this subpart. Per paragraph (c), the grant officer has the initial burden of production, which is satisfied by the submission of an administrative file. After the grant officer submits the administrative file, the party seeking to overturn the Grant Officer's determination has the burden of persuasion. This section retains the same requirements found at 20 CFR 667.810.

Section 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

This section, which applies to all discretionary grants issued under subpart D of title I of WIOA, specifies the remedies that an ALJ may award. Paragraph (a) applies to cases other than grant selection cases and is unchanged from the WIA regulation.

Paragraph (b) specifies the remedies for grant selection cases, and is largely drawn from the Senior Community Service Employment Program remedies provision found at 20 CFR 641.470. This section gives the Grant Officer discretion to ensure that project beneficiaries (*i.e.,* an entity awarded financial assistance) will not be unduly negatively impacted by the implementation of remedies resulting from a grant selection appeal.

Proposed paragraphs (b)(1) and (2) state that upon receipt of an ALJ finding the application review process must be corrected or that an appealing entity should have been awarded funding, the Grant Officer will be required to take certain steps to determine whether the funding must be awarded to that entity. In determining whether the funds will be awarded to the appealing entity, the Grant Officer must take into account whether such a move would be in the interest of project beneficiaries and whether it would cause undue disruption to the participants and the program. In the event the Grant Officer determines that the appealing entity will not receive the funds, entities without an approved Negotiated Indirect Cost Rate Agreement (NICRA) will receive reasonable application preparation costs (under 2 CFR 200.460, for entities with an approved NICRA, application preparation costs may be included in their indirect cost pool and therefore are recouped from their indirect costs to other Federal grant awards). In the event that the Grant Officer determines that the appealing entity will receive the funds, that entity will only receive funds that have not yet been obligated by the current grantee.

Finally, the Grant Officer will provide notification to the current grantee within 10 days of its decision, and that the current grantee may appeal the Grant Officer's determination using the appeal procedures described in 20 CFR 683.800.

Section 683.830 When will the Administrative Law Judge issue a decision?

This section describes the timeframe in which an ALJ must make a decision to avoid any unnecessary delays. It also describes the parties' appeal rights, as stated in WIOA sec. 186(b).

Section 683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?

This section describes the available alternative an entity may use to seek resolution other than a hearing process. The outcome of this process is considered the equivalent of the final decision of an ALJ. The purpose of this provision is to offer entities a less formal, less burdensome, and more interactive appeal process.

Section 683.850 Is there judicial review of a final order of the Secretary issued under the Workforce Innovation and Opportunity Act?

This section outlines the steps a party to a final order must take to obtain judicial review in a United States Circuit Court of Appeals of any decision made by the Secretary under WIOA sec. 184 or 186, as well as the deadlines for seeking review. This provision summarizes the requirements of WIOA sec. 187.

*H. Part 684—Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act*

1. Introduction

Because sec. 166 of WIOA retains many of the requirements of sec. 166 of WIA, the Department has drawn on the WIA regulations, found at 20 CFR part 668, in drafting the regulations for sec. 166 of WIOA. Consequently, many of the sections in this part retain the requirements found in their parallel sections of the WIA regulations. This preamble details the Department's reasons for changing any of the previous requirements under the WIA regulations on a paragraph by paragraph basis. However, some changes to the requirements under the WIA regulations affect so many paragraphs that they are noted in the introduction to the preamble instead of noting them every time that they occur.

First, proposed part 684 seeks to streamline the competitive process for awarding the Indian and Native American (INA) program grants. Section 166 of WIOA is unusual in that it requires both that grants be awarded through a competitive process and that grantees submit a 4-year plan (WIOA secs. 166(c) and 166(e)). Under the WIA regulations, the competition was separate from the plan. These WIOA regulations propose to streamline the grant award process to ease the administrative redundancy inherent in the WIA regulations. The Department will no longer designate grantees or require a notice of intent. Moreover, the proposed WIOA regulations have incorporated the 4-year plan into the competitive grant award process. The Department anticipates that these changes will help streamline the process for awarding grants. These proposed changes should result in less of an administrative burden on both applicants and the Department.

Additionally, although WIA had a 2-year grant cycle for grantees under sec. 166, WIOA has established a 4-year grant cycle (WIOA secs. 166(c) and 166(e)). Consequently, all references to the grant cycle or plan in the proposed WIOA regulations refer to a 4-year cycle or 4-year plan.

Finally, to ensure that the terms used to discuss the populations and entities that will be served, as described in sec. 166(d) of WIOA, are consistent throughout the proposed regulation, the Department proposes to define the term ''INA'' to mean American Indian, Native American, Alaska Native, and Native Hawaiian in proposed § 684.130. This term provides an efficient way to ensure inclusivity and consistency in this part.

2. Subpart A—Purposes and Policies

Section 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

Proposed § 684.100 describes the purpose of WIOA for the INA programs authorized by WIOA sec. 166.

Proposed § 684.100(a) retains the same requirements found in the WIA regulations at 20 CFR 684.100(a) except that § 684.100(a)(2) includes entrepreneurial skills as part of the purpose of the program in order to implement and carry out the entrepreneurial skills requirement in sec. 166(a)(1)(B) of WIOA.

Proposed § 684.100(b) describes the principle means of accomplishing the purpose described in § 684.100. Because the Department has determined that no substantial changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.100(b) with the exception that it references the principles of the Indian Self-Determination and Education Assistance Act (ISDEAA). This reference to the principles of the ISDEAA directly aligns with sec. 166(a)(2) of WIOA.

Section 684.110 How must Indian and Native American programs be administered?

Proposed § 684.110(a) describes how the Department will administer the INA program. Because no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements as the WIA regulations at 20 CFR 668.120.

Proposed § 684.110(b) states that the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act (ISDEAA), at 25 U.S.C. 450a, as well as the Department of Labor's American Indian and Alaska Native policies in administering these programs. These policies include DOL's ''American Indian and Alaska Native Policy,'' dated July 29, 1998 and the ''Tribal Consultation Policy'' published in the **Federal Register** on December 4, 2012 (77 FR 71833). This is consistent with WIOA because WIOA sec. 166(a)(2) incorporates the principles of the ISDEAA and the other two policies are important works of guidance on consultation and coordination with INA parties.

Proposed § 684.110(c) and (d) describe the trust responsibilities of the Federal government and the designation of the Division of Indian and Native American Programs (DINAP) within ETA. Because the Department has determined that no changes were necessary to these regulations to implement WIOA, these proposed regulations retain the same requirements at 20 CFR 668.120(c) and (d).

Proposed § 668.120(e) describes the establishment of administrative procedures of the INA programs. 20 CFR 668.120(e) required that the Department utilize staff with a particular competence in this field for administration of the program. Although the Department is still committed to the utilization of competent staff, the proposed regulation does not retain this requirement as this language was not included in WIOA. The rest of the proposed regulation retains the same requirements at 20 CFR 668.120(e) because the Department has determined that no changes were necessary to implement WIOA.

Section 684.120 What obligation does the Department have to consult with the Indian and Native American grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

Proposed § 684.120 describes the obligation the Department has in consulting with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 668.130, except that it adds new language referencing the Department's tribal consultation policy, which was published in the **Federal Register** on December 4, 2012, and Executive Order (E.O.) 13175 of November 6, 2000, which requires Federal agencies to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes. Section 166(i)(2) of WIOA states that the Secretary must consult with Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations in establishing regulations to carry out WIOA sec. 166 and develop a funding distribution plan for the INA program. In addition, sec. 166(i)(4)(A) of WIOA states that the Secretary must establish a Native American Employment and Training Council to facilitate consultation and provide advice on the operation and administration of the WIOA INA programs, including the selection of the individual appointed as the head of DINAP. While it is not specified in WIOA, by referencing the tribal consultation policy in this proposed section, the Department proposes that the consultation requirements referenced in WIOA must be coordinated with the Department's tribal consultation policy published in the **Federal Register** on December 4, 2012 and E.O. 13175 of November 6, 2000. However, the Department notes that although these consultation policies must be coordinated, they are also separate. The Native American Employment and Training Council represents all of the INA grantee community but it does not necessarily serve as the primary vehicle through which the Federal government fulfills its obligation to consult with tribes.

Section 684.130 What definitions apply to terms used in the regulations in this part?

Proposed § 684.130 provides definitions to terms used in proposed part 684 that have not been defined in secs. 3 or 166 of WIOA or § 675.300 of these proposed regulations. Because the Department has determined that no changes were necessary to the definitions used in 20 CFR 668.150, we have retained those definitions as included in the WIA regulations without change. These include the definitions for the terms ''DINAP,'' ''Governing body,'' ''Grant Officer,'' and ''Underemployed.'' The Department has not retained the term ''NEW'' because it is not used in this proposed subpart. However, to provide additional clarity in these proposed regulations, the Department has included definitions for nine additional terms.

*Alaska Native-Controlled Organization*—This definition clarifies that an entity applying for WIOA sec. 166 funds as an Alaska Native-Controlled Organization must have a governing board in which 51 percent of the members are Alaska Natives, to ensure that entities that receive WIOA sec. 166 funds as an Alaska Native-Controlled Organization are comprised of representatives from the communities they serve.

*Carry-In*—The Department is providing a definition of carry-in to clarify our process at § 684.254(d) for reallocating funds unspent at the end of a PY. This definition is consistent with current practice and the process for reallocating funds is explained in more detail in the preamble for § 684.270(d).

*High-Poverty Area*—A definition of ''high-poverty area'' has been included to reflect the inclusion of the phrase in WIOA. Section 129(a)(2) of WIOA provides a special rule for the youth program that includes the term ''high-poverty area'' but does not define that term. This proposed part references sec. 129 of WIOA in implementing the youth INA program. Therefore the Department proposes to provide a definition for high-poverty area in these regulations. The Department has chosen to employ the American Community Survey 5-Year Data because it is the only source data that uniformly collects the income level of individuals across all geographic service areas in the United States.

*Incumbent Grantee*—This term is used in several places in the regulations including the regulations that define which entities are eligible to apply for a WIOA sec. 166 grant. Therefore the Department is providing a definition to

make clear which entities are considered incumbent grantees as referred to in the regulations.

*INA*—Throughout proposed part 684, the Department refers to American Indians, Native Americans, Alaska Natives, and Native Hawaiians. To ensure consistency and inclusiveness the Department decided to use a single term, INA, when referencing all four groups.

*Indian-Controlled Organization*—This definition clarifies the qualifications for an organization to be an Indian-Controlled Organization and is intended to ensure that entities that receive WIOA sec. 166 funds as Indian-controlled entities are comprised of representatives from the communities they serve.

*Native Hawaiian-Controlled Organization*—This definition clarifies that an entity applying for WIOA sec. 166 funds as a Native Hawaiian-controlled organization must have a governing board in which 51 percent of the members are Native Hawaiians. The purpose is to ensure that entities that receive WIOA sec. 166 funds as a Native Hawaiian entity are comprised of representatives from the communities they serve.

*Total Funds Available*—This term is used in the definition of carry-in. The Department is providing a definition to clarify what is meant by total funds available as it affects the amount of carry-in a grantee may have and whether such carry-in is considered excessive. Available funds do not include carry-in funds. This definition is consistent with current practice and the process for reallocating funds is explained in more detail in the preamble for § 684.270(d).

3. Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Section 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

Proposed § 684.200(a)(1) establishes the eligibility requirements to apply for a WIOA sec. 166 grant. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at the WIA regulations at 20 CFR 668.200(a)(1), except that we have required that all members of a consortium must be one of the listed entities to insure the input, authority, and autonomy of the INA entities listed in sec. 166(c) of WIOA. To be eligible, entities must also meet the requirements of § 684.200(c); § 684.200(a) just provides further detail about the legal shape eligible entities might take. For example, the application for a tribe might be submitted by the tribal government. Additionally, a non-profit might be an Indian-controlled organization.

Proposed § 684.200(a)(2) describes a $100,000 minimum funding award amount that is required in order to receive a WIOA sec. 166 grant. There is an exception for INA grantees participating in the demonstration program under Public Law 102–477; under this exception, if all resources to be consolidated under Public Law 102–477 total $100,000, only $20,000 must be derived from sec. 166 funds. Under proposed § 684.200(a)(2), there is no exception to the requirement that at least $20,000 of all resources to be consolidated under Public Law 102–477 must be derived from WIOA sec. 166 funds. Awards for less than $20,000 do not provide sufficient funds to effectively operate an employment and training grant. Therefore, under WIOA, all sec. 166 funding awards must be equal to or greater than $20,000 in order to apply for a grant under Public Law 102–477 except for incumbent Public Law 102–477 grantees that are receiving WIA funding as of the date of implementation of WIOA. These grantees will be grandfathered into the program because the advantage of requiring these grantees to meet the $20,000 minimum does not outweigh the advantages of allowing these grantees to continue with programs that have already been approved.

Proposed § 668.200(b) describes the types of entities that may make up a consortium. The proposed section requires that each member of a consortium meets the requirements. To ensure that all INA grantees sufficiently represent the interests of the INA community, the Department has decided to require that every member of a consortium must meet the requirements at proposed § 668.200(a).

Proposed § 684.200(b)(1) through (3) describe the requirements for entities to apply for WIOA sec. 166 funds as a consortium. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.200(b)(1) through (3).

Proposed § 684.200(c) describes the entities that are potentially eligible to receive WIOA sec. 166 funds. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.200(c).

Proposed § 684.200(d) explains that State-recognized tribal organizations will be considered to be ''Indian-controlled'' organizations for WIOA sec. 166 purposes, assuming they meet the definition of an Indian-controlled organization as defined at § 684.130. The proposed section also states that State-recognized tribes that do not meet this definition but are grantees under WIA will be grandfathered into WIOA as Indian-controlled organizations. State-recognized tribal organizations that meet the definition of an Indian-controlled organization can apply for a WIOA sec. 166 grant because they otherwise meet the eligibility requirements for an Indian-controlled organization, which ensures that they are comprised of representatives of the community they serve. State-recognized tribes that are grantees under WIA may be grandfathered in because allowing grantees that have successfully provided services to continue providing those services is consistent with the objectives of WIOA sec. 166.

Section 684.210 What priority for awarding grants is given to eligible organizations?

Proposed § 684.210(a) states that Federally-recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have the highest priority to receive grants for those geographic service areas in which the Indian Tribe, Alaska Native entity, or a consortium of such entities has legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA) or Alaska Native Village Service Area (ANVSA). The Department recognizes that Federally-recognized tribes are sovereign governments that often have reservation areas over which they have legal jurisdiction. Accordingly, consistent with current practice, it is the Department's position that when a tribe has legal jurisdiction over a geographic service area such as an Indian reservation or OTSA, the Department will award sec. 166 grants to serve such areas to that tribe if it meets the requirements for receiving a grant.

Proposed § 684.210(b) states that if the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area—for example if a Federally-recognized tribe is not eligible to apply for a WIOA grant or does not have the ability to administer Federal funds—the Department will consult with that tribe or Alaska Native entity before selecting an entity to serve the tribe's legal jurisdictional area. As described in the preamble to § 684.120,

consultation with tribes and Alaska Native entities about the service areas over which they have legal jurisdiction is integral to the principles of Indian self-determination. However, to ensure that the INA individuals residing in this service area receive services, § 684.210(b) does not require prior approval of the entity with legal jurisdiction.

Proposed § 684.210(c) clarifies that the priority described in paragraphs (a) and (b) does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity. The Department does not believe that the same priority is warranted outside the legal jurisdiction of Indian tribes and Alaska Native entities.

Section 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

Proposed § 684.220(a) describes when the competitive grant application process takes place. The process described aligns this proposed section with the requirements at secs. 166(c) and (e) of WIOA and with the streamlining of the application process, which is discussed in further detail in the introduction to this proposed part.

Proposed § 684.220(b) provides clarification on which applicants are required to submit a 4-year plan, as described at proposed § 684.710. The Department has decided to exclude entities that have been granted approval to transfer their WIOA funds pursuant to Public Law 102–477 from this requirement because the intent of Public Law 102–477 is to allow Federally-recognized tribes and Alaska Native entities to combine formula-funded Federal grant funds, which are employment and training-related, into a single plan with a single budget and a single reporting system.

Section 684.230 What appeal rights are available to entities that are denied a grant award?

Proposed § 684.230 describes the appeal rights for entities that are denied a grant award in whole or in part. There is no appeal process specifically for sec. 166 grants; however, the Department proposes to follow the appeal process described at proposed §§ 683.800 and 683.840, which allow entities that are denied a grant award an opportunity to appeal the denial to the Office of the Administrative Law Judges. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.270.

Section 684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

Proposed § 684.240 describes other ways in which an entity may be granted an award under this proposed subpart if areas would otherwise go unserved.

Section 684.250 Can an Indian and Native American grantee's grant award be terminated?

Proposed § 684.250(a) states that a grant award can be terminated for cause, or due to emergency circumstances under the Secretary's authority at sec. 184(e) of WIOA. This proposed section retains substantively the same requirements found in the WIA regulations at 20 CFR 668.290(a). The Department notes that if a grant is terminated under sec. 184(e) of WIOA, the grantee must be given prompt notice and opportunity for a hearing within 30 days after the termination.

Proposed § 684.250(b) describes the circumstances under which an award may be terminated for cause. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.290(b).

Section 684.260 Does the Department have to award a grant for every part of the country?

Proposed § 684.260 states that the Department is not required to provide grant funds to every part of the country. This proposed section retains similar requirements in the WIA regulations at 20 CFR 668.294, with the exception that the Department clarified that funds not allocated to a service area will be distributed to existing INA grantees consistent with current practice.

Section 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

Proposed § 684. 270(a) through (c) describe how funds will be allocated to INA grantees. Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.296.

Proposed § 684. 270(d) states that the Department may reallocate funds under certain circumstances. This language clarifies that excess carry-in will result in the funding formula being adjusted in future years to reflect the excess. Additionally, there is no exception for carry-in amounts in excess of 20 percent because these funds must be fully expended.

Proposed § 684.270(e) describes the funding resources the Department may draw on for TAT purposes. The proposed paragraph clarifies that the 1 percent of funding reserved under this section is not the only source funding for providing TAT for the INA program grantees. This language is consistent with current practice and is intended to make clear that INA program grantees may also access resources available to other Department programs as needed.

4. Subpart C—Services to Customers

Section 684.300 Who is eligible to receive services under the Indian and Native American program?

Proposed § 684.300(a) describes who is eligible to receive services under an INA program. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.300(a), with the exception that the language in § 684.300(a)(2) references the definition of Alaska Native in sec. 166(b)(1) of WIOA.

Proposed paragraph (a)(1) leaves the definition of ''Indian'' to the tribes and local American Indian organizations that receive grant funds to determine, since WIOA does not define who is eligible to receive services under sec. 166, and there are different opinions on who is considered an Indian when determining eligibility for employment and training services. For instance some grantees consider members of State-recognized tribes as eligible individuals while other grantees do not. Therefore, the Department has left the decision of defining who is an Indian to tribes and organizations at the local level. However, the Department requires that a grantee's definition must at least include anyone who is a member of a Federally-recognized tribe.

Proposed § 684.300(b) and (c) describe additional eligibility requirements for participants to receive services from the INA program. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements in the WIA regulations found at 20 CFR 668.300(b).

Section 684.310 What are Indian and Native American program grantee allowable activities?

Proposed § 684.310(a) describes what types of opportunities INA program grantees must attempt to develop and provide. This section incorporates the

broad objectives referenced in sec. 194(1) of WIOA.

Proposed § 684.310(b) further defines the employment and training services that are allowable under sec. 166 of WIOA. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.340(a).

Proposed § 684.310(c) references a non-exhaustive list of career services listed in WIOA. This language reflects WIOA's unified approach to the provision of services.

Proposed § 684.310(d) defines follow-up services. The Department chose to define follow-up services as including counseling and supportive services for up to 12 months after the date of exit for consistency with current practice. Unlike the follow-up services available under sec. 134 of WIOA, the follow-up services available under § 684.310 are available for up to 12 months because of the limited employment opportunities available to participants in the sec. 166 program.

Proposed § 684.310(e) references the non-exhaustive list of training services available at WIOA sec. 134(c)(3). The Department has referenced sec. 134(c)(3) because this section includes good examples of services that are allowable activities for INA program grantees.

Proposed § 684.310(f) lists examples of allowable activities specifically designed for youth. The Department references the program requirements for the WIOA youth program because these activities serve as good examples of allowable activities for INA programs targeting INA youth.

Proposed § 684.310(g) provides examples of allowable activities for job development and employment outreach. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found in the WIA regulations at 20 CFR 668.340(f).

Proposed § 684.310(h) describes whether services can be overlapping and/or sequential. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.340(g).

Proposed § 684.310(i) states that services may be provided to a participant in any sequence based on the particular needs of the participant. This clarification is consistent with the description of career services in proposed § 678.425(b), which states that services are provided to individuals based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. Section 134(c)(3)(A)(iii) of WIOA similarly clarifies that an individual is not required to receive career services prior to receiving training services.

Section 684.320 Are there any restrictions on allowable activities?

Proposed § 684.320(a) and (b) describe geographical restrictions on training activities and restrictions on OJT services. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.350(a) and (b).

Proposed § 684.320(c) prohibits OJT where an employer has exhibited a pattern of certain conduct. Because the Department has determined that no substantial changes were necessary to these section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.350(c). However, to align § 684.320(c) with the language found at sec. 194(4) of WIOA, the phrase ''including health benefits'' has been included in § 684.320(c)(1), and § 684.320(c)(2) targets patterns of violation instead of single violations.

Proposed § 684.320(d) through (g) describe restrictions on the use of INA grant funds. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.350(d) through (g), with citations and references updated to be consistent with WIOA.

Section 684.330 What is the role of Indian and Native American grantees in the one-stop system?

Proposed § 684.330(a) describes the required collaboration between INA grantees and the one-stop system. The Department recognizes that there are areas in the U.S. where the Native American population is so sparse that it is not practical for WIOA grantees to be actively involved in the local one-stop system. Accordingly, WIOA only requires grantees to be involved in those local workforce investment areas where an INA grantee conducts field operations or provides substantial services. In these areas, the INA grantee must execute an MOU with the Local Board or, at a minimum, be able to demonstrate that it has made a good faith effort to enter into such agreement. Regardless of how sparse the Native American community is in an area, and regardless of an executed MOU, it is expected that, at a minimum, both the INA grantee and the local one-stop operator are familiar with each other's services and that information is available at each other's location, and referrals, coordination, and co-enrollment are encouraged. INA grantees will be required to provide details of their relationship with the local one-stop operators as part of the 4-year plan.

Proposed § 684.330(b) describes the minimum provisions necessary in an MOU between the INA grantee and a local one-stop delivery system. Proposed paragraph (b) lists information required under WIOA sec. 121(c) and includes additional requirements that implement current policy.

Proposed § 684.330(c) describes when an INA grantee is required to describe its efforts to negotiate a MOU. This information is necessary for determining why the INA grantee has not been able to negotiate an MOU and for alerting the Department about what steps might be taken to facilitate the negotiation of an MOU.

Proposed § 684.330(d) describes the application of the one-stop infrastructure in the context of INA programs. Proposed paragraph (d) implements the statutory requirements found at WIOA sec. 121(h)(2)(D)(iv).

Section 684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

Proposed § 684.340(a) through (e) describe the policies that govern payments to participants. Because the Department has determined that no changes are necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.370.

Section 684.350 What will the Department do to strengthen the capacity of Indnian and Native American grantees to deliver effective services?

Proposed § 684.350 describes what the Department will do to strengthen the capacity of INA program grantees to deliver effective services. This proposed section retains the same commitment to provide necessary technical assistance and training to INA program grantees as found in the WIA regulations at 20 CFR 668.380.

5. Subpart D—Supplemental Youth Services

Section 684.400 What is the purpose of the supplemental youth services program?

Proposed § 684.400 describes the purpose of the supplemental youth services program.

Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements found at 20 CFR 668.400.

Section 684.410 What entities are eligible to receive supplemental youth services funding?

Proposed § 684.410 describes the entities that are eligible to receive supplemental youth services funding. The amount of funding reserved for the supplemental program makes it impractical to fund all service areas in the United States. Therefore the Department proposes to limit funding awards to eligible entities that serve low-income youth residing on or near their respective reservations, OTSAs or ANVSAs or other legal jurisdictional areas, or to eligible organizations that are providing services on behalf of entities with legal jurisdiction.

Section 684.420 What are the planning requirements for receiving supplemental youth services funding?

Proposed § 684.420 describes the planning requirements for receiving supplemental youth services funding. Because youth funding is considered a supplement to the adult funding, the Department envisions that the strategy for youth will not be extensive. This proposed section also aligns the planning requirements for the youth supplemental services with the streamlined application process, which is described in more detail in the introduction to this part.

Finally, the Department also recognizes that awareness of one's culture and history is important to having a healthy self-identity and self-esteem. Therefore, the Department supports youth activities that teach INA to incorporate culture and traditional values since it is not fully explored in the public school system and because it plays a role in transitioning INA youth to become successful adults.

Section 684.430 What individuals are eligible to receive supplemental youth services?

Proposed § 684.430(a)(1) through (3) provide the eligibility requirements for individuals to receive supplemental youth services. Individuals must be low-income, except that 5 percent of individuals enrolled in a grantee's youth program during a PY need not meet the definition of low-income. Individuals included under this 5 percent exception do not need to meet any requirements other than those listed under proposed § 684.430(a)(1) and (2) because the Department recognizes that the funding amounts for the majority of INA program grantees are so small (and therefore the number of youth served are also so small) that the number of youth served under the 5 percent exception is numerically insignificant and that the effort and cost of collecting information on the additional barriers is not justified. Furthermore, the poverty level on or near Indian reservations (which are the areas to be served with youth funds) is so high that the vast majority of youth served under WIA met the low-income requirement and those that do not are only slightly over the poverty level.

Additionally, the INA youth program differs significantly from the State youth formula program in that it does not distinguish between ''in-school'' youth and ''out-of-school'' youth and there are no percentage requirements for ISY and OSY as required by the State youth formula program. The Department recognizes that given the small funding amount for the INA youth program, most INA grantees are primarily limited to operating summer employment programs for ISY. However, the Department encourages the few grantees that receive significant amounts of youth funding to provide year-round youth programs and incorporate educational and training components in their youth program.

Proposed § 684.430(b) provides additional information about the definition of ''low-income.'' This proposed section helps implement and carry out the definition of low-income provided in WIOA sec. 129(a)(2).

Section 684.440 How is funding for supplemental youth services determined?

Proposed § 684.440(a) specifies how funding will be allocated. Because the Department has determined that WIOA did not require any substantive changes to 20 CFR 668.440(a), we have retained the same essential requirements. Although this proposed section specifies that the Department will allocate youth funding based on the number of youth in poverty, the inclusion of the term ''in poverty'' merely implements current practices and does not change our requirements.

Proposed § 684.440(b) through (e) describe what data the Department will use in calculating the youth funding allocation, how the hold harmless factor described in § 684.270(c) will apply, how the reallocation provisions apply, and how supplemental youth services funds not allotted may be used. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retains the same requirements found at 20 CFR 668.350(b) through (e).

Section 684.450 How will supplemental youth services be provided?

Proposed § 684.450(a) through (c) describe how supplemental youth services will be provided. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements found at 20 CFR 668.450(a) through (c).

Section 684.460 What performance measures are applicable to the supplemental youth services program?

Proposed § 684.460(a) describes the performance measures and standards applicable to the supplemental youth services program. These measures and standards of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. Section 166(e)(5) of WIOA specifies that performance indicators for the Native American program ''shall'' include the primary indicators of performance described in WIOA sec. 116(b)(2)(A). Consequently, the Department has listed the youth performance indicators at WIOA sec. 116(b)(2)(A)(ii) to implement and carry out statutory requirements.

The Department acknowledges that some of the performance indicators for youth programs are targeted to capture data related to participants who are either in their senior year of high school or are no longer a high school student (§ 684.460(a)(1) and (2)). Because of limited funding, many of the INA youth programs are summer employment programs serving younger high school students, these performance indicators might not accurately capture the success of such programs.

Proposed § 684.460(b) describes the Secretary's role in the creation of additional performance measures to the ones listed in § 684.460(a). Section

684.460 implements the statutory language in WIOA sec. 166(h)(2).

6. Subpart E—Services to Communities

Section 684.500 What services may Indian and Native American program grantees provide to or for employers?

Proposed § 684.500(a) and (b) describe other services that INA program grantees may provide to or for employers under sec. 166. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements as 20 CFR 668.500.

Section 684.510 What services may Indian and Native American program grantees provide to the community at large?

Proposed § 684.510(a) and (b) describe services that INA program grantees may provide to INA communities. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.510(a) and (b).

Section 684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?

Proposed § 684.520 discusses the requirement to give preference to Indian/Native American entities in the selection of contractors or service providers. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.520.

Section 684.530 What rules govern the issuance of contracts and/or subgrants?

Proposed § 684.530 describes the rules that govern the issuance of contracts and/or subgrants. In general, INA program grantees must follow the uniform administrative requirements, cost principles, and audit requirements for Federal awards at 2 CFR part 200 subpart E published in the **Federal Register** on December 26, 2013, except that these rules do not apply to OJT contract awards. This section essentially retains the same language as provided under WIA at 20 CFR 668.530, except that the references to OMB Circulars A–102, A–110 have been replaced with references to 2 CFR part 200 subpart E.

7. Subpart F—Accountability for Services and Expenditures

Section 684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of INA funds?

Proposed § 684.600(a) and (b) describe who INA program grantees are accountable to for the provision of services and the expenditure of INA funds. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements as 20 CFR 668.600.

Section 684.610 How is this accountability documented and fulfilled?

Proposed § 684.610(a) and (b) require INA program grantees to establish internal policies and procedures to ensure accountability to its governing body and describe how accountability to the Department is accomplished. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.610(a) and (b).

Proposed § 684.610(c) describes how accountability to the Department is documented and fulfilled. The Department proposes to require compliance with the reporting items listed in § 684.610(c) because these are the best ways to ensure accountability and they comply with our current practices.

Section 684.620 What performance measures are in place for the Indian and Native American program?

Proposed § 684.620(a) describes the performance measures that are required under WIOA for the INA program. These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. Section 166(e)(5) of WIOA specifies that performance indicators for the Native American program ''shall'' include the primary indicators of performance described in WIOA sec. 116(b)(2)(A). Proposed § 684.620(a) lists the applicable performance indicators described in WIOA sec. 116(b)(2)(A), thus implementing and carrying out the statutory requirements of sec. 166(e)(5) of WIOA.

Proposed § 684.620(b) describes the Secretary's role in the creation of additional performance measures to the ones listed in § 684.620(a). Section 684.620 implements the statutory language in WIOA sec. 166(h)(2).

Section 684.630 What are the requirements for preventing fraud and abuse?

Proposed § 684.630(a) requires INA program grantees to establish fiscal control and fund accounting procedures. This section implements the language in WIOA sec. 184 to the INA program.

Proposed § 684.630(b) and (c) include requirements related to conflicts of interest gifts. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.630(b) and (c).

Proposed § 684.630(d) describes certain restrictions on selecting family members as participants. Because the Department has determined that no substantial changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.610(d), except that it clarifies our current practice of counting all INA individuals in a community to determine if the exception is met.

Proposed § 684.630(e) through (h) describe kickback, political activities, lobbying, and embezzlement restrictions that apply to this section. Because the Department has determined that no substantial changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.630(e) through (h) with changes to update citations.

Proposed § 684.630(i) prohibits discriminatory practices by recipients of WIOA funds. This section clarifies for the benefit of potential applicants the effect of WIOA sec. 188 on the INA programs. The language in this section also addresses a long-standing misconception among INA grantees that individuals outside of a grantee's geographic service area cannot be served without the consent of the grantee whose service area the individual resides. The Department recognizes that INA program grantees receive funding based on specified geographic boundaries such as a county, reservation, Alaska Native village etc., and therefore we agree that grantees are not required to serve individuals outside their geographic areas since another grantee is receiving funding to serve such individuals. However, this

does not mean that grantees cannot serve individuals outside their specified boundaries if they choose to do so.

Section 684.640 What grievance systems must an Indian and Native American program grantee provide?

Proposed § 684.640 requires INA program grantees establish grievance procedure. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.640.

Section 684.650 Can Indian and Native American program grantees exclude segments of the eligible population?

Proposed § 684.650(a) and (b) inform INA program grantees whether they can exclude segments of the eligible population. Because the Department has determined that no changes were necessary to these sections to implement WIOA, this proposed sections retain the same requirements at 20 CFR 668.650.

8. Subpart G—Section 166 Planning/Funding Process

Section 684.700 What is the process for submitting a 4-year plan?

Proposed § 684.700 describes the process for submitting a 4-year plan, as required by sec. 166(e) of WIOA. Specific requirements for the submission of a 4-year plan will be provided in a Funding Opportunity Announcement (FOA). This section facilitates the streamlining of the application process as is described in detail in the introduction of this part.

Section 684.710 What information must be included in the 4-year plans as part of the competitive application?

Proposed § 684.710 describes the information that must be included in the 4-year plan. The Department intends to seek economic and workforce responsive 4-year plans under WIOA. Under WIOA, the Department proposes that a plan contains only the four information requirements set out in WIOA sec. 166(e), which will leave the Department flexibility to ask for different kinds of information in a request for additional information during the FOA process. The Department recognizes that the workforce system must be able to change and adapt to the changes required by employers who are, in turn, changing and adapting to forces in the economy and advancements in technology which require different skill sets for American workers. This new approach to planning will provide the flexibility necessary to address the current workforce needs at the time plans are written.

Proposed § 684.710(a) describes the information that must be included in the 4-year plan, required by WIOA secs. 166(e)(2) through (5).

Proposed § 684.710(b) states that the 4-year plan must include a projection of participants to be served and expenditures during a PY and any additional information requested in a FOA. Again, this section has been added under WIOA to convey that additional information will be required in the 4-year plan, as determined by current labor market trends and skills requirements, and what information must be in plans will be requested in a FOA as part of the competitive process.

Proposed § 684.710(c) requires INA program grantees receiving supplemental youth funds to provide additional information in the 4-year plan that describes a strategy for serving low-income, INA youth. The Department supports youth activities that preserve Native American culture and values. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.720(b), with the exception that it is framed to reflect the streamlined application process described in more detail in the introduction to this part.

Section 684.720 When must the 4-year plan be submitted?

Proposed § 684.720 describes when the 4-year plan must be submitted. The due date for the submission of the 4-year plan will be specified in the FOA. This approach implements and carries out the requirements of WIOA secs. 166(c) and 166(e) in the context of the streamlined application process that is described in more detail in the introduction to this part. The Department envisions that the first 4-year plan will be for PY 2016–2020 which will cover the period from July 1, 2016 through June 30, 2020.

Section 684.730 How will the Department review and approve such plans?

Proposed § 684.730 describes how the Department will review and approve 4-year plans. The Department will make every effort to approve plans that are fully complete prior to the beginning of the first PY of the 4-year plan and funds will be obligated to grantees for that year through a grant award. After the first year of a 4 -year plan, funds will automatically be added each year for the following 3 years through a grant modification, assuming the grantee continues to be in good standing with the Department.

Incomplete plans that do not fully meet the requirements provided in the FOA will not be approved. It is possible for entities to be selected through the competitive process and also have an incomplete plan. Therefore, after competitive grant selections have been made, the DINAP office may assist INA program grantees with incomplete plans on tasks such as submitting required documents and other unresolved issues that render the 4-year plan incomplete. However, the Department may delay funding to grantees until all issues with the 4-year plan have been resolved.

While it is unlikely that a grantee will fail to submit an acceptable 4-year plan, the Department will reallocate funds from an INA program grantee that fails to submit a 4-year plan to other incumbent INA program grantees that have an approved 4-year plan. The Grant Officer may also delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the required documents—including the 4-year plan—are in place.

Proposed § 684.730(a) states that it is the Department's intent to approve a grantee's 4-year strategic plan before the date on which funds for the program become available. Because the Department has determined that no changes were necessary under WIOA, this section retains the same language as provided under WIA at 20 CFR 668.740(a), save for the addition of language specifically addressing the streamlined, 4-year grant application process as described in more detail in the introduction to this part.

Proposed § 684.730(b) describes the extent to which the DINAP office will assist INA program grantees in resolving any outstanding issues that may exist with the 4-year plan. Again, while the Department expects that it is unlikely that a grantee will fail to submit an acceptable 4-year plan, we need a mechanism to reallocate funds when such an event occurs in order to ensure that funds are spent providing services to eligible program participants.

Proposed § 684.730(c) notes that the Department may approve portions of a plan while disapproving others. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.740(b).

Proposed § 684.730(d) references appeal rights in nonselection cases or in the case of a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's

application or 4-year plan. There are no appeal rights in addition to the ones listed in the cited regulations because the Department has determined that consistency of appeal rights amongst WIOA programs is desirable.

Section 684.740 Under what circumstances can the Department or the Indian and Native American program grantee modify the terms of the grantee's plan(s)?

Proposed § 684.740(a) describes when the Department may unilaterally modify an INA program grantee's plan to add or reduce funds to the grant. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.750(a).

Proposed § 684.740(b) describes when an INA program grantee may request approval to modify their plan to add, expand, delete, or diminish any service allowable under the regulations in this part. Because the Department has determined that no changes were necessary to implement WIOA, the proposed regulation retains the same requirements found in the WIA regulations at 20 CFR 668.750(b). Generally, it is the Department's intent to pursue grant modifications only when there are significant increases or decreases in the grantee's funding that results in significant changes in the employment and training services stated in the 4-year plan or when the grantee wishes to make a significant change in its service strategy. As a general rule, a significant change is when the number of participants to be served in the original plan changes by 25 percent or by 25 actual participants, whichever is larger.

9. Subpart H—Administrative Requirements

Section 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

Proposed § 684.800(a) and (b) describe the systems that must be in place in order for INA grantees to administer a WIOA sec. 166 grant INA program. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.800.

Section 684.810 What types of costs are allowable expenditures under the Indian and Native American program?

Proposed § 684.810 describes where the rules relating to allowable costs under WIOA are located. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.810.

Section 684.820 What rules apply to administrative costs under the Indian and Native American program?

Proposed § 684.820 describes where the definition and treatment of administrative costs can be found. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.820.

Section 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to grants?

Proposed § 684.830 informs INA program grantees about whether the WIOA administrative cost limit for States and local areas applies to INA grants. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.825.

Section 684.840 How should Indian and Native American program grantees classify costs?

Proposed § 684.840 describes how INA program grantees must classify costs. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.830.

Section 684.850 What cost principles apply to Indian and Native American funds?

Proposed § 684.850 requires INA program grantee to follow the cost principles at 2 CFR part 200 subpart E of the Uniform Administrative Requirements published in the **Federal Register** on December 26, 2013. This section retains the same language as provided under WIA at 20 CFR 668.840, except that the references to OMB Circulars A–87, A–122, A–21 have been updated with references to 2 CFR part 200 subpart E, Cost Principles, & Audit Requirements for Federal Awards.

Section 684.860 What audit requirements apply to Indian and Native American grants?

Proposed § 684.860 requires INA program grantee to follow the audit requirements at 2 CFR 200 subpart F of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published in the **Federal Register** on December 26, 2013. This section retains the same language as provided under WIA at 20 CFR 668.850, except that the references to OMB Circular A–133 and 29 CFR part 99 have been updated with references to 2 CFR part 200 subpart E, Cost Principles, & Audit Requirements for Federal Awards.

Additionally, § 684.860(b) implements the language at WIOA sec. 166(j) relating to single audit requirements.

Section 684.870 What is ''program income'' and how is it regulated in the Indian and Native American program?

Proposed § 684.870(a) through (c) provide descriptions of what qualifies as program income for work experience participants and OJT participants. Because the Department has determined that no changes were necessary to these sections to implement WIOA, these proposed sections retain the same requirements at 20 CFR 668.870(a) through (c).

10. Subpart I—Miscellaneous Program Provisions

Section 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

Proposed § 684.900 describes the regulatory and/or statutory waiver authority for the INA program. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.900, except that we have clarified, in accordance with WIOA sec. 166(i)(3), that only requirements related to title I of WIOA may be waived.

Section 684.910 What information is required in a waiver request?

Proposed § 684.910(a) describes what information an INA program grantee must include when it requests a waiver. This section implements the requirements in WIOA sec. 166(i)(3)(B) and saves INA grantees from having to reference additional departmental guidance on how to request a waiver.

Proposed § 684.910(b) states that a waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. The Department envisions that waivers will be requested for unique situations that were not expected in the normal course of operating an INA grant. Therefore, Department proposes that waivers cannot be provided indefinitely and

must be renewed at the beginning of a new 4-year grant cycle.

Section 684.920 What provisions of law or regulations may not be waived?

Proposed § 684.920 describes the laws and regulations that may not be waived. Because the Department has determined that no changes were necessary to this section to implement WIOA, this proposed section retains the same requirements at 20 CFR 668.920.

Section 684.930 May Indian and Native American grantees combine or consolidate their employment and training funds?

Proposed § 684.930 provides a description of when INA program grantees can consolidate their funds under Public Law 102–477 (477). In addition to generally allowing the consolidation of funds as required under Public Law 102–477, § 684.930 describes the extent to which the Department will review 477 plans. The Department will not review the renewal of 477 plans after the initial plan has been approved by DOL, accepted by the Department of the Interior, and all other applicable Departmental programmatic and financial obligations have been met prior to transfer. This policy aligns with the requirements of Public Law 102–477 which allows Federally-recognized tribes and Alaska Native entities to combine formula-funded Federal grant funds, which are employment and training-related, into a single plan with a single budget and a single reporting system. The Department recognizes that when Federal funds from various agencies are combined under one unified plan, there must be one lead agency that administers and manages the unified plan. According to Public Law 102–477 the lead agency is the DOI.

Section 684.940 What is the role of the Native American Employment and Training Council?

Proposed § 684.940 describes the role of the Native American Employment and Training Council. The language in proposed § 684.940 repeats the requirements at WIOA sec. 166(i)(4)(C) and explains that WIOA sec. 166(4) has not made any major changes to the council.

Section 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Proposed § 684.950 address the additional assistance that WIOA provides for unique populations in Alaska and Hawaii. This proposed section implements and carries out the requirements in WIOA sec. 166(k).

*I. Part 685—National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act*

1. Introduction

The purpose of part 685 is to implement WIOA sec. 167, which authorizes MSFW programs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f). MSFW programs include career services and training, housing assistance, youth services, and related assistance. In drafting the proposed regulations for this part the Department seeks to encourage strategic alignment across other workforce development programs such as Wagner-Peyser and WIOA title I adult, dislocated worker, and youth programs; encourage the delivery of training for in-demand occupations; provide comprehensive youth workforce activities; and provide a detailed description of housing services available to eligible MSFWs. As required by WIOA sec. 167(e), when making grants and entering into contracts under this section, the Department will consult with the Governors and Local Boards of the States in which grantees will carry out the activities described in WIOA sec. 167(d) during the FOA process described in § 685.210.

The regulations in this section support strategic alignment across workforce development programs by: Aligning the definition of ''farmwork'' found in this section with that used in the Wagner-Peyser program; adjusting the upper and lower age ranges of eligible MSFW youth to conform to those established in WIOA sec. 129 for OSY and ISY; and requiring that grantees coordinate services, particularly outreach to MSFWs, with the State Workforce Agency (SWA) in their service area and the State's monitor advocate. These changes are intended to support coordination between MSFW programs and other workforce programs such as the Wagner-Peyser program, and facilitate MSFW youth co-enrollments with other WIOA title I programs.

The Department proposes language in § 685.350 regarding training services that reinforces that training must be directly linked to an in-demand industry or occupation that leads to economic self-sufficiency and encourages the attainment of recognized post-secondary credentials when appropriate.

Proposed §§ 685.330 and 685.510 establish that grantees funded under WIOA sec. 167 can serve eligible MSFW youth participants. The Department also has proposed that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing grants, and described specific housing assistance activities in § 685.360, to better articulate the types of services that can be delivered to eligible MSFWs.

2. Subpart A—Purpose and Definitions

This subpart describes the general purpose and definitions relevant to MSFW programs authorized under WIOA sec. 167, the role of the Department in providing technical assistance and training to grantees, and the regulations applicable to grantees.

Section 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under Workforce Innovation and Opportunity Act?

Proposed § 685.100 identifies achieving economic self-sufficiency as the goal of the services and activities that are authorized in WIOA sec. 167 for eligible MSFWs which includes their dependents. This section emphasizes the importance of obtaining, retaining, and stabilizing the unsubsidized employment of MSFWs, including obtaining upgraded agricultural employment, in achieving the goal of the program.

Section 685.110 What definitions apply to this program?

Proposed § 685.110 provides definitions of terms relevant to the implementation and operation of workforce investment activities authorized for MSFWs and their dependents under WIOA sec. 167.

A definition of *allowances* has been provided that means direct payments made to participants to support participation specific career services and training.

*Dependents* of eligible MSFWs may receive services under WIOA secs. 167(i)(2)(B) and 167(i)(3)(B), and the Department has provided a definition of the family member relationships of an eligible MSFW who qualify for MSFW program services.

*Eligibility determination period* is defined as ''any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW.'' The definition was adopted from the first clause of

WIOA sec. 167(i)(3)(A)(i), which defines ''eligible seasonal farmworker.''

The definition of *eligible migrant farmworker* is taken from WIOA sec. 167(i)(2).

The definition of *eligible seasonal farmworker* is taken from WIOA sec. 167(i)(3).

A definition of *eligible migrant and seasonal farmworker* has been provided, meaning an eligible migrant farmworker or an eligible seasonal farmworker as defined in WIOA sec. 167(i).

A definition of *eligible MSFW youth* has been provided, and it is defined as eligible MSFWs aged 14–24 who are individually eligible or are dependents of eligible MSFWs. The upper age range (age 24) and lower age range (age 14) for eligible MSFW youth have been put in alignment with the upper and lower age ranges provided in WIOA secs. 129 ((a)(1)(B) and (a)(1)(C). *Eligible MSFW youth* is a subset of *eligible MSFWs* as defined in this section. This alignment will facilitate co-enrollment with other WIOA youth programs that serve 14–24 year old youth participants, where appropriate.

A definition of *emergency assistance* had been provided that establishes that emergency assistance is a form of related assistance, and means assistance that addresses immediate needs of eligible MSFWs and their dependents, provided by grantees. To facilitate the delivery of emergency services in a timely manner the applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

A definition of *family,* is provided that means an eligible MSFW and all the individuals identified under the definition of *dependent* in this section who are living together in one physical residence. The definition has been proposed for the purpose of reporting housing assistance grantee indicators of performance as described in § 685.400.

A definition of *farmwork* is provided that means work while employed in the occupations described in 20 CFR 651.10. The specific occupations and industries within agricultural production and agricultural services will be provided through Departmental guidance, and will be updated when government-wide standard industry and occupation codes undergo periodic review and revision. Providing a definition of farmwork that is aligned with the Wagner-Peyser ES system will facilitate the provision of services to MSFWs under both programs.

A definition of *grantee* has been provided, meaning an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

A definition of *housing assistance* is provided and means housing-related services provided to eligible MSFWs. Examples of specific authorized housing activities are provided in proposed § 685.360.

The definition of *lower living standard income level* from WIOA sec. 3(36)(B) has been referenced without change.

The definition of *low-income individual* from WIOA sec. 3(36)(A) has been referenced without change.

A definition of *MOU* has been provided, meaning ''Memorandum of Understanding.''

A definition of National Farmworker Jobs Program (NFJP) has been provided and is the Department-administered workforce investment program for MSFWs established by WIOA sec. 167 as a required partner of the one-stop system and includes career services, training grants, and housing grants. The term *NFJP* was initially developed in 1999 by the Secretary's MSFW Advisory Committee to distinguish the NFJP from the other workforce investment grants and activities funded under WIA sec. 167, such as the farmworker housing assistance grants; however, since that time the NFJP has come to be the accepted term for both employment and training grants and housing grants, and this definition reflects that understanding.

The definition of *recognized post-secondary credential* from WIOA sec. 3(52) has been referenced without change.

A definition of *related assistance,* which is authorized under WIOA sec. 167(d), has been provided meaning short-term forms of direct assistance designed to assist eligible MSFWs retain or stabilize their agricultural employment.

A definition of *self-certification* has been provided meaning an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

A definition of *service area* has been provided meaning the geographical jurisdiction, which may be comprised of one or more designated States or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

A definition of *technical assistance* has been provided meaning the guidance provided to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to eligible MSFWs. This definition was adapted from and replaces the 20 CFR part 685 definition of *capacity enhancement* under WIA to reflect the term more commonly used by the Department.

Section 685.120 How does the Department administer the National Farmworker Jobs Program?

Proposed § 685.120 clarifies that the Department's ETA administers NFJP activities authorized under WIOA sec. 167 for eligible MSFWs, and as described in § 685.210, the Department designates grantees in a manner consistent with standard Federal government competitive procedures.

Section 685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

Proposed § 685.130 establishes that the Department will provide guidance, administrative support, technical assistance, and training to support MSFW programs and promote employment outcomes for eligible MSFWs.

Section 685.140 What regulations apply to the programs authorized under Workforce Innovation and Opportunity Act?

Proposed § 685.140 specifies the regulations that are applicable to MSFW programs authorized under WIOA sec. 167, including proposed part 685. Applicable regulations include the general administrative requirements found in 20 CFR part 683, including the regulations regarding the Complaints, Investigations and Hearings found at 20 CFR part 683, subpart D through subpart H; Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR part 200 and 2 CFR part 2900; the regulations on partnership responsibilities contained in 20 CFR parts 679 (Statewide and Local Governance) and 678 (the one-stop system); the Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIOA sec. 188.

3. Subpart B—The Service Delivery System for the National Farmworker Program

This subpart describes the service delivery system for the MSFW programs authorized by WIOA sec. 167 including who is eligible to receive grants and the role of the NFJP in the one-stop delivery system. Termination of grantee designation is explained. This subpart also discusses the appropriation of WIOA sec. 167 funds and establishes

that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing assistance grants.

Section 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

Proposed § 685.200 describes the entities that are eligible to receive NFJP grants. The entity must have an understanding of the problems of eligible MSFWs, a familiarity with the agricultural industries and the labor market needs of the proposed service area, and the ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

Section 685.210 How does an eligible entity become a grantee?

Proposed § 685.210 establishes that grantees will be selected through a FOA using standard Federal government competitive procedures. The entity's proposal must describe a 4-year strategy for meeting the needs of eligible MSFWs in the proposed service area and a description of the entity's experience working with the broader workforce delivery system. This is in alignment with the requirement in WIOA sec. 167(a) that the Department make grants or enter into contracts on a competitive basis every 4 years. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under part 685 is denied in whole or in part may request an administrative review under 20 CFR 683.800.

Section 685.220 What is the role of the grantee in the one-stop delivery system?

Proposed § 685.220 describes that in those local workforce development areas where the grantee operates its NFJP, as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500 and sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop system to eligible MSFWs.

Section 685.230 Can a grantee's designation be terminated?

Proposed § 685.230 explains the circumstance in which a grantee may be terminated by the Department for cause, including emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program, or by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. The Department has changed the standard for Grant Officer termination from ''substantial or persistent violation'' as used in the WIA regulations in order to be consistent with the standards used for all other Department WIOA grants under the common administrative requirements for grants.

Section 685.240 How does the Department use funds appropriated under Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Proposed § 685.240 establishes that in accordance with WIOA sec. 167(h), at least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the **Federal Register**. The grants will be awarded under § 685.210. The Department has added language that clarifies that of this amount, a percentage of funds will be set aside for housing grants and will be specified in an FOA issued by the Department. The balance, up to 1 percent of the appropriated funds, will be used for discretionary purposes, such as providing technical assistance to eligible entities, and other activities prescribed by the Secretary to eligible entities. This differs from the up to 4 percent reserved in the prior regulations so as to comply with the funding requirements of WIOA sec. 167(h).

4. Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

This subpart describes the responsibilities of grantees, and workforce investment activities available to eligible MSFWs, including career services and training, housing assistance, youth services, and related assistance.

Section 685.300 What are the general responsibilities of grantees?

Proposed § 685.300 establishes the general responsibilities of grantees, including that: eligible entities receive grants through the FOA process described in § 685.210; career services and training grantees are responsible for providing appropriate career services, training, and related assistance to eligible MSFWs and eligible MSFW youth; and housing grantees are responsible for providing housing assistance to eligible MSFWs. Grantees will provide these services in accordance with the service delivery strategy described in the approved program plan described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs. Grantees also are responsible for coordinating services, particularly outreach to MSFWs, with the SWA, as defined in 20 CFR part 651, and the State's monitor advocate and fulfilling the responsibilities of one-stop partners described in proposed § 678.420.

Section 685.310 What are the basic components of an National Farmworker Jobs Program service delivery strategy?

Proposed § 685.310 describes the basic components of the NFJP delivery strategy that must include: A customer-focused case management approach; the provision of workforce investment activities, which include career services and training, as described in WIOA secs. 167(d) and 134 and 20 CFR part 680, and youth workforce investment activities described in WIOA sec. 129 and 20 CFR part 681; the arrangements under the MOU's with the applicable Local Workforce Development Boards for the delivery of the services available through the one-stop system to MSFWs; and related assistance services.

Section 685.320 Who is eligible to receive services under the National Farmworker Jobs Program?

Proposed § 685.320 establishes that MSFWs as defined in § 685.110 are eligible for services funded by the NFJP. As provided in WIOA sec. 167(d)(1), NFJP grants are used to provide adult and youth services, thus the NFJP may use funds available to serve youth even when the service area is not being served with supplemental youth funds authorized in WIOA sec. 127(a)(1). In addition, NFJP services can be provided to eligible MSFW youth who demonstrate a need for and ability to benefit from career services. For example, some older youth may benefit more from the array of career services available under NFJP than from the youth services offered under subpart E.

Section 685.330 How are services delivered to eligible migrant and seasonal farmworkers?

Proposed § 685.330 emphasizes that services to eligible MSFWs will be focused on the customer's needs and provided through a case-management approach emphasizing customer choice, and may include appropriate career services and training, and related assistance, which includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in §§ 685.340 through 685.390.

Section 685.340 What career services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.340 establishes that eligible MSFWs must be provided the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680. Other career services may be provided as identified in the grantee's approved program plan. The Department also has included language to clarify that while career services must be made available through the one-stop delivery system, grantees also may provide these types of services through other sources outside the one-stop system. Examples include non-profit organizations or educational institutions. The delivery of career services to eligible MSFWs by the grantee and through the one-stop system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

Section 685.350 What training services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.350 establishes that the training activities in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680, must be provided to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and OJT. The Department also emphasizes that eligible MSFWs are not required to receive career services prior to receiving training services, as described in WIOA sec. 134(c)(3)(iii). This section also reinforces the intent of WIOA that training services be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). The Department also establishes that training activities must encourage the attainment of recognized post-secondary credentials as defined in § 685.110 (which refers to WIOA sec. 3(52)), when appropriate for an eligible MSFW. This requirement is in alignment with WIOA secs. 116(b)(2)(A)(i)(IV) and 116(b)(2)(A)(ii)(III), which include ''the percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma,'' as a primary indicator of performance for both the adult and youth programs.

Section 685.360 What housing services must grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.360 requires that housing grantees must provide housing services to eligible MSFWs and that career services and training grantees may provide housing services to eligible MSFWs as described in their program plan. The proposed section establishes the definitions of permanent housing and temporary housing services that are available to eligible MSFWs. The Department establishes that permanent housing is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the MSFW's primary residence to which he/she typically returns at the end of the work or training day and temporary housing is non-owner-occupied housing used by MSFWs whose employment requires occasional travel outside their normal commuting area. Permanent housing may include rental units, single family, duplexes, and other multi-family structures, dormitory, group homes, and other housing types that provide short-term, seasonal, or year-round housing opportunities in permanent structures. Modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities and other infrastructure are also considered permanent housing. Temporary housing may include: Units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures, tents, and yurts that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re-erected when needed for farmworker occupancy; and off-farm housing operated independently of employer interest in, or control of, the housing, or on-farm housing operated by a nonprofit, including faith-based or community non-profit organizations, but located on property owned by an agricultural employer. Specific examples of permanent housing services and activities associated with the provision of permanent housing services, and specific examples of temporary housing activities associated with the provision of temporary housing services, including emergency assistance such as emergency housing payments, vouchers, and cash payments for rent/lease and utilities are provided. The Department establishes that housing services are intended to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking employment, retaining employment, or engaging in training. The definitions of permanent housing and temporary housing assistance and the specific examples of permanent and temporary housing services described in the proposed § 685.360 are adapted from the 2011 Department *Notice of Availability of Funds and Solicitation for Grant Applications for the National Farmworker Jobs Program (NFJP) Housing Assistance Program* (Funding Opportunity Number: SGA–DFA–PY–10–08) which provided specific requirements and guidelines for housing grant applicants.

Section 685.370 What services may grantees provide to eligible migrant and seasonal farmworker youth participants aged 14–24?

Proposed § 685.370 describes the services that grantees may provide to eligible MSFW youth participants aged 14–24 based on an evaluation and assessment of their needs. These services include the career and training services described in §§ 685.340 through 685.350; youth workforce investment activities described in WIOA sec. 129; life skills activities that encourage development of self and interpersonal skills development; community service projects; and other activities that conform to the use of funds for youth activities described in 20 CFR part 681. Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

Section 685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?

Proposed § 685.380 describes the types of services that may be provided to eligible MSFWs as ''related assistance,'' and establishes that these services are short-term, direct services. Examples include emergency assistance, as defined in § 685.110, and those activities identified in WIOA sec. 167(d), such as English language and literacy instruction, pesticide and worker safety training, housing (including permanent housing), as

described in § 685.360, and school dropout prevention and recovery activities. Related assistance is distinct from ''supportive services'' as defined in WIOA sec. 3, which ''means services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this Act,'' because related assistance may be provided to eligible MSFWs who are not otherwise participating in activities authorized under this Act such as career services, youth services, or training services.

Section 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Proposed § 685.390 establishes that eligible MSFWs may receive related assistance services when the need for the related assistance is identified and documented by the grantee. A statement by the eligible MSFW may be included as documentation.

5. Subpart D—Performance Accountability, Planning, and Waiver Provisions

This subpart describes indicators of performance for grantees, required planning documents, and the information required in program plans required under WIOA sec. 167. The subpart also explains waiver provisions and clarifies how grant costs are classified under WIOA sec. 167.

Section 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

Proposed § 685.400 describes the indicators of performance that apply to grantees. Grantees providing career services and training will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A), as required by WIOA sec. 167(c)(2)(C). These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations.

For grantees providing career services and training, the Department will reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). The levels agreed to will be the adjusted levels of performance and will be incorporated in the program plan, as required in WIOA sec. 167(c)(3). For grantees providing housing services only, grantees will use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance. Performance indicators for NFJP housing grantees are not specified in WIA or WIOA statute, and the measures proposed here are adapted from the Department's TEGL, Number 15–13, *Program Year 2014 Planning Guidance for National Farmworker Jobs Program Housing Grantees,* released March 25, 2014. As described in proposed § 685.400(d), the Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. In accordance with § 685.400(d), the Department may develop additional indicators of performance for housing grantees in addition to the indicators specified in proposed § 685.400(c). If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan. Grantees also may develop additional performance indicators and include them in the program plan or in periodic performance reports.

Section 685.410 What planning documents must a grantee submit?

Proposed § 685.410 describes the planning documents that a grantee must submit, including a comprehensive program plan, further described in proposed § 685.420, and a projection of participant services and expenditures covering the 4-year grant cycle.

Section 685.420 What information is required in the grantee program plan?

Proposed § 685.420 describes the information required for inclusion in program plans. Paragraph (a) asks for a description of the service area that the applicant proposes to serve, in accordance with WIOA sec. 167(c). Paragraphs (b) through (g) incorporate the elements described in WIOA sec. 167(c)(2). Paragraphs (h) and (i) specify additional information required in program plans which include: The methods the grantee will use to target its services on specific segments of the eligible population, as appropriate, and the response to any other requirements set forth in the FOA issued under § 685.210.

Section 685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?

Proposed § 685.430 describes the circumstances when the terms of the grantee's program plan can be modified by the grantee or the Department. Program plans must be modified to reflect the funding level for each year of the grant, and the Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1, prior to the start of the subsequent year of the grant cycle. Grantees must submit a request to the Department for any proposed modifications to the plan to add, delete, expand, or reduce any part of the program plan or allowable activities, and the Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans. The purpose of this requirement is to ensure that the Department has reviewed and approved any proposed programmatic changes as part of a grant award to ensure the changes are allowable, programmatically and fiscally sound, and do not negatively affect performance outcomes. If the grantee is approved for a regulatory waiver under proposed § 685.560 and § 685.570, it must submit a modification of the grant plan to reflect the effect of the waiver.

Section 685.440 How are costs classified under the National Farmworker Jobs Program?

Proposed § 685.440 describes how costs are classified under the NFJP. Costs are classified as administrative costs, as defined in 20 CFR 683.215, and program costs are all other costs not defined as administrative. The Department further specifies that program costs must be classified and reported in the categories of related assistance (including emergency assistance), supportive services, and all other program services.

Section 685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?

Proposed § 685.450 describes the administrative cost limit for NFJP grants which, under 20 CFR 683.205(b), will be identified in the grant or contract award document, and will not exceed 15 percent of total grantee funding. The administrative cost limit established in

this section is consistent with the administrative cost limit under which the program is currently operating.

Section 685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?

Proposed § 685.460 describes the regulatory and/or statutory waiver provisions that apply to WIOA sec. 167. The statutory waiver provision at WIOA sec. 189(i) and discussed in 20 CFR 679.600 does not apply to WIOA sec. 167. Paragraph (b) establishes that grantees may request a waiver of any regulatory provisions only when such regulatory provisions are (1) not required by WIOA; (2) not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and (3) not related to the basic purposes of WIOA, described in 20 CFR 675.100.

Section 685.470 How can grantees request a waiver?

Proposed § 685.570 describes the information that grantees must submit to the Department in a waiver plan to document a requested waiver. The waiver request must include: A description of the goals of the waiver; the expected programmatic outcomes and how the waiver will improve the provision of program activities; how the waiver is consistent with guidelines the Department establishes; the data that will be collected to track the impact of the waiver; and the modified program plan reflecting the effect of the requested waiver.

*6. Subpart E—Supplemental Youth Workforce Investment Activity Funding Under Workforce Innovation and Opportunity Act Sec. 127(a)(1)*

This subpart describes the purpose of supplemental youth workforce investment activity funding that may become available under WIOA sec. 127(a)(1). Included is a description of how the funds may become available, and what requirements apply to grants funded by WIOA sec. 127(a)(1). Significantly, these funds may be used only for workforce investment activities for eligible MSFW youth, as defined in § 685.110. The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1), and the selection will be made in accordance with the procedures described in § 685.210, giving priority to applicants that are WIOA sec. 167 grantees. Planning documents required for grants funded by WIOA sec. 127(a)(1) will be described in the FOA; and allocation of WIOA sec. 127(a)(1) funds will be based on the comparative merits of the applications in accordance with criteria set forth in the FOA.

Section 685.500 What is supplemental youth workforce investment activity funding?

Proposed § 685.500 describes that if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

Section 685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.510 specifies that the requirements in subparts A through D of § 685 apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

Section 685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.520 specifies that the Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1). The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

Section 685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.530 specifies that planning documents required for grants funded by WIOA sec. 127(a)(1) will be described in the FOA.

Section 685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.540 describes that the allocation of WIOA sec. 127(a)(1) funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

Section 685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Proposed § 685.550 describes that eligible MSFW youth as defined in § 685.110 may receive services through grants funded by WIOA sec. 127(a)(1).

J. Part 686—The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part provides proposed regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The Department's intent in the regulations is to incorporate the requirements of title I, subtitle C of the Act and to describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or post-secondary education. The regulations also serve to explain clearly the requirements necessitated by the unique residential environment of a Job Corps center. The major changes from the existing regulations reflect WIOA's effort to enhance the Job Corps program, provide access to high quality training and education, create incentives for strong contractor performance, and promote accountability and transparency.

2. Subpart A—Scope and Purpose

This proposed subpart contains regulatory provisions that describe the Job Corps program, its purpose, the role of its Director, and applicable definitions. In describing the role of the Job Corps Director, this subpart provides that the Secretary has delegated the authority to carry out his or her responsibilities under this part to the National Director of Job Corps; therefore, all references to the Secretary issuing guidelines, procedures or standards means that they will be issued by the National Job Corps Director. This subpart also describes the Policy and Requirements Handbook (PRH), which provides the operating policies and

procedures governing day-to-day activities of the Job Corps program. The subpart describes the scope and purpose of the program, along with the responsibilities of its National Director. It promotes accountability and transparency by making readers aware of exactly what the Job Corps program plans to achieve and the procedures for doing so, as well as the role its leadership plays in its operation.

Section 686.100 What is the scope of this part?

Proposed § 686.100 contains the regulatory provisions governing the Job Corps program. It explains that procedures guiding day-to-day operations are proposed to be provided in the PRH and clarifies that throughout this part, phrases that refer to instructions or procedures issued by the Secretary refer to the PRH and other Job Corps Directives. Because this section of WIOA is so similar to the corresponding section in WIA, this proposed section retains the same requirements found at 20 CFR 686.100.

Section 686.110 What is the Job Corps program?

Proposed § 686.110 describes the Job Corps program. Job Corps is a national program that operates in partnership with States, communities, local Workforce Development Boards, youth councils, one-stop centers and partners, and other youth programs to provide social, academic, career and technical education, and service-learning opportunities, primarily in a residential setting, for low-income young people. Proposed § 686.110 reflects the increased focus in sec. 141 of WIOA on connecting young people to the labor force by providing them with intensive social, academic, career and technical education in order to obtain secondary school diplomas or recognized credentials leading to successful careers in in-demand industries or occupations, the Armed Forces, or enrollment in post-secondary education. The program's goals for students are economic self-sufficiency, opportunities for advancement, and responsible citizenship.

Section 686.120 What definitions apply to this part?

The definitions that are listed in this section are specific to this proposed part, which governs the Job Corps program. Other definitions that apply to the Job Corps program are defined under secs. 3 and 142 of WIOA. Proposed § 686.120 describes definitions in four categories.

The first category is made up of proposed definitions that are the same as those included in the regulations at 20 CFR 686.120 that governed the Job Corps program under WIA. These are ''Absent Without Official Leave (AWOL),'' ''Capital improvement,'' ''Contract center,'' ''Enrollee,'' ''Enrollment,'' ''Individual with a disability,'' ''Interagency agreement,'' ''Job Corps Director,'' ''National Office,'' ''Placement,'' ''Regional appeal board,'' ''Regional Director,'' ''Regional Office,'' ''Regional Solicitor,'' ''Separation,'' ''Student,'' and ''Unauthorized goods.'' Because these definitions are the same as those in the WIA regulations, the Department has not included further explanation of them below.

The second category is made up of proposed definitions that are similar to definitions included in the WIA regulations at 20 CFR 670.120, but they have been modified slightly due to differences in the definitions contained in WIOA. These are ''Applicable Local Board,'' ''Civilian Conservation Center (CCC), ''Contracting Officer,'' ''Graduate,'' ''Job Corps,'' ''Job Corps center,'' ''Low-income individual,'' ''National training contractor,'' ''Operational support services,'' ''Operator,'' and ''Outreach and admissions provider.''

The third category is made up of proposed definitions that were not included in the WIA regulations, but they are defined in sec. 142 of WIOA. These are ''Applicable one-stop center,'' ''Former Enrollee,'' and ''Service Provider.''

The fourth category is made up of proposed definitions that apply to the Job Corps program and are commonly used in these regulations, but do not appear in the WIA regulations or in WIOA. These are ''Career Technical Training,'' ''Career Transition Service Provider,'' and ''Participant.''

Aside from the terms in the first category, the definitions are explained as the terms appear in this proposed section in alphabetical order, as follows:

*Applicable Local Board*—The proposed definition of this term implements the definition of ''applicable Local Board'' contained in sec. 142 of WIOA. It is similar to the definition of ''Workforce Investment Board'' in the WIA regulations.

*Applicable one-stop center*—The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

*Career Technical Training*—The proposed definition of this term means career and technical education and training, which is the term most often used by WIOA rather than ''vocational training,'' as used in WIA.

*Career Transition Service Provider*—The proposed definition of this term means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students. WIOA uses both the term ''Career Transition Service Provider'' and ''Placement Provider'' interchangeably. Career transition services are further explained in subpart G of the proposed rule.

*Contracting officer*—The proposed definition of this term is similar to the definition of ''contracting officer'' in the WIA regulations, but it does not include ''Regional Director,'' because contracting officers are most often not Regional Directors.

*Former Enrollee*—The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

*Graduate*—The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

*Job Corps*—The proposed definition of this term is similar to the definition of ''Job Corps'' in the WIA regulations, but it clarifies that the Job Corps is established within the Department and cites the applicable section of WIOA.

*Job Corps center*—The proposed definition of this term is the same as the definition in the WIA regulations, except that this definition cites the applicable section of WIOA.

*Low-income individual*—The proposed definition of this term is the same as the definition in the WIA regulations, except that this definition cites the applicable section of WIOA.

*National training contractor*—The proposed definition of this term is slightly different from the definition in the WIA regulations, because the term ''career and technical training'' is used rather than ''vocational training.'' However, the meaning remains unchanged.

*Operational support services*—The proposed definition of this term is slightly different from the definition in the WIA regulations, because the term ''career and technical training'' is used instead of ''vocational training.'' However, the meaning remains unchanged.

*Operator*—The proposed definition of this term implements the definition of ''operator'' contained in sec. 142 of WIOA. It is similar to the definition of ''center operator'' in the WIA regulations.

*Outreach and admissions provider* - The proposed definition of this term is similar to the definition of ''outreach

and admissions agency'' in the WIA regulations, but it clarifies that the entity performs recruitment in addition to outreach and enrollment activities, consistent with the definition in sec. 142 of WIOA.

*Participant*—The proposed definition of this term clarifies which individuals are considered participants for performance reporting purposes under proposed § 686.1010. The definition of participant includes graduates and those enrollees and former enrollees who have completed the career preparation period. It also includes enrollees and former enrollees who have remained in the program for 60 days or more, regardless of whether they have completed their career preparation period. During the career preparation period, the student learns, demonstrates, and practices personal responsibility and skills required in the workplace; learns, demonstrates, and practices job search skills; visits and learns about one-stop centers; and creates a personal career development plan with the help of staff. In most cases, the career preparation period culminates with the commitment to the Personal Career Development Plan. The Department proposes this limitation because students are not assigned to trades and are not generally receiving the services described subpart E of this part until the career preparation period is completed. The career preparation period is described in Job Corps' Policy and Requirements Handbook.

*Service Provider*—The proposed definition of this term implements the definition contained in sec. 142 of WIOA.

Section 686.130 What is the role of the Job Corps Director?

Proposed § 686.130 describes the role of the Job Corps Director, noting that he/she has been delegated authority to carry out the responsibility of the Secretary under title I, subtitle C of WIOA related to the operation of the Job Corps program. Proposed § 686.130 also clarifies that references in this part referring to ''guidelines'' or ''procedures issued by the Secretary'' mean that the Job Corps Director issues such guidelines. This proposed section retains the same requirements as those found at 20 CFR 686.130.

3. Subpart B—Site Selection and Protection and Maintenance of Facilities

This proposed subpart describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the WIA Job Corps regulations at 20 CFR part 686 subpart B. The Secretary, through delegation of authority to the National Director of Job Corps, must approve the location and size of all Job Corps centers, and establish procedures for requesting, approving, and initiating capital improvement and new construction on Job Corps centers, which serves to strengthen and enhance the program as a whole.

Section 686.200 How are Job Corps center locations and sizes determined?

Proposed § 686.200 explains that the Secretary must approve the location and size of all Job Corps centers, including both contract centers and CCCs. The Secretary also establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

Section 686.210 How are center facilities improvements and new construction handled?

Proposed § 686.210 states that the Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

Section 686.220 Who is responsible for the protection and maintenance of center facilities?

Proposed § 686.220 states that the Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department. The proposed section also states that when the Department of Agriculture operates CCCs on public land, it will be responsible for the protection and maintenance of CCC facilities. The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify additional physical needs. This proposed section retains the same requirements found at 20 CFR 670.220.

4. Subpart C—Funding and Selection of Center Operators and Service Providers

In this proposed subpart the Department implements new requirements of WIOA with regard to the operators of high-performing centers, the length of contractual agreements to operate Job Corps centers, and how entities are selected to receive funding to operate Job Corps centers and to provide outreach, admissions, and career transition support services. In addition to adding to the list of considerations currently used in selecting Job Corps center operators and service providers, WIOA emphasizes competition to increase the performance and quality of the Job Corps program. WIOA also provides that an entity, in its role as incumbent operator of a center deemed to be high performing, may compete in any competitive selection process carried out for an award to operate that center, even in cases where the selection of the operator is set aside for small businesses as required by the Federal Acquisition Regulation. This serves to ensure continued access to high quality training and education for Job Corps students, since a high performing incumbent operator has an established and proven record of providing it. WIOA also provides that a center operations contracts cannot exceed 2 years, with three 1-year options to renew. This codifies current Job Corps practice. Furthermore, WIOA precludes the Secretary from exercising an option to renew a center operations contract for an additional 1-year period if certain criteria are not met, with limited exceptions. All of these new and expanded provisions follow WIOA's theme of enhancing the Job Corps program and providing access to high quality training and education by ensuring Job Corps centers are staffed with high quality service providers.

Section 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

Proposed § 686.300 implements secs. 147(a)(1), 147(e), and 145(a)(3) of WIOA, establishing the entities eligible to receive funds to operate Job Corps centers, and to provide outreach and admissions, career transition, and other operational support services.

Proposed paragraphs (a)(1), (a)(2), and (a)(4) reflect the entities eligible to operate Job Corps centers listed in WIOA sec. 147(a)(1)(A). Proposed paragraph (a)(3) includes ''Indian tribes and organizations'' as eligible center operators, consistent with sec. 147(e) of WIOA. For purposes of this section, the Department interprets ''Indian tribes and organizations'' consistent with sec. 147(e)(2) of WIOA, which provides that the terms ''Indian'' and ''Indian tribe'' have the meanings given them in sec. 4 of the ISDEAA (codified at 25 U.S.C. 450b(d) and (e)), which says that ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (codified at 43 U.S.C. 1601 *et seq.*), which is recognized as

eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Proposed paragraph (b) lists the entities eligible to receive funds to provide necessary services to Job Corps centers, including outreach and admissions, career transition, and other operational support services. Generally, as provided in WIOA sec. 147(a)(1)(B), local or other entities with the necessary capacity to provide activities described in this part are considered eligible entities. Paragraphs (b)(1), (b)(2), and (b)(3) reflect the entities listed in sec. 145(a)(3) of WIOA. Currently Job Corps also allows private for-profit and non-profit corporations to act as eligible service providers; paragraph (b)(2) clarifies that private for-profit and non-profit corporations continue to be included as business organizations eligible to receive funds as service providers.

Section 686.310 How are entities selected to receive funding to operate centers?

Proposed § 686.310 implements secs. 147(a)(2) and (a)(3) of WIOA, which contain new provisions to strengthen the Job Corps contracting process by requiring specific criteria that emphasize quality, performance, and accountability to be addressed as part of the selection process for center operators. The proposed section adopts these criteria to improve the effectiveness of the program in helping young people become responsible citizens by providing them with the skills they need for successful careers in in-demand industry sectors, occupations, or the Armed Forces, or for enrollment in post-secondary education. The Department welcomes comments on how best to embed a focus on quality, performance, and accountability into the procurement process.

Proposed § 686.310(a) implements sec. 147(a)(2)(A) of WIOA, stating that the Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. This paragraph also explains that in selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contact centers according to the Federal Acquisition Regulation (48 chapter 1) and the Department's Acquisition Regulation (48 chapter 29). ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce development area in which the center is located.

Proposed paragraph (b) requires that the RFPs for each contract center describe uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

Proposed paragraph (c) implements the factors for selection of an entity to operate a Job Corps center established in sec. 147(a)(2)(B)(i) of WIOA, by specifying that the selection criteria will be established by the Secretary and set forth in the RFP. Proposed paragraphs (c)(1) through (5) set forth the specific criteria that must be included in the RFP, as listed in sec. 147(a)(2)(B)(i) of WIOA. Paragraph (c)(1) retains the language found in the WIA regulations at 20 CFR 670.310(c)(1), requiring that the offeror demonstrate its ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans. This supports the overall goal of better connecting and aligning Job Corps with the workforce system.

Proposed paragraphs (c)(2) through (4) implement the criteria at WIOA secs. 147(a)(2)(B)(i)(II) through 147(a)(2)(B)(i)(IV). These provisions support the goal of better alignment with the workforce system and the increased focus on past performance and student outcomes against the primary indicators of performance for eligible youth and the Job Corps program.

Proposed paragraph (c)(5) is a new element in the selection process established in sec. 147(a)(2)(B)(i)(V) of WIOA, requiring that the criteria include the offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career and technical training. This aligns with the increased focus on student outcomes and emphasizes the purpose of the program, which is to provide students with the skills they need for successful careers in in-demand industries, occupations, or the Armed Forces, or to continue on to post-secondary education. The Department welcomes comments on how to assess potential offerors' past records in assisting at-risk youth to connect to the workforce.

Proposed paragraph (d) implements the additional factors for selection of an entity to operate a Job Corps center that are specified in sec. 147(a)(3) of WIOA. These provisions support the goals of better alignment with the workforce system and increased focus on past performance and student outcomes against the primary indicators of performance for eligible youth and the Job Corps program. In addition, paragraph (d) specifies that the information described in paragraphs (d)(1) through (11) must be submitted at such time in the procurement process, and in such form, as the Secretary determines is appropriate.

Section 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

Proposed § 686.320(a) implements sec. 147(b)(1) of WIOA, allowing an entity that, in its role as the incumbent operator of a center, meets the requirements of this section to be considered an operator of a high-performing center. If the entity is considered an operator of a high-performing center, the entity must be allowed to compete in any competitive selection process carried out for an award to operate that center. This means that in cases where the selection of the operator of a particular center is set aside for small businesses as required by the Federal Acquisition Regulation, the incumbent operator may participate in the subsequent competition for the center operations contract even if the operator would be otherwise ineligible to compete as a result of the set-aside.

Proposed paragraph (b) implements sec. 147(b)(2) of WIOA, which provides the criteria an operator must meet to be considered an operator of a high-performing center for the purposes of paragraph (a). First, under paragraph (b)(1), the center must be ranked among the top 20 percent of Job Corps centers for the most recent preceding PY according to the ranking described in proposed § 686.1070. Second, under paragraph (b)(2), the center must meet the expected levels of performance established with respect to each of the primary indicators of performance for eligible youth found in proposed § 686.1000. A center will be determined to have met the expected measures of performance if, per proposed § 686.320(b)(2)(i) and (ii), it achieved an average of at least 100 percent of the expected level of performance for the indicator over the most recent preceding 3 PYs, and, for the most recent preceding PY for which information is available at the time the determination is made, the center achieved at least 100 percent of the expected level of performance established for the indicator. This provision emphasizes the importance of meeting the expected levels of performance related to the primary indicators, by providing an opportunity for the most successful incumbent contractors to compete to operate a high-performing center even if

the competition for that center is a small business set-aside and the incumbent would not normally meet the criteria to compete in a small business set-aside competition. The Department anticipates going through the market research phase of the competition before determining whether the competition will be set aside for small businesses; a determination as to whether the incumbent contractor meets the criteria in proposed paragraph (b) will likely be made after the market research phase is completed and before the issuance of the solicitation.

Proposed paragraph (c) implements the transition procedures in sec. 147(b)(3) of WIOA, and describes the criteria that must be met for an operator to be considered to be an operator of a high-performing center if any of the PYs described in paragraph (b) precede the implementation of the establishment of the expected levels of performance and the application of the primary indicators of performance for eligible youth.

Section 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

Proposed § 686.330 implements secs. 147(f)–(g) of WIOA, which contain new provisions to strengthen the Job Corps contracting process by enacting new requirements for the length of center operations contracts and the conditions under which they may be renewed. These provisions emphasize quality and integrity in center operators and direct the Secretary not to exercise option years for contracts where minimum standards of performance related to the primary indicators of performance for eligible youth are not met. These provisions further support the overall vision of improved performance and accountability for the Job Corps program.

Proposed § 686.330(a) implements sec. 147(f) of WIOA, which provides that contracts to operate a Job Corps center cannot exceed 2 years, but that the Secretary can exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years. This proposed paragraph reflects current Job Corps contracting practice.

Proposed paragraph (b) explains that the Secretary will establish procedures for evaluating the option to renew an agreement that include an assessment of the factors described in proposed paragraph (c), a review of contract performance and financial reporting compliance, a review of the program management and performance data described in proposed §§ 686.975 and 686.980, and an evaluation of the factors described in proposed paragraph (d).

Proposed paragraph (c) implements sec. 147(g)(4) of WIOA, which establishes conditions that must be met for the Secretary to exercise a contractual option to renew an agreement for an entity to operate a Job Corps center.

Proposed paragraph (d) implements sec. 147(g)(1) of WIOA, which prohibits the Secretary from renewing an agreement for an entity to operate a Job Corps center for any 1-year additional period if, for both of the 2 most recent preceding PYs for which information is available at the time the determination to exercise an option is made, the center both has been ranked in the lowest 10 percent of Job Corps centers according to the ranking described in proposed § 686.1070 and has failed to achieve an average of 50 percent or higher of the expected level of performance with respect to each of the primary indicators of performance for eligible youth (as described in proposed § 686.1000). If a second year of program data is unavailable at the time the determination regarding the contractual option is made, proposed paragraph (d) requires the use of data from the preceding year from which performance information is available. This provision emphasizes the center operator's accountability for meeting the expected levels of performance related to the primary indicators by establishing minimum performance standards that must be met for the Secretary to exercise an option year.

Proposed paragraph (e) addresses the availability of information and data necessary to make the determination required by proposed paragraph (d). The availability of sufficient information to make this determination is a particular concern in situations where there is a change of operators at the beginning of an agreement, and there is a period of time during which student outcome data, and thus the primary indicators of performance, reflect the performance of the previous operator rather than the operator upon whose contract the determination is being made.

In order to prevent an entity from being penalized for the poor performance of the previous operator, proposed paragraph (e)(1) states that information will only be considered to be available for a PY for purposes of paragraph (d) if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator. Six months represents a sufficient length of time for the efforts of the current operator to influence the outcomes achieved by a student. Proposed paragraph (e)(2) further provides that if complete information for any of the indicators of performance described in paragraph (d)(2) is not available for either of the 2 PYs described in paragraph (d), the Secretary will review partial PY data from the most recent PY for those indicators, if at least 2 quarters of data are available, when making the determination required under paragraph (d)(2). The Department recognizes that data for some of the primary indicators of performance do not become mature for an extended period of time. For example, employment in the fourth quarter after exit and credential attainment are measured more than a year after the student exits the program and then are reported in a subsequent quarter. Because the Secretary's decision on whether to exercise the first option year is normally made about 18 months after the contract begins, in many cases complete information on employment in the fourth quarter after exit and credential attainment will not be available at the time the first option year decision is made. The Department invites comments on the issue of information availability, including the threshold for the point at which the performance of the center reflects the performance of the current operator.

Proposed paragraph (f) provides a transition provision for establishing the criteria that must be met for an operator to meet the requirements of proposed paragraph (d). The transition provisions apply if any of the PYs described in paragraph (d) precede the implementation of the primary indicators of performance for eligible youth and establishment of the expected levels of performance. While the WIOA statute does not include a transition provision, it is necessary to add such a provision because although the WIOA contracting provisions, including this section, go into effect on July 1, 2015, the WIOA performance reporting requirements do not go into effect until July 1, 2016. In addition, there will be a gap in time during which initial data on the primary indicators of performance is being collected and baselines are being established when the expected levels of performance will not have been established and therefore, the data described in paragraph (d)(2) will not yet be available. ETA has modeled the transition language in proposed

paragraph (f) on the transition provision in WIOA sec. 147(b)(3), which is used to determine whether a center is a high performing center, and based on criteria similar to the criteria in proposed paragraph (d). The transition bases the determination on similar data points using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system, which is the available data that most closely aligns with the requirement in paragraph (d). Therefore, the Department chose this as the best proxy data available. The Department invites comments on the approach to transitioning from the WIA to WIOA performance management systems.

Proposed paragraph (g), implements sec. 147(g)(2) of WIOA, which provides an exception to the prohibition against exercising an option year for an operator of a low-performing center as determined under proposed paragraph (d).

As required in sec. 147(g)(3) of WIOA, if the Secretary exercises a contractual option by applying the exception described in proposed paragraph (g), proposed paragraph (h) requires the Secretary to provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

Section 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operational support services?

Proposed § 686.340(a) implements sec. 147(a)(2)(A) of WIOA, generally describing the process by which eligible entities are selected to provide outreach and admissions, career transition, and other operational support services to the Job Corps program.

Proposed paragraph (b) requires that the RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

Proposed paragraph (c) implements the factors for selection of an entity to provide operational support services, as established in sec. 147(a)(2)(B)(i) of WIOA, by specifying that the selection criteria will be established by the Secretary and set forth in the RFP. The criteria listed in proposed paragraphs (c)(1) through (5) are the same as those in proposed § 686.310(c)(1) through (5). Proposed paragraph (c)(6) provides that the Secretary may require additional information or selection factors in the RFP.

Section 686.350 What conditions apply to the operation of a Civilian Conservation Center?

Proposed § 686.350 is a new section that implements sec. 147(d) of WIOA. Proposed paragraph (a) implements sec. 147(d)(1) of WIOA, establishing that the Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers called CCCs. Paragraph (a) also contains the description of the characteristics of CCCs.

Proposed paragraph (b) retains the language in the WIA regulations at 20 CFR 670.310(e) that when the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

Proposed paragraph (c), implementing sec. 147(d)(2) of WIOA, permits enrollees in CCCs to provide assistance in addressing national, State, and local disasters, consistent with relevant child labor laws. This proposed paragraph further requires that the Secretary of Agriculture ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Proposed paragraph (d) requires the Secretary of Agriculture to designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs, as required by sec. 147(d)(3) of WIOA.

Proposed paragraph (e) permits the Secretary, in consultation with the Secretary of Agriculture, to select a private entity to operate a CCC using the process and requirements described at § 686.310.

Proposed paragraph (f) permits the Secretary to close a CCC as part of the Department's administration of the Job Corps program if it determines that such action would be appropriate.

Section 686.360 What are the requirements for award of contracts and payments to Federal agencies?

Proposed § 686.360 states the requirements and authorities that apply to the award of contracts and payments to Federal agencies. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.320.

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

This proposed subpart describes who is eligible for Job Corps under WIOA and provides additional factors that are considered in selecting eligible applicants for enrollment. Also described is how applicants who meet eligibility and selection requirements are assigned to centers, which implements WIOA's new requirements that the assignment plan consider the size and enrollment level of a center, including the education, training, and supportive services provided, and the performance of the Job Corps center related to the newly established expected levels of performance. WIOA also amends the assignment plan to provide for assignments at the center closest to home that offers the type of career and technical training selected by the individual rather than just the center closest to home, which improves access to high quality training for Job Corps students. These proposed regulations serve to enhance the Job Corps program overall by ensuring that the individual training and education needs of applicants and enrollees are met in accordance with the requirements of WIOA. They also ensure that applicants and enrollees are provided accurate information about the standards and expectations of the Job Corps program and are fully prepared to be successful.

Section 686.400 Who is eligible to participate in the Job Corps program?

Proposed paragraph (a) implements the eligibility requirements in sec. 144(a) of WIOA. According to WIOA, to be eligible to participate in the Job Corps, an individual must be at least 16 and not more than 24 years old at the time of enrollment, except that: Under proposed paragraph (a)(1)(i), the Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) and the requirement in paragraph (a)(1)(ii) for an individual with a disability who is otherwise eligible according to the requirements listed in §§ 686.400 and 686.410. Proposed paragraph (a)(1)(ii) states that not more than 20 percent of individuals enrolled nationwide can be aged 22 to 24 at the time of enrollment. The regulatory language in paragraph (a)(1)(i) differs from the language in the WIA regulations at 20 CFR 670.400(a)(1). The proposed language is intended to enable the Job Corps Director to admit individuals with disabilities even if they exceed the age limitations in paragraph

(a) as long as the Director determines that the individual meets all the other eligibility requirements listed in proposed § 686.410.

In addition to satisfying the age requirements above, proposed § 686.410 lists the additional requirements for a person to be eligible to participate in Job Corps. An individual must also be a low-income individual and be facing one or more of the following barriers to education and employment: Be basic skills deficient, as defined in WIOA sec. 144(a)(3)(A); be a high school dropout; be homeless, as defined in sec. 41043(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)); be a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(2)); a runaway, an individual in foster care, or an individual who was in foster care and has aged out of the system; be a parent; or require additional education, career, and technical training, or workforce preparation skills in order to obtain and retain employment that leads to economic self-sufficiency.

Proposed paragraph (b) implements the special eligibility rule for veterans in sec. 144(b) of WIOA. That rule states that an otherwise eligible veteran may still enroll in Job Corps if they do not meet the income requirement at § 686.400(a)(2) as a result of military income earned within the 6-month period prior to the individual's application for Job Corps, per 38 U.S.C. 4213.

Section 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

In addition to the basic eligibility requirements identified above, proposed § 686.410 lists several additional criteria that must be met before an otherwise eligible applicant may be enrolled in Job Corps.

Proposed paragraph (a) provides, pursuant to sec. 145(a)(2)(C) of WIOA, that an otherwise eligible applicant can be selected for enrollment in Job Corps only if a determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's education and career and technical needs can best be met through the Job Corps program.

An additional determination, as described in proposed paragraph (b), implementing sec. 145(b)(1)(A) of WIOA, must also be made that there is a reasonable expectation that the applicant can participate successfully in group situations and activities, and is not likely to: Engage in actions that would potentially prevent other students from receiving the benefit of the program; be incompatible with the maintenance of sound discipline; or impede satisfactory relationships between the center to which the student is assigned and the surrounding local communities. These requirements support the vision of Job Corps centers as safe environments with a culture that is conducive to student learning and achievement of the academic, technical, and social skills needed to obtain employment or enter post-secondary education.

Proposed paragraph (c) requires that an applicant must also be made aware of and understand the center's rules, the consequences for failing to observe the rules, and agree to comply with the rules.

Proposed paragraph (d) provides that no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system, except if the individual has been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault, in accordance with secs. 145(b)(2) and (3) of WIOA. All applicants must also submit to a background check conducted according to procedures established by the Secretary and with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws and regulations. However, the Department notes that although these individuals are eligible, the final admission decision remains with the Job Corps.

Finally, proposed paragraph (e) requires that suitable arrangements be made for the care of any dependent children for the proposed period of enrollment.

Section 686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

As required by WIOA sec. 146(a), this proposed section requires each male applicant 18 years of age or older, or a male student who turns 18 years of age, to present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*). These requirements are the same as those found at 20 CFR 670.420.

Section 686.430 What entities conduct outreach and admissions activities for the Job Corps program?

Proposed § 686.430 states that the Secretary makes arrangements with outreach and admission agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions service are identified in § 686.300(b).

Section 686.440 What are the responsibilities of outreach and admissions providers?

Proposed paragraphs (a) and (b) of this section require outreach and admission providers to perform a number of tasks to recruit and enroll students, including completing all Job Corps application forms and determining whether the applicants meet the eligibility and selection criteria outlined for participation in the program as provided in proposed §§ 686.400 and 686.410.

Proposed paragraph (c) clarifies that the Secretary may require that the National Director or his or her designee make determinations with regard to one or more of the eligibility criteria.

This proposed section retains the same requirements as those found at 20 CFR 670.450.

Section 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

In accordance with WIOA secs. 145(c) and (d), proposed § 686.450 describes the process for assigning applicants to Job Corps centers.

Applicants who meet the eligibility and selection requirements of proposed §§ 686.400 and 686.410 are assigned to a center based on an assignment plan developed by the Secretary based on an analysis of the factors described in proposed paragraph (a). These factors are specified in secs. 145(c) and (d) of WIOA. They are similar to the factors for the assignment plan required to be developed under WIA, except that sec. 145(c)(2)(D) of WIOA also requires the Secretary to consider the performance of the center, as described in proposed § 686.450(a).

Proposed paragraph (b) describes the general rules for assignment of individual enrollees, consistent with sec. 145(d) of WIOA.

In accordance with sec. 145(d)(2) of WIOA, and similar to the same requirement in WIA, proposed paragraph (c) mandates that if a parent or guardian objects to the assignment of

a student under the age of 18 to a center other than the center closest to home that offers the desired career and technical training, the Secretary must not make such an assignment.

Section 686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

In accordance with WIOA sec. 147(c), this proposed section requires that no more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

Section 686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

Proposed § 686.470(a) describes the process for an applicant to appeal a denial of their application.

Proposed paragraph (b) states that if an applicant believes that he or she has been determined ineligible or not selected for enrollment in violation of the nondiscrimination and equal opportunity provisions contained in sec. 188 of WIOA and at 29 CFR part 37, the individual may file a complaint as described by the nondiscrimination regulations at 29 CFR part 37. Finally, proposed paragraph (c) requires that an applicant denied enrollment be referred to the appropriate one-stop center or other service provider as appropriate.

This proposed section retains the same requirements as those found at 20 CFR 670.470.

Section 686.480 At what point is an applicant considered to be enrolled in Job Corps?

Proposed § 686.480 delineates when an applicant is considered to be enrolled in Job Corps and requires that, based on procedures issued by the Secretary, center operators must document the enrollment of new students.

This proposed section retains the same requirements as those found at 20 CFR 670.480.

Section 686.490 How long may a student be enrolled in Job Corps?

This proposed section implements the requirements in sec. 146(b) of WIOA. Proposed paragraph (a) states the general rule that a student may remain enrolled in Job Corps for no more than 2 years.

However, proposed paragraph (b) implements four exceptions to this rule, consistent with sec. 146(b) of WIOA, which permit the 2 years to be extended in specific cases. Paragraph (b)(1) permits the Secretary to extend the 2 year enrollment period in special cases, according to procedures issued by the Secretary. Paragraph (b)(2) permits up to a 1 year extension of a student's enrollment in an advanced career training program in order to complete the program. Paragraph (b)(3) permits an extension for a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for up to an additional year. Finally, proposed paragraph (b)(4) permits a student who participates in national service authorized by a CCC to have his or her enrollment extended for the amount of time equal to the period of national service. This paragraph (b)(4) implements sec. 146(a)(3) of WIOA. WIOA also states that students enrolled in CCCs may provide assistance in addressing national, State, and local disasters (sec. 147(d)(2) of WIOA; see proposed § 686.610(a)). Both of these provisions are new in WIOA. Taken together, these provisions show WIOA's added attention to ensuring that Job Corps students in CCCs have the flexibility to provide assistance, such as fire-fighting, for example, when needed in a disaster. The Department notes that similar to the provision in proposed § 686.490(b)(4) that addresses national service, the Secretary is authorized to extend the enrollment period for students who perform service to address State and local disasters or other needs under proposed § 686.490(b)(1).

6. Subpart E—Program Activities and Center Operations

This proposed subpart describes the services and training that a Job Corps center must provide. Job Corps distinguishes itself from other training programs by providing students with residential services in combination with hands-on training and experience aligned with industry standards. While education, training, and job placement are core components of what the program offers, this section of the regulations describes how Job Corps provides a comprehensive service model that also includes life skills, emotional development, personal management, and responsibility. New regulations addressing advanced career training programs are included; such programs provide broader opportunities for higher wages and career advancement.

This proposed subpart also establishes the requirements for a student accountability system and behavior management system. Job Corps' policy for violence, drugs, and unauthorized goods is described. Requirements to ensure students are provided due process in disciplinary actions, to include center fact-finding and review board and appeal procedures are outlined. These systems and requirements serve to enhance the Job Corps program by ensuring that Job Corps centers are safe and secure environments that promote the education and training of students. Approved experimental, research and demonstration projects related to the Job Corps program are authorized in this proposed subpart, which also serves to enhance the program.

Section 686.500 What services must Job Corps centers provide?

Proposed paragraph (a) specifies that Job Corps centers must provide an intensive, well-organized and fully supervised program, including training activities, work-based learning and experience, residential support services, and other services as required by the Secretary.

Proposed paragraph (a)(1) describes training activities to include career and technical training, academic education, and employability and independent learning and living skills development. Job Corps is first and foremost a career training program, and an essential part of preparing enrollees for success upon exit necessitates providing employability, social, and independent-living skills.

Proposed paragraph (b) provides that students must be provided with access to career services as described in WIOA secs. 134(c)(2)(A)(i) through (xi).

Section 686.505 What types of training must Job Corps centers provide?

In order to provide enrollees with the intensive program of activities required by WIOA, several types of training must be provided by Job Corps centers.

Proposed paragraph (a) requires that centers provide students with a CTT program that is aligned with industry-recognized standards and credentials. Ensuring that training programs are aligned with industry standards and credentials better prepares students to attain in-demand, long-term employment; further career enhancement along a career pathway; or advanced education, including apprenticeships.

Proposed paragraph (b) requires that centers provide an education program, including English language acquisition programs, as required by sec. 148(a)(1) of WIOA, as well as high school diploma (HSD) or high school equivalency certification programs, and academic skills training. These skills are necessary for students to master

technical skills in their chosen CTT programs.

Proposed paragraph (c) states that centers must provide programs for students to learn and practice employability and independent learning and living skills. These skills include: Job search and career development, interpersonal relations, driver's education (as required by sec. 148(a)(1) of WIOA), study and critical thinking skills, financial literacy and other skills specified in program guidance issued by the Secretary. Learning these skills will enable long-term labor market attachment and are critical to the continuing success of enrollees after leaving the Job Corps program.

Proposed paragraph (d) requires all Job Corps training programs to be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, with the goal of placing students in unsubsidized employment in in-demand jobs with career advancement opportunities; enrollment in advanced education and training programs or apprenticeships; or enlistment in the Armed Forces. Responsiveness to employers' and industries' needs for employees who are prepared with the academic, technical, and employability skills necessary for career success is required in order to effectively place students and to sustain Job Corps' relationships with employers.

Proposed paragraph (e) requires that specific career and technical training programs offered by individual centers must be approved by the Regional Director. Approval is necessary to ensure that the training provided by Job Corps meets industry workforce needs.

Proposed paragraph (f) states the responsibilities of the center workforce council in shaping a center's career and technical training program, as described in § 686.800.

Proposed paragraph (g) retains the same requirements as those in the WIA regulations at 20 CFR 670.505(c), requiring that each center must implement a system to evaluate and track the progress and achievement of each student at regular intervals.

Proposed paragraph (h) states that each center must develop a training plan that must be available for review and approval by the appropriate Regional Director. It retains the same requirements as those in 20 CFR 670.505(d).

Section 686.510 Are entities other than Job Corps center operators permitted to provide academic and career and technical training?

Proposed paragraph (a) implements sec. 148(b) of WIOA, which lists the entities that the Secretary may use to provide career technical and academic education of Job Corps students, as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

Proposed paragraph (b) states that these entities will be selected in accordance with the requirements of § 686.310.

Section 686.515 What are advanced career training programs?

Advanced career training provides students an opportunity to receive advanced education or training while still receiving the benefits and services provided by Job Corps. In order to be eligible, students must have a HSD or its equivalent and have completed a Job Corps CTT program. Proposed paragraphs (a) and (b) restate the requirements for advanced career training programs in secs. 148(c)(1)–(2) of WIOA.

Advanced career training programs are authorized by the Secretary based on the relationship between on board strength and training slot availability. Proposed paragraph (c), which restates the requirements found in WIOA sec. 148(c)(3), permits a center operator to enroll more students than otherwise authorized by the Secretary in an advanced career training program if, in accordance with standards developed by the Secretary, the operator demonstrates that participants in the program have achieved a satisfactory rate of training and placement in training-related jobs, and for the most recently preceding 2 PYs, the operator has, on average, met or exceeded the primary indicators for eligible youth described in § 686.980.

Section 686.520 What responsibilities do the center operators have in managing work-based learning?

This section retains the same requirements as those in the WIA regulations at 20 CFR 670.515. Proposed § 686.520(a) requires that center operators emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. This paragraph further requires that work-based learning must be under actual working conditions and be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career and technical training, and is intended to develop a further understanding of career opportunities, employer expectations, and the impact of post-secondary education in the workplace. Work-based learning can include structured, hands-on experiences, as well as workplace tours, employer presentations, and job shadowing to help students refine their career objectives.

Proposed paragraph (b), in accordance with sec. 159(g)(2) of WIOA, states that the center operator must ensure that the students are assigned only to workplaces that meet the safety standards described in § 686.920.

Section 686.525 Are students permitted to hold jobs other than work-based learning opportunities?

Proposed § 686.525 states that a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled academic and CTT activities. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.520.

Section 686.530 What residential support services must Job Corps center operators provide?

Proposed § 686.530 states that Job Corps center operators must provide residential support services according to procedures issued by the Secretary. Residential support services are critical for the success of the Job Corps programs because they are central to creating and maintaining environments that allow enrollees to learn, practice independent and community living skills, promote personal responsibility, and reinforce social and employability skills, such as a positive attitude, dependability, and teamwork. This proposed section retains largely the same requirements as those contained in the WIA regulations at 20 CFR 670.525.

The Department notes that one of the requirements is that a student leadership program and an elected student government is supported by the center operator. The goals of student leadership programs are to provide opportunities for interested students to develop leadership skills through participation in student governance, representing Job Corps in the community at large, planning and leading Job Corps events, and providing input and feedback for center

management decisions that impact student services and/or residential living.

Section 686.535 Are Job Corps centers required to maintain a student accountability system?

Job Corps centers are required to maintain a student accountability system, as described at proposed § 686.535. This proposed section retains the same requirements as those contained in the WIA regulations at 20 CFR 670.530. An accountability system is important to ensure the safety and security of Job Corps students and to track participation in various activities in order to evaluate program delivery.

Section 686.540 Are Job Corps centers required to establish behavior management systems?

Proposed § 686.540 states that each Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, consistent with the standards of conduct and procedures established by the Secretary. The behavior management plan must be approved by the Job Corps regional office and reviewed annually. The system must include Job Corps' zero tolerance policy for violence and drugs as described in § 686.545.

Section 686.545 What is Job Corps' zero tolerance policy?

Proposed § 686.545(a) requires all center operators to comply with Job Corps' zero tolerance policy as established by the Secretary. Infractions addressed in the zero tolerance policy must include, but are not limited to: Actions of violence, as defined by the Secretary; use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802; abuse of alcohol; possession of unauthorized goods; or other illegal or disruptive activity.

Proposed paragraph (b) implements secs. 145(a)(2)(A) and 152(b)(2) of WIOA, providing that all students must be tested for drugs as a condition of enrollment.

Proposed paragraph (c) provides that the zero tolerance policy established by the Secretary specifies the offenses that will result in the separation of students from the Job Corps. This paragraph further provides that the center director is expressly responsible for determining when such an offense has occurred.

Section 686.550 How does Job Corps ensure that students receive due process in disciplinary actions?

Proposed § 686.550 provides that a center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. This proposed section retains the same requirements as those contained in the WIA regulations at 20 CFR 670.545.

Section 686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?

Proposed § 686.555 implements the requirement in sec. 148(e) of WIOA that the Secretary provide for child care to the extent practicable. Proposed paragraph (a) encourages Job Corps centers to coordinate with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. This paragraph also requires that, prior to enrollment, a program applicant with dependent children who provides primary or custodial care must certify that suitable arrangements for child care have been established for the proposed period of enrollment. This is necessary to ensure full program participation once a student is enrolled.

Proposed paragraph (b) states that a child development program may be located at a Job Corps center with the approval of the Secretary.

Section 686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?

Proposed § 686.560 retains the same requirements found in the WIA regulations at 20 CFR 670.555.

Section 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Proposed § 686.565(a) establishes that the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program as long as the projects are developed, approved, and conducted in accordance with the policies and procedures developed by the Secretary, in accordance with sec. 156(a) of WIOA.

7. Subpart F—Student Support

Proposed subpart F discusses the support services provided to Job Corps enrollees, including transportation to and from Job Corps centers, authorized student leave, allowances and performance bonuses, and student clothing. In addition to being eligible to receive transportation to and from Job Corps centers, students are eligible for other benefits, including basic living allowances to cover personal expenses, in accordance with guidance issued by the Secretary. Students are also provided with a modest clothing allowance to enable them to purchase clothes that are appropriate for the classroom and the workplace. These proposed regulations again work to strengthen the Job Corps program and provide access to high quality training by ensuring that Job Corps students are placed in the best possible position to prepare them for learning, and that they are rewarded for their success in the program.

Section 686.600 Are students provided with government-paid transportation to and from Job Corps centers?

Proposed § 686.600 states that Job Corps provides students with transportation to and from Job Corps centers, according to policies and procedures established by the Secretary. This section retains the same requirements as those in the WIA regulations at 20 CFR 670.600.

Section 686.610 When are students authorized to take leaves of absence from their Job Corps centers?

Proposed § 686.610 provides that Job Corps students are eligible for annual leave, emergency leave, and other types of leaves of absence from their assigned centers. Procedures for requesting, approving, and recording student leave will be based on criteria and requirements issued by the Secretary. This section retains the same requirements found in the WIA regulations at 20 CFR 670.610. Additionally, proposed § 686.600(a) states that in accordance with sec. 147(d)(2) of WIOA, enrollees in CCCs may take leave to provide assistance in addressing national, State, and local disasters.

Section 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

Proposed § 686.620(a) allows, based on criteria and rates established by the Secretary, Job Corps students to receive cash living allowances, performance bonuses, and allotments for care of dependents. Also, graduates receive post-separation transition allowances according to proposed § 686.750. This paragraph largely retains the same requirements in the WIA regulations at 20 CFR 670.620(a), but revises the description of the payments to align with sec. 150(b) of WIOA.

Under proposed paragraph (b), in the case of a student's death, any amount due is to be paid according to 5 U.S.C. 5582, governing issues including designation of a beneficiary, order of precedent, and related matters. This paragraph retains the same requirements as those found at 20 CFR 670.620(b).

Section 686.630 Are student allowances subject to Federal payroll taxes?

As required by sec. 157(a)(2) of WIOA, proposed § 686.630 requires that Job Corps student allowances be subject to Federal payroll tax withholding and Social Security taxes. For purposes of the Internal Revenue Code of 1986 and title II of the SSA (42 U.S.C. 401 *et seq.*), enrollees are deemed to be employees of the United States.

Section 686.640 Are students provided with clothing?

Proposed § 686.640 provides that, according to rates, criteria, and procedures issued by the Secretary, center operators and other service providers must provide Job Corps students with a clothing allowance and/or articles of clothing as needed to facilitate their participation in Job Corps and successful entry into the workforce. This proposed section retains the same requirements as those in the WIA regulations at 20 CFR 670.640.

8. Subpart G—Career Transition and Graduate Services

This proposed subpart discusses career transition and graduate services for Job Corps enrollees. Job Corps focuses on placing program graduates in full time jobs, post-secondary education, advanced training programs, including apprenticeship programs, or the Armed Forces. In an effort to further integrate the Job Corps program with the greater workforce system and align it with the core programs, proposed § 686.820 specifically focuses on how Job Corps will coordinate with other agencies, where emphasis is placed on utilizing the one-stop delivery system to the maximum extent practicable. This proposed subpart also outlines a center's responsibilities in preparing students for career transition services; the career transition services that are provided for enrollees; who m6ay provide career transition and graduate services, in addition to one-stop centers; and services provided for graduates and former enrollees.

Section 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

Proposed § 686.700 implements sec. 149(a) of WIOA, providing that Job Corps centers assess and counsel enrollees to determine their competencies and capabilities and readiness for career transition services prior to their scheduled graduation. The purpose of counseling and assessment is to determine students' capabilities to allow them to either be placed into employment leading to self-sufficiency based on their training, or to assist the student in participating in further activities leading to the capabilities necessary for placement.

Section 686.710 What career transition services are provided for Job Corps enrollees?

Proposed § 686.710 implements sec. 149(b) of WIOA, requiring that career transition services focus on placing program graduates in full time jobs that are related to their career and technical training and that lead to economic self-sufficiency; higher education; advanced training programs, including apprenticeship programs; or the Armed Forces.

Section 686.720 Who provides career transition services?

As required by sec. 149(b) of WIOA, proposed § 686.720 states that the one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. Multiple other resources can also provide post-program services, including, but not limited to, Job Corps career transition service providers and State VR agencies for individuals with disabilities.

Section 686.730 What are the responsibilities of career transition service providers?

Proposed § 686.730 contains the responsibilities of career transition service providers. The section largely retains the same requirements found in the WIA regulations at 20 CFR 670.730.

Section 686.740 What services are provided for program graduates?

As required by sec. 148(d) of WIOA, proposed § 686.740 states that career transition and support services must be provided to program graduates for up to 12 months after graduation, according to procedures issued by the Secretary.

Section 686.750 Are graduates provided with transition allowances?

Proposed § 686.750 states that Job Corps graduates receive post-separation transition allowances. As required by sec. 150(b) of WIOA, the transition allowance must be incentive-based to reflect a graduate's completion of academic, career, and technical education or training, and attainment of recognized post-secondary credentials.

Section 686.760 What services are provided to former enrollees?

Proposed § 686.760(a) implements sec. 150(c) of WIOA, allowing for the provision of 3 months of ESs to former enrollees.

Proposed paragraph (b) states that Job Corps centers may provide other assessment, counseling, or career transition services to help former enrollees find and retain employment, if determined appropriate, according to procedures issued by the Secretary.

9. Subpart H—Community Connections

This proposed subpart highlights WIOA's focus on community relationships and further integration with the workforce system. In both the new contracting provisions in proposed subpart C and in this subpart, there is more emphasis on connections with one-stops, Local Boards, and State and local plans. While WIA's requirement for a Business and Community Liaison has been eliminated, the responsibility for establishing beneficial business and community relationships and networks now lies with the director of each Job Corps center. Moreover, WIOA contains a new requirement that in a single-State local area, a representative of the State Board must be included on the workforce council. Proposed § 686.810 also states, consistent with sec. 154(b)(2) of WIOA, that the workforce council may include employers from outside the local area that are likely to hire center graduates. The new requirements for the workforce council seek to provide greater access to high quality training for Job Corps students, in part by ensuring that Job Corps is providing training in in-demand industry sectors and occupations.

Section 686.800 How do Job Corps centers and service providers become involved in their local communities?

While WIA's requirement for a Business and Community Liaison designated by the director of each center has been eliminated, the director of each Job Corps center must still ensure that mutually beneficial business and community relationships and networks are established and developed. As required by sec. 153 of WIOA, proposed § 686.800(a) states that each Job Corps center director must establish relationships with local and distant employers; applicable one-stop centers and Local Boards; entities carrying out relevant apprenticeship programs and youth programs; labor-management organizations and local labor organizations; employers and contractors that support national training programs and initiatives; and CBOs, non-profit organizations, and intermediaries providing workforce development and support services. Through these relationships, Job Corps

hopes to improve the quality of the training programs that it offers and create meaningful associations with other entities with which it interacts and shares similar goals.

Under proposed paragraph (b), each Job Corps center must also establish and develop relationships with members of the community in which it is located. This paragraph further proposes that members of the community be informed of projects of the center and changes in the rules, procedures, or activities of the center that may affect the community. Through these efforts, Job Corps aims to garner the support and endorsement of the local community.

Section 686.810 What is the makeup of a workforce council and what are its responsibilities?

Section 154 of WIOA requires each center to establish a workforce council according to procedures established by the Secretary. Proposed § 686.810 implements this provision. It specifies that the council must include: non-governmental and private sector employers; representatives of labor organizations and employees; Job Corps enrollees and graduates; and, in the case of a single State local area, a representative of the State Board.

Proposed paragraph (b) describes the composition of the workforce council, consistent with the requirements of sec. 154(b) of WIOA.

Proposed paragraph (c) states that the workforce council may also include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

Proposed paragraph (d)(1) implements sec. 154(c)(1) of WIOA by identifying that the first responsibility of the workforce council is to work with all applicable Local Boards and review labor market information to determine and provide recommendations to the Secretary regarding the center's career and technical training offerings, including identifying the emerging occupations suitable for training. In doing so, Job Corps hopes to remain current in its CTT offerings, adjusting and supplementing its training offerings based on the needs of industry in the surrounding communities.

Proposed § 686.810(d)(2) and (3) state the remaining duties of the workforce council, in accordance with secs. 154(c)(2)–(3) of WIOA.

Section 686.820 How will Job Corps coordinate with other agencies?

Proposed § 686.820 describes how Job Corps coordinates with other agencies. This section retains the same requirements found in the WIA regulations at 20 CFR 670.760 and 20 CFR 670.800(g). Paragraph (b) of this section describes the linkages required between Job Corps and the one-stop service system and paragraph (c) indicates that Job Corps is identified as a required one-stop partner. The Department notes that in addition to these linkages, similar to the requirement in WIA, proposed § 678.400 identifies Job Corps as a required one-stop partner, as required by sec. 121(b)(1)(B)(i) of WIOA. Additionally, similar to the WIA regulations at 20 CFR 670.800(g), proposed § 678.415 specifies that the Job Corps center is the Job Corps ''entity'' that is required to serve as the one-stop partner in any local area where a center exists. Job Corps centers are encouraged to review the requirements of one-stop partners described in subpart B of part 678 of these proposed regulations.

10. Subpart I—Administrative and Management Provisions

The proposed subpart provides requirements relating to tort claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction on Job Corps center property. It also addresses whether Job Corp operators and service providers are authorized to pay State or local taxes on gross receipts, and details the financial management responsibilities of center operators and other service providers. The management of student records, as well as procedures applicable to the disclosure of information about Job Corps students and program activities are outlined. Finally, procedures available to resolve complaints and disputes, and how Job Corps ensures that complaints or disputes are resolved in a timely fashion, are addressed. The entirety of this proposed subpart addressing administrative and management principles that apply to the operation of the Job Corps program serves to promote its accountability and transparency.

Section 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

In accordance with sec. 157(a)(4) of WIOA, proposed § 686.900 states that students are considered Federal employees for purposes of the FTCA (28 U.S.C. 2671 *et seq.*) and that claims for such damage must be filed pursuant to the procedures found in 29 CFR part 15, subpart D. This proposed section retains the same requirements as those found in the WIA regulations at 20 CFR 670.900.

Section 686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Proposed § 686.905 states that the Job Corps program may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D. This proposed section retains the same requirements found at 20 CFR 670.905.

Section 686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?

Proposed § 686.910 implements sec. 157(a)(3) of WIOA. Paragraph (a) states that Job Corps students are considered Federal employees for purposes of the FECA, as specified in sec. 157(a)(3) of WIOA (29 U.S.C. 2897). Proposed paragraphs (b) through (d) outline the requirements for Job Corps students' eligibility for FECA benefits and the procedures by which the benefits are paid. These paragraphs contain the same requirements as those in § 670.910 of the WIA regulations.

Section 686.915 When is a Job Corps student considered to be in the performance of duty?

Proposed § 686.915 outlines when a Job Corps student is considered to be in the performance of duty. This proposed section retains the same requirements as those found at 20 CFR 670.915.

Section 686.920 How are students protected from unsafe or unhealthy situations?

Proposed § 686.920(a) states that the Secretary will establish procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. This section further states, consistent with sec. 159(g)(2) of WIOA, that whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State, and local health and safety standards. This proposed paragraph retains the same requirements found at 20 CFR 670.935.

Proposed paragraph (b) states that the Secretary will develop procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration (OSHA) regulations and Wage and Hour Division (WHD) regulations.

Section 686.925 What are the requirements for criminal law enforcement jurisdiction on center property?

Proposed § 686.925 provides information about criminal law enforcement jurisdiction on Job Corps center property. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.940.

Section 686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

Consistent with sec. 158(d) of WIOA, proposed § 686.930 explains some of the tax liabilities that apply to Job Corps center operators.

This proposed section retains the same requirements as those found at 20 CFR 670.945.

Section 686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?

As required by WIOA sec. 159(a), proposed § 686.935 states the financial management responsibilities that apply to Job Corps center operators and other service providers.

This proposed section retains the same requirements as those found at 20 CFR 670.950.

Section 686.940 Are center operators and service providers subject to Federal audits?

As required by WIOA sec. 159(b), proposed § 686.940 explains how Job Corps center operators and other service providers are subject to Federal audits.

This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.955.

Section 686.945 What are the procedures for management of student records?

Proposed § 686.945 states that the Secretary will issue guidelines for a system for maintaining records for each student during enrollment and for disposition of records after separation. This proposed section retains the same requirements as those found at 20 CFR 670.960.

Section 686.950 What procedures apply to disclosure of information about Job Corps students and program activities?

Proposed § 686.950 discusses the procedures that apply to disclosure of information about Job Corps students and program activities.

This proposed section retains the same requirements as those found at 20 CFR 670.965.

Section 686.955 What are the reporting requirements for center operators and operational support service providers?

Proposed § 686.955 states that the Secretary will establish procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Under this section, center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide. This proposed section retains the same requirements as those found at 20 CFR 670.970.

Section 686.960 What procedures are available to resolve complaints and disputes?

In support of the Department's commitment to ensuring that students are entitled to a fair process, proposed § 686.960 outlines the procedures that are available to resolve student complaints and disputes. This section retains the same requirements found in the WIA regulations at 20 CFR 670.991.

Section 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

Proposed § 686.965 outlines the procedures that are available to ensure timely resolution of a complaint or dispute. This section retains the same requirements as those found at 20 CFR 670.991.

Section 686.970 How does Job Corps ensure that centers or other service providers comply with the Act and the Workforce Innovation and Opportunity Act regulations?

Proposed § 686.970 explains the procedures Job Corps will use to ensure Job Corps center operators and other service providers comply with WIOA and this part. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.992.

Section 686.975 How does Job Corps ensure that contract disputes will be resolved?

Proposed § 686.975 states that a dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations. This proposed section retains the same requirements as those found at 20 CFR 670.993.

Section 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Civilian Conservation Centers?

Proposed § 686.980 states that disputes between the Department and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies. This proposed section retains the same requirements as those found at 20 CFR 670.994.

Section 686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Proposed § 686.985 states that nondiscrimination requirements, procedures, complaint processing, and compliance reviews would be governed by provisions of the Department's regulations, as applicable. This proposed section retains the same requirements found in the WIA regulations at 20 CFR 670.995.

11. Subpart J—Performance

Proposed subpart J incorporates WIOA-specific requirements related to performance assessment and accountability, as well as requirements for performance improvement plans for Job Corps center operators who fail to meet expected levels of performance. The Job Corps program is now required to report on the performance indicators common to all WIOA programs that provide key employment information on how many students entered and retained employment, their median wages, whether they attained credentials, their measurable skills gains, and effectiveness of services to employers. The entirety of this proposed subpart serves to promote the accountability, performance, and transparency of the Job Corps program.

Section 686.1000 How is the performance of the Job Corps program assessed?

Proposed § 686.1000 describes the performance management system the Secretary will establish to meet the requirements for management information in sec. 159 of WIOA.

Proposed paragraph (a) indicates that the performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admission providers, and career transition service providers, will be assessed in accordance with required procedures and standards issued by the Secretary, through a national

performance management system described in proposed paragraph (b) that includes the Outcome Measurement System (OMS). The Department proposes to continue its use of a national performance management system that includes the OMS because such a system is needed to track and report all of the management information required in sec. 159 of WIOA. The management information requirements include establishing expected levels of performance and collecting and reporting data on each center's performance relating to the primary indicators of performance for eligible youth, the performance indicators for outreach and admission providers, and the performance indicators for career transition service providers required under WIOA sec. 159(c); collecting and reporting data on each center's performance relating to the additional information required to be submitted in the annual report to Congress under sec. 159(d) of WIOA; collecting and reporting information regarding the state of Job Corps buildings and facilities under sec. 159(h) of WIOA; and collecting and reporting information regarding national and community service activities of enrollees under sec. 159(i) of WIOA.

Consistent with current practice, proposed paragraph (b) states that the performance management system will include measures that reflect not only the primary indicators of performance described in proposed § 686.1010, but also the information needed to complete the Annual Report described in proposed § 686.1040, as well as any other information the Secretary determines is necessary to manage and evaluate the effectiveness of the Job Corps program.

Job Corps' performance management system, which includes the OMS, is a well-established measurement system within the Job Corps community that has been used to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance. The performance management system is designed to provide the Secretary with the information necessary to manage and evaluate the effectiveness of the Job Corps program. It currently includes data on the WIA common measures, each center's success in filling student slots or on-board strength (OBS), information on the results of Regional Office Center Assessments, and the OMS.

The OMS currently includes the following 15 measures: HSD or General Educational Development (GED) Attainment Rate, CTT Completion Rate, Combination HSD or GED, and CTT Attainment Rate, Average Literacy Gain, Average Numeracy Gain, CTT Industry-Recognized Credential Attainment Rate, CTT Completer Job-Training Match/Post-secondary Credit Placement Rate, Former Enrollee Initial Placement Rate, Graduate Initial Placement Rate, Graduate Average Hourly Wage at Placement, Graduate Full-Time Job Placement Rate, Graduate 6-Month Follow-up Placement Rate, Graduate 6-Month Average Weekly Earnings, Graduate 12-Month Follow-up Placement Rate, and Graduate 12-Month Follow-up Weekly Earnings. These measures are based on the current performance requirements under WIA, and in some cases break down an overarching measure to provide a more detailed look at elements that make up the overarching measures. For example, one of the WIA common measures is the percent of students who achieve literacy or numeracy gains. In the OMS, literacy gains and numeracy gains are broken into two separate measures that provide program managers with an additional level of detail. A center may be achieving a high level of literacy gains but lagging in numeracy gains. In the combined measure that distinction would be hidden, but with the broken out measure, program managers can more specifically identify where to target interventions to support achievement of the overall common measure. Similarly, the OMS will be updated to reflect the primary indicators, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators.

Four of the new primary indicators of performance under WIOA are long-term measures, meaning that the point of measurement is as much as a year after a student exits the Job Corps program. These measures are valuable in assessing the performance of the program, but additional shorter-term measures are needed to supplement the primary indicators and provide program managers with information on a quicker cycle that can be used to make adjustments in the program on a faster timeframe. This includes measures such as the CTT completion rate, which provides useful information about the quality of the training programs at a center without waiting for the student outcome data to become fully available. When updating the OMS, the Department will begin to incorporate the primary indicators and other measures that will drive the system towards attainment of the WIOA primary indicators, while still maintaining other shorter-term measures that will provide additional information that the Secretary believes is necessary to manage and evaluate the effectiveness of the Job Corps program. The Department welcomes comments on this approach, and specifically on which short-term measures should be maintained in the new OMS system.

Over the years as program reporting requirements have changed from the Government Performance and Results Act (GPRA), the Program Assessment and Rating Tool (PART), and Common Measures, the OMS has proven to be flexible and through its mix of measures, goals, and weights, and successful in driving the system towards meeting changing priorities. For example, when additional emphasis was placed on longer term attachment to the workforce, Job Corps added 12-month placement and 12-month earnings to the existing line-up of measures included on the OMS as a clear indication to program operators of the new priority. Similarly, beginning in PY 2016, the OMS will be updated to reflect the new primary indicators of performance under WIOA.

Proposed paragraph (b) also indicates that the Secretary will issue annual guidance describing the performance management system and OMS. This guidance will describe any changes or updates to the overall performance management system or the OMS and also communicate the expected levels of performance for each indicator for each center, outreach and admission provider, and career transition service provider described in § 686.1030 to the system.

Proposed § 686.1000(c), implementing sec. 159(f)(1) of WIOA, indicates that annual performance assessments based on the measures referenced in proposed paragraph (b) will be done for each center operator and other service providers, including outreach and admission providers and career transition providers. These annual assessments will include a review of the data in the OMS, a calculation of the annual performance ranking as described in proposed § 686.1070, and an analysis of the operator or service provider's success at meeting the expected levels of performance, including consideration of any factors influencing the performance outcomes such as disruption in the operations of the center, economic conditions, or other factors.

Section 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Proposed § 686.1010 implements WIOA sec. 159(c)(1), which requires the use of the primary indicators of performance for eligible youth as described in sec. 116(b)(2)(A)(ii) of WIOA for the Job Corps program and each center. Proposed paragraphs (a) through (f) are the primary indicators of performance for eligible youth as described in sec. 116(b)(2)(A)(ii) of WIOA. These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations.

Section 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

Proposed § 686.1020 implements sec. 159(c)(2) of WIOA, which requires that the Secretary establish performance indicators and expected levels of performance on those indicators for recruitment service providers serving the Job Corps program. The performance management system and OMS will be updated to reflect the new performance measures for Job Corps outreach and admissions providers. Proposed paragraphs (a) through (d) are the indicators of performance as provided in sec. 159(c)(2) of WIOA.

Section 686.1030 What are the indicators of performance for Job Corps career transition service providers?

Proposed § 686.1030 implements sec. 159(c)(3) of WIOA, which requires that the Secretary establish performance indicators and expected levels of performance on those indicators for career transition service providers serving the Job Corps program. The performance management system and OMS will be updated to reflect the new performance measures for Job Corps Career Transition Service providers. Proposed paragraphs (a) through (g) are the indicators of performance as provided in sec. 159(c)(3) of WIOA.

Section 686.1040 What information will be collected for use in the Annual Report?

Proposed § 686.1040 implements sec. 159(c)(4) of WIOA, which requires the Secretary to collect information and submit an Annual Report on the performance of each Job Corps center and the Job Corps program. The Department is including this proposed section so that the Job Corps community is made aware of the information that will be collected. Proposed paragraphs (a) through (p) specify the information required to be included by secs. 159(c)(4)(A)–(B) and 159(d)(1)(A)–(N) of WIOA. Proposed paragraph (q) reflects the information required to be included by sec. 159(h) of WIOA, and proposed paragraph (r) reflects the information required by sec. 159(i) of WIOA.

Proposed paragraph (s) states that the Secretary may collect and include additional information in the Annual Report that the Secretary determines is necessary. Any such information would be collected as part of the performance management system and identified in the annual guidance described in § 686.1000.

Section 686.1050 How are the expected levels of performance for Job Corps centers, outreach and admission providers and career transition service providers established?

Proposed § 686.1050(a) implements secs. 159(c)(1)–(3) of WIOA, which require that the Secretary establish expected levels of performance for Job Corps centers, outreach and admission providers, and career transition service providers, and the Job Corps program relating to each of the primary indicators of performance described in §§ 686.1010, 686.1020 and 686.1030. In order to develop expected levels of performance for the primary indicators, the Department will first examine past performance specific to the new measures. Since several of the employment-related indicators are intended to utilize State wage records, this will involve a process of developing quarterly earnings specifications as well as developing an infrastructure to align WRIS data with Job Corps survey data at the center level. Expected levels of performance can more readily be developed for the credential attainment and skill gains indicators using past performance aligned to the timeframes required by WIOA. Job Corps will also continue to use a regression model to statistically adjust for local economic conditions and participant characteristics at the center level similar to regression models used for other programs under WIOA. The Department anticipates that after implementation of the new primary indicators, there will be a period of at least 1 PY where baseline data are collected on each of the primary indicators and there is no expected level of performance in place. Once baseline data has been collected, the Department will begin to establish expected levels of performance.

Proposed paragraph (b) states that as provided in § 686.1000, the Secretary will issue annual guidance describing the national performance management system. This guidance will also communicate the expected levels of performance for each center and each indicator of performance for each outreach and admissions provider and each career transition service provider. This guidance will also describe how the expected levels of performance were calculated.

Section 686.1070 How are center rankings established?

Proposed § 686.1070(a) states that the Secretary will calculate the annual rankings of center performance based on the performance management system described in proposed § 686.1000. As described above in the explanation of proposed § 686.1000, Job Corps' OMS is a well-established measurement system within the Job Corps community that has been used to track performance of centers and service providers for many years, and it will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance. It is designed to drive the system to meet programmatic goals, which under WIOA will be established through the primary indicators of performance. As described above, the OMS will be updated to reflect the primary indicators of performance and may also include other measures that will drive the system towards attainment of the primary indicators or that provide more detailed information about elements that make up the primary indictors that the Secretary believes are necessary to manage and evaluate the effectiveness of the Job Corps program.

Proposed § 686.1070(b) states that the Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year. This guidance will include any changes in the weighting of individual measures in the calculation. The Department expects to weigh measures reflecting the attainment of the primary indicators most heavily. However, the Department anticipates that there could be changes in weighting from year to year to address areas of concentration in the program. For example, if the Department's analysis of past years' data regarding the system's results on the primary indicator related to measurable skills gains indicates that students are achieving high levels of literacy gains but lagging on numeracy gains, the Department may increase the weighting of the OMS measure on numeracy gains to signal to operators that they need to put more emphasis on improving numeracy. The expected result would

be that the increased focus on numeracy would lead to improved numeracy gains and a commensurate increase in the primary indicator related to measurable skills gains. The center rankings will reflect these efforts to push the system to continuous improvement of outcomes.

Section 686.1070 How and when will the Secretary use Performance Improvement Plans?

Proposed § 686.1070 implements sec. 159(f)(2) of WIOA, which sets out requirements for the circumstances under which the Secretary will use Performance Improvement Plans.

Proposed paragraph (a) provides that the Secretary will establish standards and procedures for developing and implementing performance improvement plans. Paragraph (a)(1) implements the requirement in sec. 159(f)(2) of WIOA, that when a center fails to meet expected levels of performance, the Secretary must develop and implement a performance improvement plan designed to help the center improve its performance outcomes. Paragraph (a)(1)(i) establishes standards for when the Secretary will consider a center to have failed to meet the expected levels of performance on the primary indicators. The proposed paragraph states that a center will have failed to meet the expected levels of performance if the center is ranked among the lowest 10 percent of Job Corps centers and the center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators. This is consistent with the methodology used to determine whether States have failed to meet the expected levels of performance on other programs under WIOA. Proposed paragraph (a)(1)(ii) establishes standards for when the Secretary will consider a center to have failed to meet the expected levels of performance on the primary indicators for PYs that occur prior to the implementation of the expected levels of performance on the primary indicators. The paragraph states that a center will have failed to meet the expected levels of performance if it is ranked among the lowest 10 percent of Job Corps centers and the center's composite OMS score for the PY is 88 percent or less of the year's OMS national average. This proposal is consistent with the Job Corps Performance Improvement Plan system planned for implementation in early 2015.

Proposed paragraph (a)(2) implements sec. 159(f)(3) of WIOA, which states that the Secretary may also develop and implement additional performance improvement plans that will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance. The Department expects to outline requirements for any such plans through subsequent guidance.

Proposed paragraph (b) implements the requirement in sec. 159(f)(2) of WIOA that the performance improvement plan require that action under the plan must be taken within 1 year of its implementation to address the issues that led to the center's failure to meet its expected levels of performance. The paragraph states that the plan will identify criteria that must be met for the center to complete the performance improvement plan. In addition, paragraph (b)(1) provides that the center operator must implement the actions outlined in the performance improvement plan. Proposed paragraph (b)(2) provides that if the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a). In that case, the center will remain on a performance improvement plan and the Secretary will take action as described in proposed paragraph (c). Paragraph (b)(2)(ii) implements sec. 159(f)(4) of WIOA, which provides that if a CCC fails to meet expected levels of performance relating to the primary indicators of performance specified in proposed § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) after 3 PYs, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the CCC on a competitive basis. Such competition will be held in accordance with the requirements at proposed § 686.310.

Proposed paragraph (c) implements secs. 159(f)(2)(A) through 159(f)(2)(G) of WIOA, which permit the Secretary to take specific actions to improve the performance of a center, as necessary. These requirements are taken directly from the statute and this proposed paragraph retains the same requirements as those in the WIA regulations at 20 CFR 670.985. The Department notes that nothing in the statute or in these proposed regulations requires that the performance improvement actions be taken in any particular order or on a progressive basis. The Secretary will take any of the measures listed in sec. 159(f)(2) of WIOA that will lead to improving performance of a center. Among these measures, the Secretary also reserves the right to close low-performing centers, pursuant to WIOA sec. 159(f)(2)(G).

*K. Part 687—National Dislocated Worker Grants*

Proposed part 687 implements provisions in sec. 170 of WIOA that authorize the Secretary to award discretionary funds to serve dislocated workers and other eligible individuals affected by major economic dislocations, emergencies, or disasters. The proposed regulations set forth the key elements and requirements for the statute's NDWGs. Additional guidance on NDWGs and the application requirements for these grants will be published separately.

The proposed regulations establish a framework that will enable eligible applicants to apply quickly for grants to relieve the impact of layoffs, emergencies, and disasters on employment in the impacted area and to meet the training and reemployment needs of affected workers and to enable them to obtain new jobs as quickly as possible. The proposed regulations call for early assessment of the needs and interests of the affected workers, through either rapid response activities, or other means, as well as an indication of the other resources available to meet these needs, to aid in the creation of a customer-centered service proposal. The early collection of information about affected workers will allow applicants to have an understanding of the needs and interests of the impacted workers to enable a prompt application for the appropriate level of NDWG funds. Early collection of information also will facilitate the receipt of NDWG funds when the Secretary determines that there are insufficient State and local formula funds available. Early intervention to assist workers being dislocated is critical to enable them to access work-based learning opportunities and other types of training that lead to industry-recognized credentials, as appropriate, to help them find new employment in in-demand industries and occupations as soon as possible after their dislocation occurs.

Section 687.100 What are the types and purposes of national disclosed worker grants the Workforce Innovation and Opportunity Act?

Proposed § 687.100 describes the purpose of NDWGs, expanding upon the description provided in the WIA regulations at 20 CFR 671.100. Regular NDWGs provide career services for dislocated workers and other eligible

populations where demand is unable to be met with formula funds or other sources. Disaster NDWGs, which were originally authorized under WIA to conduct clean-up and humanitarian assistance, are still authorized under WIOA; however, WIOA expands their availability by adding new qualifying events for Disaster NDWGs, such as serving workers who have relocated from an area in which a disaster has been declared, as discussed in §§ 687.110(b) and 687.180(b).

Section 687.110 What are major economic dislocations or other events which may qualify for a national dislocated worker grant?

Proposed § 687.110 describes the events that qualify for NDWG funding. Proposed § 687.110(a)(1) through (3) include substantially similar provisions to those that were contained in the WIA regulations; however, the terms ''single site of employment'' and ''in a single local community,'' which had been used to qualify the types of eligible layoff events, are not included in the proposed section. Experience under WIA has shown that a company's total number of layoffs affects the local and regional economy in the same way without regard to whether the layoffs occur at a single facility or at multiple locations. Proposed § 687.110(a)(4) describes a qualifying event added by sec. 170(b)(1)(D)(i) of WIOA, permitting the award of a NDWG when a higher than average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in proposed § 687.170(a)(1)(iii), exceeds State and local resources. Section 170(b)(1)(D)(i) of WIOA specifically limits the military spouses included in this analysis to ''spouses described in sec. 3(15)(E) [of WIOA].'' Under sec. 3(15)(E) of WIOA, these are spouses of members of the Armed Forces on active duty who are dislocated specifically because they have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the military, or are unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment. Implementing this exactly as stated in the statute would require applicants for these NDWGs to determine whether a specific subset of dislocated military spouses is driving the higher than average demand for services in an area. This would cause an unnecessary burden on the NDWG applicants, and instead proposed § 687.110(a)(4) would only require applicants for these NDWGs to assess whether military spouses who are dislocated under any of the factors in sec. 3(15) of WIOA are contributing to the higher than average demand for services. The proposed provision also specifies that these spouses must be spouses of members of the Armed Forces on active duty, which implements the intent of this provision of WIOA while avoiding the unnecessary administrative hardship. The Department intends to provide additional guidance about how higher than average demand will be defined for purposes of this section. The Department is exploring definitions that may include veterans' unemployment in excess of the State's unemployment rate, Unemployment Compensation for Ex-service members (UCX) data, and other similar administrative data sources. The Department invites comments about the usefulness of relying on these and other data sources in determining how higher than average demand should be defined. Proposed § 687.110(a)(5) maintains the prerogative of the Secretary of Labor to provide NDWG funding for other events.

Proposed § 687.110(b) describes qualifying events for Disaster NDWGs. Proposed § 687.110(b)(1) provides, similar to the WIA regulation at 20 CFR 671.110(e), that disasters declared eligible for public assistance under the Stafford Act are qualifying events for Disaster NDWGs. The proposed paragraph also makes clear that outlying areas and tribal areas that receive a public assistance declaration also are eligible to apply for a Disaster NDWG. This is consistent with the intent and purpose of sec. 170 of WIOA, because these entities are both eligible for dislocated worker grants under WIOA and are eligible for public assistance under the Stafford Act. Therefore, it is logical that they would be eligible for Disaster NDWGs.

Proposed § 687.110(b)(2) and (3) describe the new events that WIOA establishes are qualifying events for Disaster NDWGs. As stated in sec. 170(a)(1)(B) of WIOA, eligible events for Disaster NDWGs now include an emergency or disaster situation of national significance that could result in a potentially large loss of employment, as recognized by the chief official of a Federal agency that has authority or jurisdiction over the Federal response for the emergency or disaster situation. Although such an event might not meet the requirements to receive a public assistance declaration from the FEMA, it still may be an event where NDWG funding may be needed. NDWGs may be provided in this instance for activities that are determined to be appropriate by the Secretary. Proposed paragraph (b)(3) addresses situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area. This would also be a qualifying event for a Disaster NDWG, according to secs. 170(b)(1)(B)(ii) and (d)(4) of WIOA. The addition of this type of event was informed by the mass evacuations that took place as a result of Hurricane Katrina, which caused massive flooding and damage along the Gulf Coast in 2005, resulting in evacuees settling in high concentrations in some other communities.

Section 687.120 Who is eligible to apply for national dislocated worker grants?

Proposed § 687.120 identifies which entities are eligible to apply for NDWGs. Proposed § 687.120(a) and (b) retain essentially the same requirements as in § 671.120 of the WIA regulations, but these proposed regulations clearly identify which entities may apply for Regular NDWGs and which may apply for Disaster NDWGs. Unlike § 671.120(b), proposed § 687.120 does not include a statement concerning the ability of private entities to apply for NDWGs for interstate projects, because sec. 170(c)(1)(B) of WIOA and proposed § 687.120(a)(5) provide for such applications. The proposed language, in contrast to its WIA counterpart, does not distinguish between interstate and intrastate projects, because from the Department's perspective the grantee/grantor relationship is between the Department and a single entity. In proposed § 687.120(a), the Department has specified that outlying areas, in addition to States, may apply for Regular NDWGs. In proposed § 687.120(b), the Department has specified that outlying areas and Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, in addition to States, may apply for Disaster NDWGs.

Section 687.130 When should applications for national dislocated worker grants be submitted to the Department?

Proposed § 687.130 describes when applications for NDWGs may be submitted and retains many of the requirements found in the WIA regulations at 20 CFR 671.130. However, there are some key differences in the proposed regulations. Proposed § 687.130(a) identifies the conditions

applicable to Regular NDWGs and underscores the importance that applications for Regular NDWGs must be submitted as soon as possible after the eligibility criteria are met and the necessary information to apply is available to the applicant. Timely submissions that comply with the requirements will help ensure that the needed resources are provided expediently.

Proposed § 687.130(b) identifies the conditions applicable to Disaster NDWGs and underscores the importance that applications for Disaster NDWGs must be submitted as soon as possible. Proposed § 687.130(b)(1) through (3) identify the events that trigger applications for Disaster NDWGs, and also emphasize the importance of submitting applications as soon as possible after the appropriate declarations or determinations have been made.

Section 687.140 What activities are applicants expected to conduct before a national dislocated worker grant application is submitted?

Proposed § 687.140 describes the activities to be conducted before an application for a NDWG is submitted. Proposed § 687.140(a) expands on the requirements found in the WIA regulations at 20 CFR 671.160. The proposed language, based in part on the Department's experience under WIA, requires applicants to identify the needs of the affected workers, and their interest in receiving services, either through Rapid Response activities or other means. Under WIA, the Department learned that some individuals who could have benefited from receiving ESs under a National Emergency Grant (NEG) ended up not being interested in receiving them. For example, some individuals chose to opt out of receiving services because they believed their previous employer was going to call them back to work, while others chose to forgo receiving employment and training services in order to find new employment on their own. The Department has found that the lack of information on needs and interest of affected workers have significantly impacted participant enrollment rates in the past, and in some cases, resulted in the return of funds outside the timeframe allowed for the funds to be obligated for other grants. Further, the proposed language expands the allowable data gathering methods that may be used, so that applicants are no longer limited to using only data obtained via Rapid Response interventions. This change allows for greater flexibility in obtaining this critical data.

Proposed § 687.140(b)(1) makes it clear that applicants for Disaster NDWGs must conduct a preliminary assessment of the clean-up and humanitarian needs in the affected areas. Proposed § 687.140(b)(2) requires applicants to have a mechanism in place to ascertain reasonably that there is a sufficient population of eligible individuals in the area and, if needed, eligible individuals outside the area to conduct the planned clean-up and humanitarian work. Under WIA, there were a few instances where after NEGs were issued, a State was unable to conduct the work it had planned because it was unable to find eligible individuals to do the work. The Department recognizes that in the immediate aftermath of a disaster it is difficult to conduct a thorough assessment of the number of individuals that could be eligible to conduct the planned work. While the Department's proposed approach allows flexibility, it also ensures there is a process in place so that reasonable estimates of potential participant availability are made prior to submitting the application, so that the proper amount of funding may be provided.

Section 687.150 What are the requirements for submitting applications for national dislocated worker grants?

Proposed § 687.150 explains that the Department will publish additional guidance on the requirements for submitting NDWG applications. A similar approach was taken in the WIA regulations. Unlike the WIA regulations, however, the proposed section requires that a project implementation plan, which is currently required for all NEGs, be submitted post NDWG award. Under WIA, this requirement is included only in guidance. The project implementation plan includes more detailed information about project operations than is required for the initial application. This information allows the Department to provide grantees with targeted technical assistance, and to exercise appropriate oversight and monitoring over the NDWG award. Additional information on what must be included in the project implementation plan, and the process for submitting it, will be included in future guidance.

Section 687.160 What is the timeframe for the Department to issue decisions on national dislocated worker grant applications?

Proposed § 687.160 implements sec. 170(b)(2) of WIOA, which establishes a 45-day timeframe for issuing determinations on NDWG applications. The proposed paragraph makes it clear that final decisions on NDWG applications will be issued within 45 calendar days of receiving an application that meets the requirements. Applicants are encouraged to engage the appropriate Regional Office so that timely technical assistance can be provided when developing NDWG applications to help ensure that the information provided in the application is sufficient.

**§ 687.170 Who is eligible to be served under national dislocated worker grants?**

Proposed § 687.170 provides information on participant eligibility for NDWGs, distinguishing between individuals who may be served under Regular NDWGs and those who may be served under Disaster NDWGs. In the WIA regulations at § 671.140, participant eligibility and allowable activities were included in the same section; these two topics are being addressed separately in proposed §§ 687.170 and 687.180 for clarity. Proposed § 687.170(a) lists the specific populations that are eligible to be served under Regular NDWGs. This paragraph retains the provision from the WIA regulations at 20 CFR 671.140(a) that dislocated workers may be served. However, as discussed below, the definition of a dislocated worker was expanded under WIOA, thereby expanding the population that can be served with NDWGs.

Section 3(15)(E)(i)–(ii) of WIOA includes certain spouses of members of the Armed Forces on active duty in the definition of ''dislocated worker.'' These spouses are considered dislocated workers, and therefore eligible for services under NDWGs, if they: (1) Have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the Armed Forces; or, (2) are unemployed or underemployed and experiencing difficulty obtaining or upgrading employment.

WIOA also expanded upon the definition of a ''displaced homemaker,'' recognized under both WIA and WIOA as a type of dislocated worker. Under sec. 3(16)(A)(ii) of WIOA, the definition of a displaced homemaker now explicitly includes a person who is a dependent spouse of a member of the

Armed Forces on active duty whose family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the member, and who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment. In addition to the expanded dislocated worker definition covering additional military spouses, dislocated members of the Armed Forces and other dislocated military spouses continue to be included in the definition of ''dislocated workers'' and therefore continue to be eligible for services under NDWGs, just as they were under WIA NEGs. Finally, sec. 170(c)(2)(A)(iv) of WIOA retains the eligibility provision found at sec. 173(c)(2)(iv) of WIA that members of the Armed Forces who were on active duty or full-time National Guard duty who meet other specific requirements are an eligible population. These members of the Armed Forces and the requirements are specifically described in proposed § 687.170(a)(1)(iii).

As discussed earlier in this preamble, WIOA states that dislocated members of the Armed Forces, members of the Armed Forces described in proposed § 687.170(a)(1)(iii), and dislocated spouses of members of the Armed Forces on active duty may be served with NDWGs when there is a higher than average demand for employment and training activities from this population that exceeds State and local resources to provide them.

Proposed § 687.170(b)(1) retains many of the participant eligibility requirements for Disaster NEGs found in the WIA regulations at § 671.140(d), and also includes a new population authorized under sec. 170(d)(2)(D) of WIOA—individuals who were self-employed, but become unemployed or significantly underemployed as a result of the emergency or disaster. Proposed § 687.170(b)(2) implements sec. 170(b)(1)(B)(ii) of WIOA, discussed in proposed § 687.110(b)(3), which authorizes NDWG assistance for individuals who have relocated to another State, tribal area, or outlying area as a result of the disaster. This paragraph lists the relocated individuals who are eligible for assistance under these type of NDWGs, and also notes that in rare instances, humanitarian-related temporary employment will be available in the relocation areas. This is further discussed in proposed § 687.180(b)(2) and the corresponding preamble language. In those cases, the relocated individuals listed in proposed § 687.170(b)(2) would be eligible for that work.

Section 687.180 What are the allowable activities under national dislocated worker grants?

Proposed § 687.180 provides information on allowable activities; first, those allowable under Regular NDWGs; second, those allowable under Disaster NDWGs. Proposed § 687.180(a) lists the allowable activities for Regular NDWGs. These activities are essentially the same as those reflected in the WIA regulations at 20 CFR 671.140; however, consistent with WIOA, references to core, intensive, and training services have been changed to refer to career services. Additionally, the reference to trade-impacted workers under the NAFTA–TAA program contained in 20 CFR 671.140(c)(2) is not included in the proposed paragraph, since the NAFTA–TAA program no longer exists.

Proposed § 687.180(b) lists the allowable activities for Disaster NDWGs. Proposed § 687.180(b)(1) uses the same language as in the WIA regulations at 20 CFR 671.140(e), which authorizes temporary employment for humanitarian assistance and clean-up and repair of facilities and lands within the disaster area for which a Disaster NDWG is issued. This proposed paragraph also implements sec. 170(d)(1)(A) of WIOA, which requires coordination with FEMA and permits these activities to be performed in offshore areas related to the emergency or disaster. The addition of the language on offshore areas was informed by the Deepwater Horizon Oil Spill; the proposed paragraph allows clean-up and humanitarian assistance activities to take place beyond the land surface of the disaster area.

Proposed § 687.180(b)(1) implements sec. 170(d)(3) of WIOA; this paragraph allows employment of up to 12 months in the temporary jobs created under Disaster NDWGs, with the potential for an additional 12 months with Secretarial approval. Under sec. 173(d)(3) of WIA, only 6 months of disaster relief employment was allowed. Proposed § 687.180(b)(1) identifies employment and training activities as allowable under Disaster NDWGs. While the WIA regulations contained a comparable provision, individuals were only allowed to participate in employment and training services after they had completed the disaster relief employment component of the project. The proposed paragraph allows individuals enrolled in disaster relief employment under Disaster NDWGs to receive concurrent career and training services, as well as upon completion. Feedback received from grantees over the years demonstrates that individuals involved in clean-up and humanitarian assistance benefit from the opportunity to receive employment and training services. These services will help to improve the skills of these individuals and enhance their chances of obtaining employment once the temporary disaster relief employment is completed. However, because the primary purpose of Disaster NDWGs is to perform clean-up and humanitarian assistance, the Department will issue further guidance about the specific requirements regarding concurrent participation in career services.

Proposed § 687.180(b)(2) implements sec. 170(b)(1)(B)(ii) of WIOA, discussed in proposed § 687.110(b)(3), which makes individuals who have relocated to another State, tribal area, or outlying area as a result of a disaster eligible to receive services. Proposed § 687.180(b)(2) recognizes that although these individuals are eligible for temporary disaster relief employment, their employment, by virtue of their relocation, will most likely be limited to humanitarian work (if those services are warranted). If individuals relocate outside of the disaster area, they will most likely not be in the impacted geographic area to conduct clean-up work. It is the Department's expectation that, except in rare circumstances, the services provided to relocated individuals will be limited to career services.

Proposed § 687.180(b)(3), consistent with secs. 170(a)(1)(A)–(B) of WIOA, authorizes career services and/or disaster relief employment both where recognized by FEMA, or by another Federal agency. Under sec. 173(a)(2) of WIA and the WIA regulations at 20 CFR 671.110(e) and 671.130(c), NEGs were only available where FEMA declared an area eligible for disaster-related public assistance.

Proposed § 687.180(b)(4) implements sec. 170(d)(1)(B) of WIOA, which states that disaster NDWG funds may be expended through public and private agencies and organizations that are engaged in disaster relief and humanitarian assistance projects.

Section 687.190 How do statutory and regulatory waivers apply to national dislocated worker grants?

Proposed § 687.190 describes how statutory and regulatory waivers apply to NDWGs. To improve a grantee's ability to serve participants, or increase the effectiveness of NDWG projects, the Department may grant waivers to many statutory and regulatory requirements. See WIOA sec. 189(i)(3)(A), which identifies some limitations on the Secretary's waiver authority. Proposed

§ 687.190(a) and (b) retain essentially the same requirements found in the WIA regulations at 20 CFR 671.150. A grantee requesting a waiver of the statutory or regulatory requirements in connection with an NDWG must submit its request either in the initial application for an NDWG, or in a subsequent modification request. A waiver issued under other WIOA provisions does not supplant this requirement.

Section 687.200 What are the program and administrative requirements that apply to national dislocated worker grants?

Proposed § 687.200 describes program and administrative requirements for NDWGs. It retains essentially the same language included in the WIA regulations at 20 CFR 671.170. Proposed § 687.200(b) authorizes the use of funds for temporary job creation in areas declared eligible for public assistance by FEMA or in areas impacted by a situation of national significance as designated by a Federal agency other than FEMA, subject to the limitations of sec. 170(d) of WIOA, and any additional guidance issued by the Department. Proposed § 687.200(b)(2) authorizes any remaining Disaster NDWG funds awarded under this part to be used by a grantee in the same PY the funds were awarded, in limited instances as determined by the Secretary or the Secretary's designee, for additional disasters or situations of national significance subject to the limitations of sec. 170(d) of WIOA. This flexibility will allow States, tribal areas, and outlying areas that experience a quick succession of disasters (such as those experienced by several Gulf States in 2005 that were devastated by the effects of Hurricane Katrina, and approximately 1 month later, were devastated by Hurricane Rita) to be able to modify their existing grant and quickly access existing funding.

*L. Part 688—Provisions Governing the YouthBuild Program*

1. Introduction

The Department wants to emphasize the connections across all of our youth-serving programs under WIOA including the WIOA youth formula program including boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs as well as align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance measures and standard definitions, which includes aligning the definitions for homeless youth, basic skills deficient, occupational skills training and supportive services. Additionally, the YouthBuild regulation aligns six new performance measures with the WIOA youth formula program.

WIOA affirms the Department's commitment to providing high quality education, training, and ESs for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on local labor market information.

In addition to the changes to the program required by WIOA, the Department proposes several additional changes to the program, including proposed revisions to the duration of the restrictive covenant clause (as detailed in the preamble at § 688.730), clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will develop guidance and technical assistance to help grantees and the workforce development community operate highly effective YouthBuild programs.

2. Subpart A—Purpose and Definitions

Section 688.100 What is YouthBuild?

This proposed section describes the YouthBuild program. YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged youth. The program also benefits the larger community by providing new and rehabilitated affordable housing, thereby decreasing the incidence of homelessness in those communities. The program recruits youth between the ages of 16 and 24 who are school dropouts and are either: A member of a low-income family, a youth in foster care, a youth who is homeless, a youth offender, a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth.

Section 688.110 What are the purposes of the YouthBuild program?

This proposed section describes the purposes of the YouthBuild program. The overarching goal of the YouthBuild program is to offer disadvantaged youth the opportunity to obtain education and useful employment skills to enter the labor market successfully. Construction training provides skills training and hands-on application of those skills. Youth also receive educational services that lead to a HSD or its State-recognized equivalent.

In addition to describing the Department's vision for the YouthBuild program, this proposed section describes the purposes of the YouthBuild program as found at WIOA sec. 171(a).

Section 688.120 What definitions apply to this part?

This proposed section provides definitions that are specific to the YouthBuild program in sec. 171(b) of WIOA. Other definitions that apply to the YouthBuild program are defined under sec. 3 of WIOA and § 675.300. Where appropriate and applicable the Department has aligned our definitions with the definitions within the regulations of WIOA youth, Job Corps, and WIOA adult and dislocated workers programs.

These proposed definitions fall into several categories, which are described below: (1) Definitions that remain unchanged from the WIA regulation at 20 CFR 672.110; (2) terms that were included in the WIA regulation but which have been amended; and (3) new definitions added to implement WIOA.

Definitions included in 20 CFR 672.110 which have been carried over to this part unchanged are: ''Community or Other Public Facility,'' ''Core Construction,'' ''Eligible Entity,'' ''Housing Development Agency,'' ''Income,'' ''Indian; Indian Tribe,'' ''Low-Income Family,'' ''Migrant Youth,'' and ''Youth in Foster Care.''

Definitions published in the WIA regulations at § 672.110 that the Department proposes changing include existing definitions for: ''Homeless Individual'' to include individuals considered homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 and the inclusion of ''Homeless Child or Youth'' as defined under the McKinney-Vento Homeless Assistance Act; ''Needs-Based Stipends'' to ''Needs-Based Payments'' in order to be consistent with the term as used in § 688.320 below and to differentiate the term from the allowable program stipends described in § 688.320; ''Occupational Skills Traning'' to align with in-demand industries and an emphasis on post-secondary credentials; ''Registered Apprenticeship'' to align with the WIOA definition; and ''Transitional

Housing'' to reflect the amended definition under the McKinney-Vento Homeless Assistance Act as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

Proposed changes to this section also include the addition of new definitions that were not in WIA but are included in either sec. 3 or sec. 171(b) of WIOA. These are ''Adjusted Income,'' ''Applicant,'' ''Basic Skills Deficient,'' ''In-Demand Industry Sector or Occupation,'' ''Individual with a Disability,'' ''Offender,'' ''Qualified National Nonprofit Agency,'' ''Recognized Post-secondary Credential,'' ''School Dropout,'' ''Secondary School,'' ''Supportive Services,'' and ''YouthBuild Program.''

Finally, the Department proposes to include several new definitions not defined under WIA YouthBuild regulations § 673.110: ''Construction Plus,'' ''Exit,'' ''Follow-Up Services,'' ''Participant,'' and ''Pre-apprenticeship.''

In addition, the Department has removed several definitions that were included in the WIA regulations: ''Alternative School,'' ''Individuals of Limited English Proficiency (LEP),'' ''Partnership,'' ''Public Housing Agency,'' and ''Youth who is an Individual with a Disability.''

The Department proposes to include the following definitions at § 688.120:

*Adjusted Income:* The Department proposes that the term ''adjusted income'' means that with respect to a family, the amount of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any allowable income exclusions. Per WIOA sec. 171(b)(1), this definition comes from sec. 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b).

*Applicant:* The Department proposes defining this as an entity applying for YouthBuild funding as described at WIOA sec. 171(b)(2).

*Basic Skills Deficient:* This proposed definition comes from WIOA sec. 3(5) and the Department is adding it for ease of use. In assessing basic skills, YouthBuild programs must use assessment instruments that are valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for participants with disabilities.

*Construction Plus:* The Department proposes defining this as the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction. This definition is from TEGL 7–14 Guidance for Implementing the ''Construction Plus'' Component of the YouthBuild Program. The Department is adding this definition to the regulations to stress the importance of correctly implementing a high quality Construction Plus program and to refer grantees to TEGL 7–14.

*Community Or Other Public Facility:* The Department proposes defining this as those facilities which are either privately owned by non-profit organizations or publicly owned and publicly used for the benefit of the community. For publically owned buildings, examples include public use buildings such as recreation centers, libraries, public park shelters, or public schools.

*Core Construction:* The Department proposes defining this term to mean those activities that are directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, and Construction and Extraction Occupations, in codes 47–1011 through 47–4099. A full list of the SOC's can be found at the Bureau of Labor Statistics (BLS) Web site, *http://www.bls.gov/soc*.

*Eligible Entity:* This proposed term describes the entities eligible to apply for funding under this part. This definition comes from WIOA sec. 171(b)(3).

*English Language Learner:* The Department proposes defining this term as a participant who has limited ability in reading, writing, speaking, or comprehending the English language, and whose native language is one other than English; or who lives in a family or community environment where a language other than English is the dominant language. This definition comes from WIOA sec. 3(21), which adopts the definition found at WIOA sec. 203(7).

*Exit:* For purposes of measuring performance under the performance measures described in § 688.400, the Department proposes to adopt the general definition of exit that is used in § 677.150 in order to align with the core programs generally and the youth formula program specifically. For purposes of this definition, an exit from a YouthBuild program is either a successful exit under § 688.370 or an unsuccessful exit, which occurs when a participant leaves the program before completing the program. However, a participant is not considered to have unsuccessfully exited if they leave the program because of a documented death, health or medical reason, family care, being called to active duty in the military, or any other circumstance described by the Secretary.

*Follow-Up Services:* This proposed term describes the services provided to youth participants after program exit to ensure success in established outcomes, such as placement into post-secondary education and training or employment. The definition is based on the Department's experience in administering the YouthBuild program, and aligns with the WIOA youth formula program definition. By adding this definition, the Department intends to strengthen the emphasis on career pathways for YouthBuild participants. Follow-up services are critical services provided following a youth's exit from the program that help ensure the youth is successful in employment and/or post-secondary education and training as they progress along their career pathway. The Department will issue guidance and provide technical assistance regarding the services necessary to ensure the success of youth participants.

*Homeless Individual:* This proposed term comes from WIOA sec. 171(b)(4), which adopted the definition from sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)).

*Homeless Child or Youth:* This proposed term comes from WIOA sec. 171(b)(4) of WIOA and comes from sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1134a(2)).

*Housing Development Agency:* The Department proposes adopting the statutory definition of this term at WIOA sec. 171(b)(5).

*Income:* This proposed definition has been adopted from WIOA sec. 171(b)(6), which adopted the definition from the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)).

*In-Demand Industry Sector or Occupation:* The Department proposes to define this term as described at WIOA sec. 3(23).

*Indian; Indian Tribe:* These proposed terms are found in WIOA sec. 171(b)(7), which incorporated the definitions from sec. 4 of the ISDEAA.

*Individual With a Disability:* This proposed definition was taken from sec. 3(25) of WIOA, which adopted the definition from sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

*Low-Income Family:* This proposed definition implements the definition at WIOA sec. 171(b)(8), which adopted the definition of ''low-income family'' from sec. 3(b)(2) of the Housing Act of 1937. This definition applies not only to the eligibility of participants but also to the

requirement that any residential units constructed or rehabilitated using YouthBuild funds must house homeless individuals and families or low-income families.

*Migrant Youth:* The Department proposes using the definition we used under the WIA YouthBuild regulation. The definition was adapted from Farmworker Bulletin 00–02, which relates to eligibility in the Migrant Seasonal Farmworker Youth program, and expands on the definition of ''migrant seasonal farmworker'' found in WIA.

*Needs-Based Payments:* This proposed term describes additional payments to participants beyond stipends which are necessary for an eligible youth to participate in the program.

*Occupational Skills Training:* The Department proposes to define this term as a course of study that provides specific vocational skills.

*Offender:* The Department proposes to define this term based on the definition found at WIOA sec. 3(38) and it includes both youth and adults who have been subject to any stage of the criminal justice process. The Department is proposing this definition in order to align YouthBuild's definition of offender with WIOA's formula for adult and youth programs.

*Participant:* The Department is proposing to define this term as an individual who, after an affirmative eligibility determination has been made, enrolls and actively participates in the program. Participants must be reported in the performance outcome measures. The term ''participant'' is necessary to define because § 688.400 requires grantees to report on the performance of participants in the program. This definition is designed to be consistent with the definition of participant in § 677.150, and it captures the same type of individuals that are considered participants in the core programs.

*Pre-Apprenticeship:* This proposed term describes a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program. This definition is adopted from TEN 13–12 (*http://wdr.doleta.gov/directives/attach/TEN/TEN_13-12_Acc.pdf*), and is being used to ensure consistency with the definition used by the Department's Office of Apprenticeship. Per TEN 13–12, YouthBuild programs that receive funding from DOL are considered pre-apprenticeship programs.

*Recognized Post-secondary Credential:* This proposed definition explains that a recognized post-secondary credential includes an industry-recognized certificate or completion of an apprenticeship program, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree. This definition has been adopted from WIOA sec. 3(52). the Department is using this to term to align with WIOA's formula adult and youth programs.

*Registered Apprenticeship Program:* The Department proposes to adopt the definition found at WIOA sec. 171(b)(10).

*School Dropout:* This proposed definition, adopted from WIOA sec. 3(54), describes a school dropout as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

*Secondary School:* The Department proposes to define this term as a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12. This proposed definition adopts the definition at WIOA sec. 3(55), which cites to sec. 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

*Section 3:* The Department proposes to define this term as Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992. The Department proposes adding this definition because YouthBuild is specifically identified in the U.S. Department of Housing and Urban Development (HUD's) Section 3 regulations. In Section 3, contractors are encouraged to work with YouthBuild programs and participants when working on Federally-funded HUD projects. Contractors and registered apprenticeship sponsors that hire YouthBuild graduates will increase the competitiveness of their proposals when bidding on HUD-funding construction projects.

*Supportive Services:* This proposed definition adopts the definition from WIOA sec. 3(59). In this definition, linkages to community services include but are not limited to services such as linkages to free legal aid to help with the expungement of criminal records, securing government identification, and linkages to organizations that provide youth the opportunity to develop their leadership skills through service to their respective community. This proposed definition identifies additional services that are necessary for youth to participant in this program. Guidance regarding the provision of supportive services will be issued by the Department.

*Transitional Housing:* The Department proposes to define this term as housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months. This definition, per WIOA sec. 171(b)(11), is adopted from sec. 401(29) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(29)).

*Youth in Foster Care:* This term means ''youth currently in foster care or youth who have ever been in foster care.'' The Department is including it here as it was in WIA YouthBuild regulations.

*Youthbuild Program:* The Department proposes to define this term as any program that receives assistance under this section and provides disadvantaged youth with opportunities for employment, education, leadership development, and training through the rehabilitation (which for purposes of this section, must include energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities. This proposed term adopts the definition from WIOA sec. 171(b)(12).

3. Subpart B—Funding and Grant Applications

Section 688.200 How are YouthBuild grants funded and administered?

This proposed section describes how the Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of WIOA. This section also notes that grants to operate YouthBuild programs are awarded to eligible entities through a competitive selection process, as required by WIOA sec. 171(c)(3). This proposed section retains the same requirements found at 20 CFR 672.200.

Section 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?

This proposed section, implementing WIOA sec. 171(c)(1), generally describes the application process for the YouthBuild program.

Section 688.220 How are eligible entities selected to receive grant funds?

This proposed section, which implements WIOA sec. 171(c)(4), describes the selection criteria that will be considered by the Secretary when reviewing an application for funding. In addition to the criteria described in the law, the Department has added additional criteria in paragraphs (d), (e),

and (g) and added a new criteria in paragraph (i).

In paragraph (d), the Department has added ''counseling and case management'' to the criteria described in sec. 171(c)(4)(D) because these are essential to the success of YouthBuild participants.

In paragraph (e), in addition to the criteria at WIOA sec. 171(c)(4)(E), the Department has clarified that applicants should train participants in sectors or occupations that are in demand locally to help them achieve a positive employment outcome after their exit from the program. Paragraph (g) adds to the criteria at WIOA sec. 171(c)(4)(I) by clarifying that the Department will also consider the extent to which the proposal provides for previously homeless families as well as individuals.

The Department has added a new criterion at paragraph (i) which looks at the applicant's ability to enter into partnerships with a variety of organizations and providers. Inclusion of this criterion is beneficial to the grantee and the participant. No single grantee is able to provide all of the services that a participant will need to succeed along her or his chosen career pathway. However, programs that enter into various types of partnerships are able to provide participants with needed supportive services, increasing the likelihood that they will succeed both during and after their participation in the program.

Finally, paragraph (l) clarifies that the Department will apply varying weights to these factors as described in the FOA.

Section 688.230 What are the minimum requirements and elements to apply for YouthBuild funds?

This proposed section implements WIOA section 171(c)(3)(B) and describes the minimum requirements and elements that must be included in an application for YouthBuild funds.

In addition to the requirement at sec. 171(c)(3)(B)(iii), proposed § 688.230(c) requires applicants to describe their experience operating a program under Section 3 of the Housing and Urban Development Act of 1968. This requirement was added because the Department wants grantees to be aware that YouthBuild is specifically identified in HUD's Section 3 regulations. In Section 3, contractors are encouraged to work with YouthBuild programs and participants when working on Federally-funded HUD projects. The criteria described in this proposed section will be included in the FOA.

The criteria described in this section emphasize strong connections to registered apprenticeship programs as a key component of the YouthBuild model, as well as connections to the one-stop system as a support for employer engagement, connecting with the Local Workforce Development Board youth services, and connecting to the network of standing youth committees at the local level. These connections will not only strengthen YouthBuild programs, but better enable them to provide a comprehensive spectrum of employment and training services to their participants.

Additionally, § 688.230(l) proposes, consistent with current practice, that the Department will consider an applicant's past performance under an award made by the Secretary of Labor to operate a YouthBuild program. This consideration will be based on the applicant's past Quarterly Performance Reports (ETA–9136) and Quarterly Financial Reports (ETA–9130). Our past experience in administering the YouthBuild program has demonstrated that evaluating past performance allows the Department to conduct comprehensive analysis of the program's ability to meet the complicated requirements of YouthBuild. Additional details about this requirement will be included in the FOA.

Finally, proposed paragraph (v) authorizes the Secretary to include additional requirements in the FOA. This provision has been included to ensure that the requirements upon which the Secretary is making its determination are based on adequately and accurately judging the ability of the applicant in order to ensure the effective, efficient use of Federal funds and maximum benefit to program participants and the communities in which the proposed program will operate.

Section 688.240 How are eligible entities notified of approval for grant funds?

Consistent with sec. 171(c)(5) of WIOA, this proposed section describes how eligible entities are notified of the status of their respective grant application submitted for funding and the time frame for notification. This proposed section retains the same requirements found at 20 CFR 672.215.

4. Subpart C—Program Requirements

Section 688.300 Who is an eligible participant?

This proposed section sets out the participant eligibility requirements for enrollment in the YouthBuild program. It covers the required ages, education, income level, and other factors as well as exceptions. This proposed section implements the statutory eligibility requirement at WIOA sec. 171(e)(1).

While the language ''its recognized State equivalent'' in § 688.300(b)(1) is commonly understood to mean a GED, States can choose from several different equivalency tests that result in the attainment of a credential similar to the GED. Accordingly, the phrase ''recognized State equivalent'' as used in this section refers to the credential attained by passing any of the recognized equivalency tests.

While WIOA sec. 171(e)(1)(A)(ii) includes ''a youth offender'' as an eligible participant, proposed § 688.300(a)(3)(iii) permits both adult and youth offenders to participate in the YouthBuild program. The reason for the inclusion of adult offenders is twofold. First, some States categorize anyone who was convicted of a crime over the age of 16 an adult. Because individuals between the ages of 16 and 24 are eligible to participate in YouthBuild programs, not including adult offenders as eligible participants would exclude those 16 and 17 year olds who have been convicted of a crime from participating in the program. Including adult offenders in this list of eligible participants ensures that these youth with a substantial barrier to employment will be able to participate in and benefit from the YouthBuild program.

Section 688.310 Are there special rules that apply to veterans?

This section identifies the relevant rules for determining income for veterans and priority of service for qualified veterans. These rules can be found in 20 CFR 683.230 and 20 CFR part 1010, respectively. This proposed section retains the same requirements found at 20 CFR 672.305.

Section 688.320 What eligible activities may be funded under the YouthBuild program?

This proposed section, which implements WIOA sec. 171(c)(2), outlines the activities that YouthBuild programs funded under this section may provide to program participants, including the allowable education and workforce training activities. Of note, sec. 171(c)(2)(a)(i) of WIOA codified the Department's decision to allow training in in-demand industries with the approval of the Secretary.

In addition to the activities allowed by the statute, the Department, in § 688.320, proposes to allow grantees to provide referrals to mental health

services and victim services, such as referrals to domestic violence services or services to victims of gang violence. The Department has decided to add this because it is not uncommon for our participants to enroll in our programs while at the same time dealing with the adverse effects of violence.

Finally, § 688.320(a)(7)(ii) specifies that in order to provide needs-based payments, a grantee must have a written policy which includes the information described to sure that such payments are proper and fairly distributed.

Section 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

This proposed section provides requirements for YouthBuild grant programs on what is considered a qualifying work site for purposes of allowable construction activities under the YouthBuild program.

While the YouthBuild program model requires hands-on construction training that supports the outcome of increasing the supply of affordable housing within the communities that YouthBuild serves, some grant programs struggle to secure work sites that will offer the youth the hands-on construction skills training obtained from either building housing from scratch or through extensive rehabilitation of existing housing stock.

Determining whether a work site meets the criteria for providing substantial hands-on experience is complex. As referenced in TEGL 35–12, ''Definition and Guidance on Allowable Construction Credentials for YouthBuild Programs,'' participants must study and pass testing in a number of modules, or skill areas, before one of the industry-recognized construction certification programs will accredit them. These modules include, for example, brick masonry, carpentry, painting, plumbing, and weatherization.

Per paragraphs (a) through (e) of this section, several criteria must be met in order for a work site to qualify as appropriate for construction skills training for YouthBuild participants. The first is whether the worksite will provide the opportunity for hands-on training in at least two modules in a construction skills training program offering an industry-recognized credential. The second is whether the completed work site will be used by a family or individual that meets the low-income threshold, as defined by the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)). The third is whether the site provides substantial hands-on experience for youth. This means that the work site must include from-the-ground-up building experience (*e.g.,* foundation, framing, roofing, dry wall installation, finishing, etc.) or a substantial level of rehabilitation (*i.e.,* ''a gut job''). Fourth, per § 688.730, all YouthBuild work sites must be built or renovated for low-income individuals or families and are required to have a restrictive covenant in place that only allows for rental or resale to low-income participants for a particular period of time. Last, all work sites must adhere to the allowable construction and other capital asset costs, as defined in TEGL 05–10, ''Match and Allowable Construction and Other Capital Asset Costs for the YouthBuild Program,'' or subsequent or similar guidance issued by the Department related to allowable costs.

All grantees must use the required Work Site Description form (ETA–9143) in submitting proposed work sites for review and approval to and by the Department at the time of applying for grant funds. If after approval the grantee can no longer work at the approved construction site, the grantee must submit another ETA–9143 for the proposed new work site. The Work Site Description form requests specific information on the property for building or rehabilitation, the participants' construction activities, the funding source for the construction, and demonstration of ownership or access to the site.

By tying approved work sites with hands on training, the Department can ensure youth have the necessary hands-on training and experience in two or more of these modules or skill areas in order to qualify for industry-recognized credentials. The Department will issue guidance on the types of work sites that are acceptable for construction training for YouthBuild participants, and describe the minimum construction activities that define work site training.

Section 688.340 What timeframes apply to participation?

This proposed section, implementing WIOA sec. 171(e)(2), provides that the period of participation for YouthBuild participants while enrolled in the program is not less than 6 months and not more than 24 months. This proposed section retains the same requirements found at 20 CFR 672.315.

Section 688.350 What timeframes must be devoted to education and workforce investment or other activities?

Implementing WIOA sec. 171(e)(3), this proposed section outlines the requirements for the minimum amount of time that participants must engage in workforce and educational training activities. This section also permits program participants to spend up to 10 percent of their time engaged in leadership development and community service activities, such as youth serving as crew leaders, participating on policy councils, organizing community clean-up projects, leading youth voter registration drives and organizing and hosting community anti-violence conferences.

Section 688.360 What timeframes apply to follow-up services?

This proposed section requires YouthBuild grantees to provide follow-up services for a period of 12 months after exit. These services are provided to program participants that have successfully exited the program to help them transition successfully into a post-secondary education program or employment.

The Department proposes to require 12 months of follow-up services to align the length of services with the youth formula program and the new performance measure requiring grantees to measure outcomes up to four quarters after exit. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant.

Consistent with the youth formula program, a participant that is receiving follow-up services is considered to have exited the program, and therefore would be counted as having exited the program for the purpose of the performance measures described in § 688.400.

Section 688.370 What are the requirements for exit from the YouthBuild program?

This proposed section outlines the minimum criteria for successful exit from the YouthBuild program. One purpose of the YouthBuild program is for participants to receive practical skills and training that will allow them to successfully transition to employment or further education. As used in this section, a successful exit occurs when a participant has completed his/her training and is ready to transition out of the program.

Proposed paragraph (a) requires hands-on training because, based on our experience, participants that do not receive this training are less likely to transition out of the program successfully, thereby undermining one of the primary purposes of the program.

Proposed paragraph (b) requires each YouthBuild program to create exit

policies that establish any additional minimum requirements that youth must meet in order to be considered to have successfully completed the program.

In the past, grantees have deemed participants to have exited the program, simultaneously upon graduation, before all program services have been completed or delivered. This can result in lower performance outcome measures for the grantee and a lower post program success rate for participants. Participants do not have to exit at the moment of graduation. Exits can and should be based on the individual ongoing needs of the participant. Transition services can be provided until the participant is ready for exit and may include college experience, subsidized summer jobs, internships, or other activities that will help the youth focus on post-program goals (for further details, please see § 688.320). It may also be best to have the youth already connected to a post-program placement before exit to ensure successful outcomes for the youth and successful performance outcome measures for the program. In addition, because follow-up services are only available to participants that have successfully completed the program, adding this section clarifies which participants are eligible to receive follow-up services

Section 688.380 What is the role of the YouthBuild grantee in the one-stop system?

WIOA sec. 121(b)(1)(B)(i) includes all of the programs authorized under title I of WIOA as a required partner in the local one-stop system. This proposed section implements that provision by requiring YouthBuild grantees to take all actions required of required partners described in sec. 121 of WIOA and 20 CFR part 678. The Department encourages its YouthBuild grantees to actively participate as a partner with the one-stop system. Because of the positive role that a local one-stop center can have on the operation of a local YouthBuild program and on the outcomes for YouthBuild participants, the local YouthBuild grantee should serve as the required partner of the one-stop system as required by sec. 121 of WIOA.

5. Subpart D—Performance Indicators

Section 688.400 What are the performance indicators for YouthBuild grants?

This proposed section describes performance indicators for the YouthBuild program, as required by WIOA sec. 171(f). Proposed § 688.400(a) through (f) are the six primary indicators as required by sec. 116 (b)(2)(A)(ii) of WIOA. These measures of performance are the same as the primary indicators discussed in proposed § 677.155. Though the indicators of performance are identified in various places throughout the WIOA proposed regulations, the indicators are the same and do not vary across the regulations. In addition to the six primary indicators, the Secretary may require YouthBuild programs to collect additional information on performance. If additional performance information becomes a requirement for YouthBuild grantees, they will be informed through a formal memorandum from the Department.

In calculating a program's performance, grantees must consider all of the participants that have exited the program, as that term is defined in § 688.120, not just those that have successfully exited the program under the policy described in § 688.370.

Section 688.410 What are the required levels of performance for the performance indicators?

This proposed section, implementing sec. 171(f) of the statute, provides a description of how levels of performance are developed for YouthBuild programs.

Section 688.420 What are the reporting requirements for YouthBuild grantees?

This section outlines the performance, narrative, and financial reporting requirements for YouthBuild grantees and explains that any additional information on the reporting requirements will be included in guidance issued by the Secretary. This proposed section retains the same requirements found at 20 CFR 672.410.

Section 688.430 What are the due dates for quarterly reporting?

This section provides due dates for quarterly performance reporting under the YouthBuild program. This proposed section retains the same requirements found at 20 CFR 672.415.

6. Subpart E—Administrative Rules, Costs, and Limitations

Section 688.500 What administrative regulations apply to the YouthBuild program?

This proposed section applies the relevant administrative requirements and regulations applicable to all WIOA ETA programs to the YouthBuild program. This section requires each YouthBuild grantee to comply with the general administrative requirements found in 20 CFR part 683, except those that apply only to the WIOA title I–B program, the Uniform Administrative Requirements at 2 CFR parts 200 and 2900, 29 CFR parts 93, 94, and 98, and the nondiscrimination regulations at 29 CFR part 37.

The nondiscrimination regulations incorporated by this section at § 688.500(c)(2), 29 CFR part 37, broadly prohibit all forms of discrimination for WIOA title I programs, which include YouthBuild. In particular, 29 CFR 37.5 states that ''[n]o individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA title I-funded program or activity.''

The regulations also require that grantees provide reasonable accommodations to youth who are individuals with disabilities, as found in 29 CFR 37.8. For grantees unsure of how to best accommodate youth who are individuals with disabilities in their program, the Department recommends that the grantees consult with the Job Accommodation Network [*https://askjan.org/*] or call (800) 526–7234 (Voice) (877) 781–9403 (TTY], a free service of the Department's Office of Disability Employment Policy that provides employers with technical assistance on accommodating different disabilities.

In addition to prohibiting discrimination, YouthBuild grantees have positive requirements to ensure equal opportunity and prevent discrimination in their programs. YouthBuild grantees are required by 29 CFR 37.29 through 37.32 to disseminate an equal opportunity policy. YouthBuild grantees also must ensure that they provide universal access to their programs, including advertising the program in a manner that targets various populations, sending notices about openings in programs to community service groups that serve various populations, and consulting with community service groups on ways to improve outreach and service to various populations, as required by 29 CFR 39.42.

YouthBuild grantees also are required to comply with all generally applicable laws and implementing regulations that apply to the grantees or their participants. For example, for participants who are youth with disabilities and participate in secondary

education programs, grantees must adhere to the administrative provisions of the Individuals with Disabilities Improvement Act at 34 CFR 300.320 through 300.324, which require that grantees provide youth who are individuals with disabilities who enter the program with an appropriate transition plan corresponding to their individual needs.

Finally, proposed § 688.500(d), implementing sec. 171(e)(5) of WIOA, requires YouthBuild grantees to comply with relevant State and local education standards for their programs and activities that award academic credit or certify educational attainment.

Section 688.510 How may grantees provide services under the YouthBuild program?

This proposed section, implementing WIOA sec. 171(h), authorizes grantees to provide services directly or to enter into subgrants, contracts, or other arrangements with various public and private entities. This proposed section retains the same requirements found at 20 CFR 672.505.

Section 688.520 What cost limits apply to the use of YouthBuild program funds?

This proposed section implements WIOA secs. 171(c)(2)(C)(i) and (c)(2)(D), describing the limitations on the percentage of grant funds that a YouthBuild grantee can spend on administrative costs and the rehabilitation or construction of a community or public facility. The definition of administrative costs can be found in 20 CFR 683.215.

Section 688.530 What are the cost-sharing or matching requirements of the YouthBuild program?

This proposed section provides that the cost-sharing or matching requirements applicable to a YouthBuild grant generally will be addressed in the grant agreement, and also describes the requirements for several specific costs.

Regarding the use of Federal funds, this section explains that grantees must follow the requirements of 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share. Additionally, because inquiries about the allowability of using Federal funds as part of the cost-sharing or match amount is frequently asked by applicants, the regulations restate the prohibition on the use of such funds.

This proposed section retains the same requirements found at 20 CFR 672.515.

Section 688.540 What are considered to be leveraged funds?

This proposed section addresses the use of additional money, known as leveraged funds, to support grant activities. It explains that leveraged funds include costs that could be an allowable match but are in excess of the match requirement or costs that do not meet the cost-sharing and match requirements set forth in the Uniform Administrative Requirements. To be considered leveraged funds, they must be otherwise allowable costs under the cost principles which have been used by the grantee to support grant activity. For example, the Department would not allow a grantee to count toward the match requirement another Federal grant used by the grantee or subgrantee to support otherwise allowable activities under the YouthBuild program. However, the Department would consider such a grant a leveraged fund.

The amount, commitment, nature and quality of the leveraged funds described in the grant application will be considered as factors in evaluating grants in the FOA. The Department also will require grantees to report the use of such funds through their financial report and quarterly narrative report.

This proposed section retains the same requirements found at 20 CFR 672.520.

Section 688.550 How are the costs associated with real property treated in the YouthBuild program?

This proposed section specifies which costs associated with real property are allowable and unallowable under the YouthBuild program. It explains that the costs associated with the acquisition of buildings to be rehabilitated for training purposes are allowable under the same proportionate share conditions that apply under the match provision at § 688.530, but only with prior grant officer approval. Costs related to construction and/or rehabilitation associated with the training of participants are allowed; however, costs associated with the acquisition of land are not.

Section 688.560 What participant costs are allowable under the YouthBuild program?

This proposed section permits payments to participants for work-related and non-work-related YouthBuild activities, supportive services, needs-based payments, and additional benefits as allowable participant costs.

Section 688.570 Does the Department allow incentive payments in the YouthBuild program?

This proposed section allows incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must outline in writing how they will use incentive payments. Proposed paragraphs (a) and (b) require that incentive payments be provided in accordance with the organization's general policies governing incentives and be related to the goals of the specific YouthBuild program. All incentive payments must be provided in accordance with the requirements in 2 CFR 200.

Section 688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?

This proposed section explains the effect that payments to YouthBuild participants have on eligibility for other Federal needs based benefits. Under WIOA regulations at 20 CFR 683.275(c), allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the SSA (42 U.S.C. 301).

This proposed section retains the same requirements found at 20 CFR 672.535.

Section 688.590 What program income requirements apply to the YouthBuild program?

This proposed section provides that the program income provisions of the Uniform Administrative Requirements at 2 CFR parts 200 and 2900 apply to the YouthBuild program. This section specifies that the revenue from the sale or rental of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families or low-income families, as specified in § 688.730, is not considered program income. The Department encourages grantees to use such revenue for the long-term sustainability of the YouthBuild effort.

This proposed section retains the same requirements found at 20 CFR 672.540.

Section 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

This proposed section requires that when a YouthBuild participant works

on a project subject to Davis-Bacon labor standards, the Davis-Bacon labor standards, including prevailing wage requirements, apply to the hours worked on the site of the work.

The regulations implementing the Davis-Bacon Act contain a provision that allows for Department-certified training programs to pay less than the applicable prevailing wage rate to trainees when work is being performed on Federally-funded projects. As stipulated by 29 CFR 5.5(a)(4)(ii), ''trainees'' are not permitted to be paid less than the predetermined rate for the work performed unless they are employed under an individual registered in a program which has received prior approval, evidenced by a formal certification by DOL. However, YouthBuild program participants are not considered ''trainees'' and therefore must be paid the prevailing wage rate when they are performing work on Federally-funded projects.

This proposed section retains the same requirements found at 20 CFR 672.545.

Section 688.610 What are the recordkeeping requirements for YouthBuild programs?

This section sets forth that grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements at 2 CFR parts 200 and 2900, and any additional requirements included in subsequently issued guidance or the grantee's grant agreement. This proposed section retains the same requirements found at 20 CFR 672.550.

7. Subpart F—Additional Requirements

Section 688.700 What are the safety requirements for the YouthBuild program?

This proposed section requires YouthBuild grantees to comply with 20 CFR 683.280, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects safety requirements for YouthBuild programs, and the relevant child labor laws at 29 CFR part 570, governing the employment of children in hazardous occupations under the Fair Labor Standards Act. This proposed section is meant to protect the health and safety of YouthBuild participants on YouthBuild work sites, and to ensure that YouthBuild grantees comply with relevant child labor laws.

Section 688.710 What are the reporting requirements for youth safety?

This proposed section requires YouthBuild grantees to comply with the OSHA reporting requirements in 29 CFR part 1904 if a participant suffers a reportable injury while participating in the YouthBuild program. This proposed section retains the same requirements found at 20 CFR 672.605.

Section 688.720 What environmental protection laws apply to the YouthBuild program?

This proposed section requires grantees to comply with all environmental protection statutes and regulations, if applicable. This proposed section retains the same requirements found at 20 CFR 672.610.

Section 688.730 What requirements apply to YouthBuild housing?

In order to effectively ensure that one of the primary purposes of the YouthBuild program—to increase the stock of housing for homeless and low-income individuals and families—is met, this proposed section provides additional requirements, including a series of restrictions on the sale and use of units of housing built or renovated by a YouthBuild grantee.

This proposed section also requires a YouthBuild grantee to ensure that the owner of the property records a restrictive covenant on the property. The covenant must include the use restrictions in this section and must be for a term of 5 years. The Department requires the recordation of a restrictive covenant to ensure that YouthBuild funds are spent on projects that will benefit the intended beneficiaries of the program beyond the life of the grant.

Under the WIA regulations, grantees were required to ensure that the restrictive covenant was for a 10-year term. However, grantees have identified the 10-year restrictive covenant as a barrier to recruiting and maintaining construction partners. The current requirement of a 10-year covenant strictly binds partner organizations that may serve low-income populations but also desire flexibility regarding to whom they may sell the property in the future.

The term of the covenant was shortened in this proposed section in order to accommodate the difficulties faced by grantees while also ensuring that the purpose of the program continues to be met. Reducing the covenant period supports grantees in securing worksites where community-based housing partners and private property owners are reluctant to agree to a 10-year covenant requirement. At the same time, a 5-year term ensures that housing built or renovated using YouthBuild funding remains available solely for the use of low-income and/or homeless individuals and families for a period beyond the grantee's 3-year period of performance. The Department specifically requests comments on the restrictive covenant requirement and our proposal to shorten the length of the covenant.

*M. Part 651—General Provisions Governing the Federal-State Employment Service System*

1. Introduction

In this proposed rule, the Department proposes to revise the ES regulations that implement the Wagner-Peyser Act of 1933. These include the provision of ESs to all job seekers with a particular emphasis on MSFWs. The proposed rule will update the language and content of the regulations to, among other things, implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures; in other areas, the regulations clarify and update requirements already established. The regulations make important changes to the following components of the ES system: definitions, data submission, and ETA standards for agricultural housing, among others.

2. Background

The Wagner-Peyser Act (Wagner-Peyser) of 1933 provided the Department the authority to establish a national ES system. The ES system provides labor exchange services to its participants and has undergone numerous changes to align its activities with broader national workforce development policies and statutory requirements. WIOA expands upon the previous workforce reforms in the WIA and, among other provisions, identifies the ES system as a core program in the one-stop system, embeds ES State planning requirements into a combined planning approach, and increases requirements for the colocation of ES offices into the one-stop centers.

In 1974, the case *National Association for the Advancement of Colored People (NAACP), Western Region, et al.* v. *Brennan et al,* No. 2010–72, 1974 WL 229 (D.D.C. Aug. 13, 1974) resulted in a detailed court order mandating various Federal and State actions (referred to as the Judge Richey Court Order (Richey Order) in the remainder of this preamble). The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of ES services, benefits, and protections to MSFWs on a non-discriminatory basis, and to provide such services in a manner that is

qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers. In 1980, the Department published regulations at 20 CFR parts 651, 653, and 658 to implement the requirements of the Richey Order. Part 653 sets forth standards and procedures for providing services to MSFWs and provides regulations governing the Agricultural Recruitment System (ARS), a system for interstate and intrastate agricultural job recruitment. Part 658 sets forth standards and procedures for the administrative handling of complaints alleging violations of ES regulations and of employment-related laws, the discontinuation of services to employers by the ES system, the review and assessment of State agency compliance with ES regulations, and the Federal application of remedial action to State agencies. Also in 1980, the Department separately published amended regulations at 20 CFR part 654 providing agricultural housing standards for MSFWs.

In 1983, the Department published the regulations at 20 CFR part 652 that set forth standards and procedures regarding the establishment and functioning of State ES operations. Part 652 was amended in 1999 and 2000 to reflect provisions of WIA. The proposed rule aligns part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the workforce system that affect the ES program.

3. Discussion of Proposed 20 CFR Part 651

20 CFR part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658. The Department proposes to revise and update the definitions by eliminating outdated or obsolete definitions and by adding new definitions as needed. Throughout these parts it is generally proposed that the term ''State MSFW monitor advocate'' be replaced with the term ''State monitor advocate'' (SMA) because MSFW-related responsibilities are inherent parts of the SMA position and ''State monitor advocate'' is the commonly used term for the position. It also is proposed that the term ''local office'' be replaced with ''employment service office'' or ''one-stop center'' depending on the context. The Department also proposes that the definitions for *farmwork, farmworker,* and *agricultural worker* be streamlined through reference to the same base line definition—*farmwork.* Also, the definition of *farmwork* is proposed to be revised by drawing language from definitions used in other Department regulations and eliminating references to the North American Industry Classification System (NAICS). Additionally, it is proposed that the definitions found at 20 CFR 652.1 be moved to 20 CFR 651.10 because it is the intention of part 651 to include Wagner-Peyser ES program definitions. It is proposed that the following definitions be added as they are provided in sec. 2 of the Wagner-Peyser Act, as amended by sec. 302 of WIOA, and pertain to the scope of definitions covered by § 651.10: Local Workforce Development Board, one-stop center, one-stop delivery system, one-stop partner, training services, and workforce development activity. All of these adhere strictly to WIOA and Wagner-Peyser definitions. The Department notes that the WIOA amendments to the Wagner-Peyser Act also add the definitions of CEO, institutions of higher education, and workplace learning advisor, but these definitions are not proposed to be added to the regulatory text of § 651.10 because the terms are not used in parts 652, 653, 654, or 658. Finally, sec. 134 of WIOA merges the categories of *core services* and *intensive services* under WIA into *career services.* Since WIOA includes responsibilities for the Wagner-Peyser ES in the provision of career services, a definition for *career services* has been proposed to be added.

The definition of *act* is proposed to be added to § 651.10, moved from 20 CFR 652.1.

The definition of *agricultural worker* is proposed to be eliminated because the term is synonymous with the definition of *farmworker* described in this section. The proposed regulatory text directs the reader to the definition of *farmworker.*

The definition of *applicant* is proposed to be eliminated because the Department proposes to replace the term with *participant* as defined in this section. This change is proposed to align with the language in WIOA and conform to reporting requirements which include all MSFWs who apply for and/or receive Wagner-Peyser Act services.

The definitions for *Applicant Holding Office, Applicant Holding State,* and *Order Holding Office* are proposed to be added because the terms are used throughout 20 CFR part 658 and adding the definitions clarifies the process for stakeholders. The proposed language in each definition derives from the purpose and scope defined in § 653.500. The inclusion of ''U.S. workers'' in these definitions helps to clarify that ARS is intended for the recruitment of U.S.-based workers only.

The definition of *application card* is proposed to be deleted as the document is generally no longer used as part of Wagner-Peyser Act services. ES offices have moved from a paper-based system to an online system and participants register for services in a variety of ways electronically.

The definition of *career services* is proposed to be added, as discussed above.

A definition of *clearance order* is proposed to be added to distinguish it from a job order.

The definition of *clearance* is proposed to be revised to *clearance system* and reflect secs. 3 and 7 of the Wagner-Peyser Act, as well as 20 CFR 652.3, which describes the basic labor exchange system as ''a system for clearing labor between States.'' The updated language clarifies that this clearance system moves job seekers through an ES office or more than one such office, depending on the needs of the individual and the available job or jobs.

A revised definition of *complaint* is proposed to align with language in sec. 2 of the Wagner-Peyser Act, as amended by WIOA sec. 302, to refer to ''employment service'' offices rather than ''job service'' (JS) offices. The revised definition specifies that complaints are representations or referrals of *alleged* violations of ES regulations, Federal laws enforced by the Department's WHD or OSHA, or State or local employment-related laws. The Department proposes to add language in the definition clarifying that the complaints filed are alleging a violation occurred, rather than confirming that a complaint represents an actual violation—which may be determined after the complaint is under investigation pursuant to 658 subpart F.

The definition of *day haul* is proposed to be deleted as the term is no longer relevant with the proposed deletion of 20 CFR 653.105 and 653.106.

A revised definition of *Employment and Training Administration (ETA)* is proposed to conform to the description of ETA that is currently used.

A definition of *employment-related laws* is proposed to be added to conform to the proposed complaint procedures in 20 CFR part 658.

A definition of the term *Employment Service* (ES) is proposed to replace the definition for the term *Job Service (JS)* in order to conform to the terminology used in the Wagner-Peyser Act as amended by WIOA. For this reason, throughout these proposed regulations, the term Employment Service (ES) replaces the term JS.

A definition of *Employment Service regulations (ES regulations)* is proposed to replace the definition of *JS regulations.* The purpose of this change

is to conform to language in the Wagner-Peyser Act, as amended by WIOA, and to include only relevant regulations. The proposed definition now includes Federal regulations at 20 CFR parts 651, 652, 653, 654, and 658 and at 29 CFR part 75, and removes references to 20 CFR parts 620 and 621 because they are reserved, the reference to 29 CFR part 8 because *Employment Service* is not referenced in that part, and 29 CFR part 26 because it does not exist.

The proposed definition of *farmwork* will eliminate references to NAICS codes and include language aligning it with pertinent definitions in other Department regulations at 29 CFR 500.20 and 20 CFR 655.103(c). Drawing language from those definitions clarifies what is covered by the term *farmwork* and slightly expands the term to include certain occupations and activities covered by the Department's Office of Foreign Labor Certification (OFLC) and/or WHD. It is also proposed that the revised definition of *farmwork* fold in food ''processing'' work to align § 651.10 with OFLC regulations at 20 CFR 655.103(c)(1) which include food processing worker in the definition for *agricultural labor or services.* Including food processing work in the revised definition expands the scope of those who would be considered farmworkers. It also allows the Department to streamline the regulations by eliminating the separate definition of migrant food processing worker without reducing ES coverage or protections of such workers. The addition of food processing work to the revised definition of *farmwork* also expands the capability of Wagner-Peyser staff to provide services to more MSFWs. The Department will provide guidance to clarify what is considered food ''processing.'' Fish farming is added to conform to sec. 167 of WIOA.

The reference to *''. . .* the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities'' and ''[t]his includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market*''* is adapted from 20 CFR 655.103(c)(2) which references 29 U.S.C. 203(f), as amended (sec. 3(f) of the FLSA, as codified). The language ''the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state,'' is adapted from 20 CFR 655.103 which references sec. 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)). The language ''agricultural commodities means all commodities produced on a farm including, but not limited to, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine and gum rosin'' is taken from OFLC 20 CFR 655.103 and aligns with WHD 29 CFR 500.20. Under the proposed definition, the activities and services currently included by reference to NAICS codes 111, 112, 115 will still be included whether explicit in the definition or through Department guidance, and those activities and services currently excluded by reference to NAICS codes 1152 and 1153 will still be excluded, excepting the proposed addition of fish farming. The NAICS reference to code 1125 will be covered through Department guidance as it relates to fish farming.

The Department anticipates the following impact of expanding the definition of farmworker and aligning it with the WHD and OFLC definitions: (1) State agency employees will more easily distinguish MSFWs for reporting purposes; (2) the proposed definition will also align with that of the proposed updated definition under 20 CFR part 685 for the NFJP; (3) more farmworkers will be served as such under Wagner-Peyser because fewer people would be excluded under the expanded definition; (4) the Department will maintain consistency with the intent of the Richey Order to update data gathering systems to accurately reflect services delivered; and (5) the Department's data reporting will improve because under the different regulations, the Department's agencies will utilize basically the same definition for farmworker and therefore will accurately reflect the number of MSFWs identified across all programs. At the end of the proposed definition, the Department proposes to add a sentence to include any service or activity covered under 20 CFR 655.103(c) (definition of agricultural labor or services) and/or under 29 CFR 500.20(e) (agricultural employment) and/or through official published Department guidance, such as a TEGL, to allow for other current or future types of farmwork to be included.

A revised definition of *farmworker* is proposed to conform to the proposed definition of *farmwork* in this section.

A definition of *field checks* is proposed to be added to § 651.10 because the term is referenced in 20 CFR 653.503 but was previously undefined. Adding the definition clarifies the meaning for those who conduct or receive field checks.

A definition of *field visits* is proposed to be added to § 651.10 because the term is referenced in 20 CFR 653.108 but was previously undefined. Adding the definition clarifies the meaning for those who conduct or receive field visits.

The definition of *full application* is proposed to be deleted because State Workforce Agencies (SWAs) generally do not utilize the full or partial application process. Instead, participants submit resumes or other information to register in the SWA network.

The definition of *Governor* is proposed to be added to § 651.10, moved from 20 CFR 652.1. Additionally, the Department proposes to add reference to the outlying areas in the definition to be clear that their chief executives are included when this part references a *Governor.*

The definition of *identification card* is proposed to be deleted as the document is no longer utilized as part of Wagner-Peyser services. SWAs have moved from paper-based to electronic-based systems and participants often log in using whatever information is required for that particular system.

A definition of *interstate job order* is proposed to be added to § 651.10 because it is referenced in the ES regulations but was previously undefined. Adding the definition clarifies the difference between *interstate* and *intrastate job orders.*

A revised definition of *intrastate clearance order* is proposed to conform to the ''employment service'' terminology used in the Wagner-Peyser Act as amended by WIOA. *Interstate or intrastate clearance order* means an agricultural job order for temporary employment describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices.

The definition of *job bank* is proposed to be deleted because the system, as it was previously defined, no longer exists. Now, most job openings are posted on internet-based systems.

The definition of *job development* is proposed to be slightly revised to refer to an ''employment service office'' rather than a ''local office.''

The definition of *Job Information Service (JIS)* is proposed to be deleted as resource centers replace JIS areas inside one-stop centers.

In the definition of *job opening,* it is proposed that the term *applicants* be replaced with the term *participants* to be consistent with the replacement term *applicant* in this section.

A definition of *job order* is proposed to be added to clarify the difference between a job order and a clearance order. The language for this definition is derived from 20 CFR 655.5.

The definition of *job referral* is proposed to be revised to include ''or for a potential job'' because the current definition is limited to the availability of a specific job and this revision opens job referrals to include situations that are responding to the possibility of employment.

A revised definition of *labor market area* is proposed to be revised to conform to the definition in sec. 3 of WIOA.

The definition of *Local Office Manager* is proposed to be revised to conform to the ''employment service'' terminology used in the Wagner-Peyser Act as amended by WIOA.

The definition of *Local Workforce Development Board* is proposed to be added to conform with sec. 2 of the Wagner-Peyser Act, as amended by WIOA.

The definition of *migrant farmworker* is proposed to be revised to conform to the updated definition of farmworker.

The definition of *migrant food processing worker* is proposed to be synonymous with the proposed definition of *migrant farmworker.*

Within the definition of *MSFW* it is proposed that ''migrant food processing worker'' be deleted to conform to the above proposed definition of *migrant food processing worker.* No reduction in coverage is intended by this change.

The definitions of *one-stop center, one-stop delivery system,* and *one-stop partner* are proposed to be added to § 651.10 to conform with sec. 2 of the Wagner-Peyser Act, as amended by WIOA.

The definition of *O*NET–SOC* is proposed to be revised to clarify that O*NET SOC codes are based on, but more detailed than, Standard Occupation Codes used across Federal statistical agencies.

The definition of *Order Holding Office* is proposed to be added for reasons explained above.

The definition of *onsite review* is proposed to be added because these reviews are mandated under the Richey Order and are found throughout the regulations at 20 CFR parts 653 and 658. The language for the proposed definition is taken from 20 CFR 653.108(g).

It is proposed that the definition of *outreach contact* be added to § 651.10 for clarification. The language for the definition is taken from § 653.107.

The definition of *partial application* is proposed to be deleted because it is generally no longer used by ES offices or SWAs. Instead, participants submit resumes or other information to register in the SWA network.

The definition of *participant* is proposed to be added to replace the definition of *applicant,* as discussed above. This definition only applies to the Wagner-Peyser regulations at parts 651, 652, 653, and 658. Proposed § 677.150(a) includes a separate, narrower definition of ''participant'' for purposes of performance accountability under sec. 116 of WIOA and 20 CFR part 677. Therefore, an individual who is considered a participant for the purpose of these Wagner-Peryser regulations would not necessarily be considered a participant for performance accountability purposes.

The definition of *Program Budget Plan (PBP)* is proposed to be deleted because the PBP is obsolete and the amendment to sec. 8 of Wagner-Peyser now calls for States to submit Unified or Combined State Plans.

The definition of *RA* is proposed to be deleted because the definition for Regional Administrator with the appropriate acronym is already described in this section.

The definition for *rural area* is proposed to be eliminated because the term is not used at 20 CFR parts 652, 653, 654, or 658 and is therefore not necessary to define in this section.

The definition of *seasonal farmworker* is proposed to be revised to mean an individual who, over the past 12 months, has been employed in farmwork of a seasonal or other temporary nature. This proposed definition seeks to simplify and clarify the meaning of seasonal farmworker, and conform to the definitions used by the Department's WHD for *seasonal agricultural workers* under 29 CFR part 500, and the OFLC under 20 CFR part 655. Additionally, the Department proposes to retain the 12-month period originally used in the definition of seasonal farmworker at 20 CFR 651.10 to minimize the time period that an individual could assert that he/she is a seasonal farmworker. The Department anticipates that this updated definition will more accurately reflect the total number of seasonal farmworkers that participate in the ES system. The Department also anticipates that ES staff will more easily be able to identify seasonal farmworkers for reporting purposes.

In the definitions of *Significant MSFW Local Offices* and *Significant Bilingual MSFW Local Offices,* the references to ''local offices'' are proposed to be replaced with ''one-stop centers'' because the WIOA amendment to the Wagner-Peyser Act requires colocation of Wagner-Peyser ESs in a one-stop center. Additionally, expanding the scope of the term will help States determine not only at which one-stop centers ESs must be sufficiently staffed to meet the needs of MSFWs, but also will identify one-stop centers that need to consider the needs of a significant number of MSFWs who do not speak English, in order to meet the requirements for making services accessible, as described in § 678.800. This also helps the Department conform to the intent of the Richey Order to serve MSFWs on a qualitatively equivalent and quantitatively proportionate basis. The term *bilingual* is proposed to be replaced with *multilingual* in the latter title to conform to the current trend of MSFWs speaking additional languages other than English and/or Spanish. Also, the references to ''applicants'' are proposed to be replaced with ''participants,'' to conform to the proposed changes in these definitions.

The definition of *Significant MSFW States* remains unchanged; however, the reference to the Department organizational unit *ETA* has been replaced with *the Department* to be consistent with other references throughout the section.

The definition of *State Administrator* is proposed to be revised to change ''State Employment Security Agency'' to ''State Workforce Agency'' to reflect language used in WIOA title I.

The definition of *State Workforce Agency (SWA)* is proposed to be revised to conform to sec. 2 of the Wagner-Peyser Act, as amended by title III of WIOA. The language ''formerly State Employment Security Agency or SESA'' is proposed to be deleted because the SESA terminology is outdated and no longer needs reference.

The definition of *State Workforce Development Board (State Board)* is proposed to be added to § 651.10, moved from 20 CFR 652.1 and updated from the former text, which defined *State Workforce Investment Board.*

The definition of *Supply State(s)* is proposed to be added to clarify its meaning under the ARS.

The definition of *supportive services* is proposed to be revised to conform to the definition for ''supportive services'' in sec. 3 of WIOA and to make clear that supportive services are also available to

individuals participating in activities funded by the Wagner-Peyser Act.

The definition of *tests* is proposed to be deleted because the Department does not offer tests to ES participants.

The definition of *training services* is proposed to replace the definition of *training,* and the proposed definition references the services provided under WIOA sec. 134(c)(3).

The definition of *transaction* is proposed to be deleted because the term is not used in the relevant sections under this chapter.

A definition of *unemployment insurance claimant* is proposed to be added in this section to conform to the emphasis on serving this population in the WIOA amendments to secs. 7(a)(1) and (3) of the Wagner-Peyser Act.

The definition of *vocational plan* is proposed to be deleted because the Wagner-Peyser Act does not require the establishment of such plans for job seekers in the ES system.

The definition of *WIOA* is proposed to be added to § 651.10, moved from 20 CFR 652.1 and updated. Section 652.1 defines *WIA.*

The definitions of *Workforce and Labor Market Information (WLMI)* and *Workforce Labor Market Information System (WLMIS)* are proposed to conform to the provisions in sec. 308 of the Wagner-Peyser Act.

The definition for *working days* is proposed to be added to 20 CFR 651 because it is originally located in 20 CFR 653.501 and fits more appropriately under part 651.

A definition of *work test* is proposed to be added in this section to ensure that individuals who are eligible for UI benefits meet continued eligibility requirements with respect to work search. The Wagner-Peyser Act's requirements for administering the work test are further discussed in 20 CFR 652.210.

*N. Part 652—Establishment and Functioning of State Employment Services*

Section 1. Introduction

The Wagner-Peyser Act of 1933 established the one Act ES, which is a nationwide system of public employment offices amended in 1998 to make ES part of the one-stop delivery system established under WIA. ES seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers.

The amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices with one-stop centers; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance measures in the one-stop delivery system. Other new provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promoting robust WLMI; the development of national electronic tools for jobseekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs. 3(c)(4) and 7(b)(3)).

2. Subpart A—Employment Service Operations

This subpart includes an explanation of the scope and purpose of the ES system, the rules governing allotments and grant agreements, authorized services, administrative provisions, and rules governing labor disputes. The proposed rule makes few changes in subpart A.

Section 652.1 Introduction

This section introduces the Wagner-Peyser Act regulations, as amended by WIOA. Therefore, the Department proposes to delete paragraph (b) of § 652.1 and change the title of the section from ''Introduction and definitions'' to ''Introduction.''

Section 652.2 Scope and Purpose of the Employment Service System

The Department proposes no changes in this section, which briefly describes the public labor exchange system.

Section 652.3 Public Labor Exchange Services System

This section explains the minimum services that must be offered by the public labor exchange system. The Department proposes adding paragraph (f) to align the title to the changes in WIOA and cite to sec. 134(c)(2)(A)(iv) of WIOA.

The Department proposes to align the Wagner-Peyser definitions of labor exchange services with those described under WIOA. The Department is seeking public comments on any issues or challenges in aligning labor exchange services described under WIOA with the labor exchange services provided by the ES.

Finally, the Department proposes to add to § 652.3(a) a clause to implement the emphasis the Act, as amended, places on national electronic tools (WIOA sec. 303(c), amending sec. 3(e) of Wagner-Peyser). The proposed clause, which would clarify that each State's obligation to assist jobseekers includes promoting their familiarity with the Department's electronic tools, is designed to improve customer access to labor exchange and workforce information.

The statutory provision recognizes the Department's longstanding efforts in this area. Since the 1990s, the Department has greatly expanded its national electronic tools to enhance short-term labor exchanges and support longer-term career aspirations for multiple audiences: Jobseekers; employers; students; employment and training staff; educators and guidance counselors; Federal, State and local policy-makers and planners; CBOs; librarians; and other individuals and entities that assist with the job search and career needs of Americans. The Department offers electronic tools through such Web portals as CareerOneStop (*www.careeronestop.org*); O*NET OnLine (*www.onetonline.org*) and O*NET's *My Next Move* (*www.mynextmove.org*); and the WLMI provided through the BLS (*www.bls.gov*) and the U.S. ETA's Labor Market Information Community of Practice (*https://winwin.workforce3one.org/page/home*).

Section 652.4 Allotment of Funds and Grant Agreement

The Department proposes no changes in this section, which ensures that allotment information is publicly available with sufficient notice to allow public comment and to resolve complaints, and that grant agreements with the States meet all applicable statutes and regulations.

Section 652.5 Services Authorized

The Department proposes only minor changes conforming to WIOA in this section, State expenditures. Specifically, the proposed regulations substitutes ''funds'' with ''sums'' and substitutes ''basic labor exchange elements'' with ''minimum labor exchange elements.'' Both changes were made to align with the Act as amended.

Section 652.8 Administrative Provisions

This section covers administrative matters, including financial and program management information systems, recordkeeping and retention of records, required reports, monitoring and audits, costs, disclosure of information, and sanctions. The Department proposes to eliminate paragraph (d)(6) of this section which addressed amortization payments to

States which had independent retirement plans in their State ES agencies prior to 1980. This paragraph is no longer applicable to any State and no State may revert back to a retirement system where these provisions apply. The Department is also proposing to change the record retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner-Peyser record retention requirements. Finally, the Department proposes to amend paragraph (f) to require that financial audits be conducted under the same requirements that apply to audits under WIOA at 20 CFR 683.210.

Section 652.9 Labor Disputes.

This section is designed to preserve the neutrality of the ES in the event of a labor dispute, such as a strike. The Department proposes no changes in this section, as WIOA made no amendments to the Wagner-Peyser Act relevant to this section.

3. Subpart B—Services for Veterans

This subpart merely refers the reader to the relevant regulatory section governing services to veterans.

Section 652.100 Services for Veterans

The Department proposes to amend this section to clarify that veterans receive priority of service for all Department-funded employment and training programs, as described in 20 CFR part 1010. The proposed amendment also clarifies that the Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program and other activities and training programs which provide services to specific populations of eligible veterans.

4. Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

This subpart discusses State agency roles and responsibilities, rules governing ES offices, the relationship between the ES and the one-stop system, required and allowable Wagner-Peyser services, universal service access requirements, provision of services and work test requirements for UI claimants, State planning, and State merit staffing requirements.

WIOA ensures the ES's key role in the one-stop delivery system by making it one of the core workforce programs. The ES must be a part of the State planning process, collocated with the one-stop delivery system, and must align its service delivery and performance measures with the rest of the one-stop system. This subpart addresses how the ES is to fulfill its mission of providing labor exchange services to job seekers and businesses in the one-stop delivery system.

Section 652.200 What is the Purpose of This Subpart?

The general purpose of this subpart is to provide guidance for implementing Wagner-Peyser services within the one-stop delivery system.

Section 652.201 What is the role of the State agency in the one-stop delivery system?

This section emphasizes the leadership role played by the State in the one-stop system, including the delivery of Wagner-Peyser services. The Department proposes changing ''Workforce Investment Board'' to ''Workforce Development Board,'' to be consistent with WIOA's terminology.

Section 652.202 May local Employment Service Offices exist outside of the one-stop service delivery system?

The Department is proposing to delete paragraph (b) of this section to align with WIOA's approach to colocation of services and prohibition against stand-alone employment service offices. Additionally, the Department proposes to change the text of what was paragraph (a) to provide a clear statement that ES offices must be collocated in one-stop centers, as required by WIOA. WIA strongly encouraged the colocation of ES and one-stop offices, but allowed some stand-alone ES offices under limited circumstances. Section 303(d) of WIOA modified sec. 3(d) of Wagner-Peyser to eliminate these exceptions and made colocation mandatory. Therefore, stand-alone ES offices are no longer permissible, as explained in §§ 678.310–678.315.

Colocation is intended to achieve several purposes: improved service delivery and coordination, less duplication of services, and greater access to services in underserved areas.

Section 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The Department proposes no changes in this regulation, which stipulates that the State agency is responsible for all Wagner-Peyser funds.

Section 652.204 Must funds authorized under the Act (the Governor's reserve) flow through the one-stop delivery system?

This section clarifies that the Governor's reserve funds may or may not be delivered through the one-stop system. The Department proposes to identify the services in sec. 7(b) of the Act that these funds must be used to provide. WIOA does not change these services; however, it is helpful to list the services in this section. As required by sec. 7(b) of the Act, the services are: performance incentives, supporting exemplary models of service delivery, and services for groups with special needs.

Section 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

The Department proposes only minor nomenclature changes in this section, which explains under what conditions funds under secs. 7(a) or 7(b) of Wagner-Peyser may be used to provide additional funds to other programs.

Section 652.206 May a State use funds authorized under the Act to provide applicable ''career services,'' as defined in the Workforce Innovation and Opportunity Act?

The Department is proposing in this section to align Wagner-Peyser service delivery with the service delivery changes in WIOA. Under WIA, non-training services were generally identified as either ''core'' or ''intensive'' services. WIOA has removed the terms ''core'' and ''intensive'' and these services are now called ''career services.'' The primary goal of the change to ''career services'' was to eliminate any sequencing of service requirements and to ensure participants had a broad array of services available to them based on a participant's employment needs.

Proposed § 678.430 organizes the WIOA career services into three categories: (1) Career services that must be made available to all participants; (2) career services that must be made available if deemed appropriate and needed for an individual to obtain or retain employment; and (3) follow-up activities. The proposed regulation respectively designates these categories as basic career services (§ 678.430(a)), individualized career services (§ 678.430(b)), and follow-up services (§ 678.430(c)).

Labor exchange services, which are the primary services provided by the ES, fall under the ''basic career services''

identified in proposed § 678.430(a) and listed in sec. 134(c)(2)(A) of WIOA. This section is designed to provide that Wagner-Peyser staff must use funds authorized by sec. 7(a) of the Act to provide the basic career services.

Individualized career services are identified in proposed § 678.430(b) and listed in sec. 134(c)(2)(A)(xii) of WIOA. These services involve more dedicated staff time to provide. These services are similar to intensive services and they may be provided as appropriate. The primary services the ES provides are labor exchange services, which are identified by the Department as basic career services. The Department proposes that the ES staff may also provide individualized career services, paid for from funds authorized under sec. 7(a) of the Act, in a manner consistent with the requirements of the Wagner-Peyser Act. Additionally, the Department wishes to clarify that the funds can be used to provide any of the individualized services defined in proposed § 678.430(b) and sec. 134(c)(2)(A)(xii) of WIOA; there is no limit that the funds can only be used for particular individualized services. However, these Wagner-Peyser funds may not be used to provide training services.

The Department is seeking comments on how services provided by the ES can be more aligned with other services in the one-stop delivery system and ensure participants can receive seamless services from the ES to other programs under WIOA.

Section 652.207 How does a State meet the requirement for universal access to services provided under the Act?

This section provides States discretion in meeting universal access to service requirements, and explains the requirements, including how those services must be delivered. The section specifies that labor exchange services may be provided through self-service, facilitated self-help service, and staff-assisted services. The Department is proposing to include ''virtual services'' as a type of self-service. The Department recognizes the valuable virtual and online services that States provide through the ES, and seeks to include these services as self-services.

The Department also proposes changes in this section to tie it to the mandatory services described in § 652.206. The revised provision would replace the reference to core and intensive services with reference to career services made mandatory by an amended § 652.206.

Section 652.208 How are applicable career services related to the methods of service delivery described in this part?

This section explains how career services may be delivered to meet the requirements for access described in proposed § 652.207(b)(2). The Department proposes to include ''virtual services'' as a type of self-service provided by the ES, recognizing these important services provided by States. The Department is also proposing to replace the reference to ''core services and intensive services'' with a reference to ''career services'' per WIOA.

Section 652.209 What are the requirements under the Act for providing reemployment services and other activities to referred unemployment insurance claimants?

The Wagner-Peyser Act authorizes funding for States to deliver a wide array of labor exchange services to jobseekers. This regulation clarifies the required and allowable Wagner-Peyser services to UI claimants, as a subset of the broader ES beneficiary population.

WIOA added language to sec. 7(a) of the Wagner-Peyser Act reemphasizing the use of funds to support reemployment and related services to UI claimants. These changes strengthen the connectivity between the ES and the UI systems, and broaden opportunities for these systems to help UI claimants return to employment as quickly as possible. Coordination of labor exchange services and UI claimant services is essential to ensure an integrated approach to reemployment strategies. Wagner-Peyser funds may also be used to administer the work test for the State unemployment system for UI eligibility assessments. Additionally, the ES may provide UI claimants with referrals to, and application assistance for, education and training resources and programs as appropriate. Such resources include those provided through the Higher Education Act and State-specific educational assistance programs, veterans' educational assistance programs, WIOA education and training programs, and VR services.

The Department proposes two types of changes in § 652.209: one to clearly require services to UI claimants, and the other to implement new statutory provisions. The proposed text deletes the existing § 652.209(a) language that services must be provided ''to the extent funding is available,'' because it is implied and the Department encourages reemployment assistance to UI claimants.

The proposed text includes in § 652.209(b)(2) a reference to ''conducting eligibility assessments'' to conform with sec. 7(a)(3)(F) of the Wagner-Peyser Act, as amended by WIOA, and includes a requirement that where applicable, UI claimants must be registered for ESs in accordance with the UC law of the State with which they file their claim. The States may use Wagner-Peyser funds to pay for eligibility assessments, which is a required activity that must be made available when appropriate.

Additionally, in § 652.209(b)(3) the Department proposes to require that States provide referrals and application assistance to UI claimants, consistent with the new statutory language in sec. 7(a)(3)(G) of the Wagner-Peyser Act and includes a reference to the Post-9/11 GI Bill which staff may also refer participants to as well as other veterans educational assistance.

Section 652.210 What are the Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

This section clarifies the requirement for administration of the work test to UI claimants. The proposed changes provide more specificity about required services.

The Department proposes to include a reference to ''conducting eligibility assessments'' to conform with sec. 7(a)(3)(F) of the Wagner-Peyser Act. The States may use Wagner-Peyser funds to pay for eligibility assessments, which are a required reemployment activity that must be made available when appropriate. Proposed new language was also added to § 652.210(b)(3) to ensure that ES staff provide information about UI claimants' ability or availability for work, or the suitability of work offered to them, to UI staff. Sharing such information with UI staff will help accelerate claimants' return to employment.

Section 652.211 What are State planning requirements under the Act?

The Department is proposing to remove the planning provisions of this part of the regulation, including the text in §§ 652.211 through 652.214, because the ES is a core program under WIOA and falls under both the unified and combined planning requirements. This section has been amended to simply provide a citation to the State planning requirements under WIOA.

Section 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Act?

This section stipulates that only State merit staff may provide Wagner-Peyser services. The only change proposed in this section is to change ''WIA'' to ''WIOA'' in the section question; the remainder of the text has not changed from the existing regulation. The Department has followed this policy since the earliest years of the ES, in order to ensure minimum standards for the quality of the services provided. A 1998 U.S. District Court decision, *Michigan* v. *Herman,* 81 F. Supp. 2nd 840 (*http://law.justia.com/cases/federal/district-courts/FSupp2/81/840/2420800/*) upheld this policy. State merit staff employees are directly accountable to State government entities, and the standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. State merit staff meet objective professional qualifications and provide impartial, transparent information and services to all customers while complying with established government standards.

Section 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Act?

This section clarifies that ES staff may receive guidance from a one-stop operator about the provision of labor exchange services, but that all personnel matters remain under the authority of the State agency. The only change proposed in this section is to add a reference to proposed § 678.500, which provides the requirements for the local MOU. The Department seeks comment on whether any other changes are needed to allow the one-stop operator to ensure the efficient and effective operation of the one-stop center.

5. Subpart D—Workforce and Labor Market Information

*Secretary of Labor's role concerning the Workforce and Labor Market Information System (WLMIS).* The Wagner-Peyser Act, as amended by and integrated with WIOA, envisions a robust WLMIS that is a critical underpinning for a wide array of workforce functions, including: (1) Supporting State and regional planning of workforce strategies that provide a pipeline of workers with in-demand skills and drive economic growth and development; (2) delivery of quality labor market and career information that enables workforce professionals to provide quality career counseling; and (3) enabling the workforce system's customers to make informed career and service delivery choices. New provisions in Wagner-Peyser provide for a collaborative process, led by the Secretary of Labor in partnership with Federal agencies, the newly created Workforce Information Advisory Council (WIAC), and States, to develop and implement a strategic plan that continuously improves the labor market and workforce information available through the workforce system. The Act describes certain key components of the WLMIS and commits the Secretary of Labor to oversee and ensure the competent management of the system.

*Wage records are a critical data source for WLMIS.* When combined with data from other sources, wage records produce a wide array of labor market information used to inform economic development, support career counseling, identify training needs, inform industry sector workforce strategies, and assist with other facets of a job-driven workforce system.

For example, through agreements with States, wage records are used to produce the following aggregate reports and data that support the objectives listed above:

- The United States Census Bureau's Longitudinal Employer-Household Dynamics Program including the:
  - Quarterly Workforce Explorer, that provides worker residence and work place location data and critical employment and business related data including hiring, worker separations, and turnover rates, at State, county, metro and Workforce Development Board areas;
  - OnTheMap, that provides geographic information system (GIS) capabilities to map worker origin and destination information on detail map overlays in customized geographic areas at a Census block level; and
  - OnTheMap for Emergency Management tools, that provides GIS capabilities to map natural disasters including fire, flood, and storm and the impact on workers and businesses in customized geographic areas at the Census block level area.
- The DOL's Bureau of Labor Statistics Quarterly Census of Employment and Wages, which provides a complete count of employment and wages, classified by industry and based on quarterly reports filed by employers for over 9 million establishments subject to unemployment insurance laws.

*Continuous improvement, in part through consultation.* The Act requires the Secretary of Labor to oversee, and the States to pursue actively, the ''continuous improvement'' of the WLMIS.[3] The Act, throughout, describes components of the system and ways in which the Secretary and the States must act to discharge their duties under the Act, including their duties related to ''continuous improvement.'' Proposed § 652.300(a) is a general statement implementing this requirement. It provides, as does the Act, that the Secretary must oversee the development, maintenance, and continuous improvement of the WLMIS. The reference to Wagner-Peyser sec. 15 simply signals the section where the WLMIS is defined; the provision does not mean to state that sec. 15 is the only section where the duty of continuous improvement is created.

Proposed § 652.300(b) implements the Secretary's more specific duties with regard to the WLMIS, as they are described in Wagner-Peyser sec. 15(b)(2). The proposed regulation closely tracks the statute with respect to duties related to collection, analysis, and dissemination of workforce and labor market information. These include, for example, the duty to eliminate gaps and duplication in statistical undertakings. The Act also identifies certain activities that should be considered to improve data sources. For example, sec. 15(b)(2) requires the Secretary, to ensure that data collected is consistent with appropriate Bureau of Labor Statistics standards and definitions and understandable to users of such data; and to develop consistent procedures and definitions for use by States in the collection of data. Earlier, in sec. 15(a)(1)(E), the Act requires that the WLMIS include ''procedures to support standardization and aggregation of data from administrative reporting systems.''

Recognizing the breadth of these and other requirements it imposes on the Secretary, the statute—at sec. 15(b)(2)—establishes an expectation that the Secretary will discuss and fulfill the requirements in active collaboration with the WIAC, Federal agencies, and States. Proposed § 652.302(b) incorporates this consultation requirement, while reserving our authority to consult with other stakeholders. To the extent that the data

[3] Based on internal Department of Labor data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

and tools used in the context of the WLMIS are owned by other Federal agencies, such as LEHD data which is owned by the Census Bureau subject to the authority of title 13 of the U.S. Code, the Secretary of Labor will work collaboratively with the owners of such data or data tools to coordinate the use of those tools with the WLMIS and to identify potential enhancements, but the Secretary of Labor has no direct authority with regard to those tools.

Proposed § 652.300 works in conjunction with certain amendments to 20 CFR part 651. In order to clarify the Secretary's jurisdiction with respect to the Employment Service and related workforce systems—in particular, with respect to responsibilities related to ''continuous improvement,'' performance assessment, and collection and management of information—the Department proposes new regulatory definitions for ''Workforce and Labor Market Information'' (WLMI) and ''Workforce and Labor Market Information System'' (WLMIS). Those proposed definitions appear in part 651.

*Definition of ''wage record.''* The proposed definition of WLMI that appears in part 651 lists numerous components, including ''wage records.'' The Wagner-Peyser Act does not define ''wage records.'' To clarify the Secretary's responsibilities with respect to that component of WLMI, however, the Department proposes to define ''wage records'' in a new section under part 652, § 652.301.

Proposed § 652.301 defines ''wage records'' for purposes of the Wagner-Peyser Act, including amendments to Wagner-Peyser relating to the WLMIS. The Department proposes to define ''wage record,'' for these purposes, as records that contain ''wage information'' as defined in the Department regulations at 20 CFR part 603. Part 603, among other things, implements the requirements of the Social Security Act governing the now-established Income and Eligibility Verification System (IEVS). Federal law requires each State participating in the Federal-State unemployment compensation (UC) program to have in place an IEVS through which it exchanges information with certain Federal agencies to help determine applicants' eligibility and amount of benefits for UC and several Federal financial assistance programs. (Social Security Act (SSA) secs. 303(f), 1137; 20 CFR 603.20–603.23.)

As part of its IEVS, every State must collect certain information—including ''wage information'' as defined in 20 CFR 603.2(k) and referred to here as ''wage records''—from applicants for these programs, employers in the State, or relevant State or Federal agencies. (SSA sec. 1137.) In the context of establishing confidentiality requirements for State UC data, the Federal regulation at 20 CFR 603.2(k) defines ''wage information'' to mean information in the records of a State UC agency, and information reported under provisions of State law that meets the requirements of an IEVS, that may fall into any one of three categories: (1) ''wages paid to an individual''; (2) the individual's SSN(s); and (3) the name, address, State, and FEIN of the employer that paid the wages. (20 CFR 603(k)) Normally, a State collects this information through the quarterly ''wage reports'' employers file with the State (referred to in 20 CFR 603.2(j) and SSA sec. 1137(a)(3)). States may, based on their need, require employers to report *additional* data—beyond these three categories—in their wage reports, whether for unemployment insurance purposes or for other purposes. It is the combination of these data collections that are referred to, broadly, as ''wage records.''

The new, proposed definition of ''wage records'' in § 652.301 helps meet the legislative intent for consistency by standardizing, the definition of ''wage records'' across regulations governing WIOA activities, Wagner-Peyser activities, and disclosure of confidential UC information. Part 603—which uses the term ''wage information'' is the basis for the definition of ''wage records'' in proposed § 652.301—in part serves to allow States to *disclose* specific confidential wage information to help meet Federal reporting requirements for certain programs and activities funded under WIOA and Wagner-Peyser. As proposed, the definition in § 652.301 is also consistent with the definition of ''quarterly wage record information'' under 20 CFR 677.175,[4] which requires States to *use* essentially the same data elements in ''wage records'' to formally assess their performance for purposes of performance reporting. (For additional explanation of the relationship between these three sections, and the distinction between the provisions authorizing State *use* of certain wage data and those authorizing States to *disclose* essentially the data for purposes of Federally-required performance reporting, see the Department's proposal to amend its regulations at 20 CFR part 603, accompanying this proposal to amend the Wagner-Peyser regulations.)

*Secretary of Labor's role concerning wage records under WIOA.* Proposed § 652.302 explains how the Secretary's responsibilities concerning the WLMIS apply to the wage record component of WLMI. That is, the proposed regulation reflects how the Department would apply the broader Wagner-Peyser expectations for improvement of labor market data sources, including those related to consistency and standardization, to one specific source—wage records.

Proposed § 652.302(b) would clarify that pursuant to his/her responsibility to oversee the development, maintenance, and continuous improvement of the WLMIS, including the numerous duties set forth in the Act and restated throughout this preamble, the Secretary will seek to develop standardized definitions of the data elements in wage records, and improved processes and systems for the collection of and reporting of wage records. As proposed, this provision would authorize the Secretary to develop common data definitions and standardized reporting formats that are consistent across States.

Proposed § 652.302(a) would work in conjunction with the proposed definitions of WLMI and WLMIS in part 651 to clarify that wage records are, in fact, included in and source data for WLMI.

*Consistency of wage records.* On the matter of wage records, a number of areas have, in recent years, required policy discussions between the Department and States and other stakeholders. Of these discussions, the one on consistency has gained momentum.

State wage records today, while they are a critical component of the WLMIS, suffer from inconsistencies that impede better management of WLMI, and of the ES more broadly. Wage records have always been a critical data source for administration of the UI program as well as other Federal programs, providing information that supports eligibility determinations and identification and reduction of improper payments. Wage records have increased importance today because States are required to use them to evaluate State performance of the workforce system and education and training providers. Additionally, wage records play a key role in Federal evaluations of the workforce system's programs. The expanded use of wage records for such a wide range of purposes requires consistency and quality of the data in order to maximize its use.

Regrettably, such consistency is lacking. The wage data employers must report on their quarterly wage reports to their State and the formats they must use to report it vary, State-by-State. While employers filing wage reports described in Federal regulations at 20

[4] Ibid.

CFR 603.2(j) must, at a minimum, report the three data elements described in 20 CFR 603.2(k), State law may require them to report additional elements. And because States differ in how they define certain data elements—including the three elements listed in § 603.2(k)—different States may prescribe different reporting formats for the same data elements. This means that the same type of data (employee SSN, employee name, employee address) may look different, from State to State, when placed on the form. For example, some States only require the first several numbers of workers' SSN. Such differences in State reporting requirements, and the variation they generate in the type of data and the format of data collected, set up a significant barrier to data quality and data consistency. They make it hard for data users to effectively match wage records across the States. This interferes with the effective and efficient measure of performance, program evaluation, income verification under sec. 1137 SSA, and detection of improper benefits payments in multiple Federal programs.

Consultations with stakeholders over the years, as well as our own, longstanding program experience, lead the Department to believe that adoption of standardized definitions of data elements, and processes and systems for collecting and reporting wage records across all States, could greatly enhance the usability of the wage records and the ability to easily merge the data they contain with other data sets. Standardized definitions, collection processes, and systems also could reduce employer burden, given that multi-State employers and their third-party administrators now have to report wages to States in many different formats. With such enhancements, State wage records would contain data that have the potential to create more comprehensive and powerful workforce and labor market information. Such an approach would also help implement the statute's requirement for consistency.

*Other Federal statutes support making significant improvements in wage records as a data source.* A number of Federal statutes now place emphasis on wage records and data standardization. WIOA and the Middle Class Tax Relief and Job Creation Act of 2014, for example, require the Department to make the labor market data it oversees or generates, even more consistent and meaningful. WIOA emphasizes the use of wage records for performance and evaluations of the workforce system. The Job Creation Act focus on data standardization.

Section 2104 of the Job Creation Act requires the Secretary to promote data exchange standardization through regulation in the delivery of the UI program, including as it relates to supporting the reemployment of unemployed workers. Data exchange standards include use of interoperable standards; use of widely accepted, non-proprietary, searchable, and computer readable formats; and use of existing non-proprietary standards, such as the eXtensible Markup Language. A key component of data exchange standardization is ensuring that the data the States are sharing is consistent. As addressed above, it is impossible to accurately exchange and match data that has different elements and different requirements for the common elements. The Secretary cannot achieve data exchange standardization in the UI program if the data elements cannot be accurately exchanged and matched. Therefore, the Department interprets the requirement in the Job Creation Act to standardize data exchange to include the requirement that the Secretary consult with the WIAC and develop a set of common data definitions.

The Wagner-Peyser Act, especially when read in the context of these two other statutes and the amendments made to it by WIOA, exhibits the same focus and expectation. Proposed §§ 652.300 through 652.303 enable all of this work to proceed through a collaborative approach that brings in other Federal agencies, States, and the public through the newly constituted WIAC.

*Consultations with the WIC and WIAC to improve wage records and the WLMIS.* Of course, consistency is not the only concern or area of consultation with stakeholders. There is a long history of interest and discussions among Federal and State agencies and data users about the desirability of making a variety of improvements to wage records that would increase their value and usability. Among these was an effort in the 1990s referred to as the Simplified Tax and Wage Reporting System (STAWRS).

More recently, a subgroup of the Workforce Information Council [5] established under WIA has been researching and developing reports on how to enhance the content of wage records to support improvements in labor market and workforce information. The working group is currently considering possible enhancements, such as adding data elements to the information States collect from employers through the wage reports under 20 CFR 603.2(j), and the potential impact of those enhancements, on State workforce agencies and businesses. This work will result in recommendations to the WIC in the coming year and will provide strong foundational information to support the Secretary's work with the WIAC when it is established. (See discussion on WIAC elsewhere in this proposed rule.)

As discussed elsewhere, sec. 15(d) of the Wagner-Peyser Act requires the WIAC to evaluate the WLMIS System and make recommendations to the Secretary on how to improve the WLMIS. Section 15(b) requires the Secretary to receive and evaluate the WIAC's recommendations and respond to these recommendations in writing. At the appropriate time, the WIAC will make recommendations for improving the WLMIS. These recommendations could range from technical improvements to the system, such as improving the technology States use to gather and report data, to more substantive changes to the system, such as standardizing data elements to facilitate comparisons and provide job seekers easy to understand information about the labor market.

To the extent that the Secretary's consultations with the WIAC and, potentially, other stakeholder groups result in proposals to change, enhance, or expand wage record data elements, the Secretary will carefully consider the potential benefits and costs of these proposals on the workforce system, and work with the Congress, other Federal agencies, States, the WIAC, and other stakeholders to explore possible ways to implement the recommendations. If appropriate, the Department will engage in further rulemaking or seek legislative authority.

*Data elements associated with wage records.* Potentially establishing new data elements to wage records that employers in all States must report could have benefits similar to standardization. For example, knowing individuals' occupations, along with the wages they earned, would be extremely valuable. Such additional information would greatly assist in performance reporting and program evaluation under WIOA, in the identification of skill shortages by detailed geographic area to inform labor market training programs, and in the analysis of the long-term impact of education and training programs on labor market outcomes. It is likely that the WIAC will explore the value and viability of adding this and, potentially, other data elements. As discussed above, the current WIC is researching this issue and developing reports that will provide additional

[5] Ibid.

information that is likely to be passed on to the WIAC for consideration.

On January 31, 2014, the WIC released its ''Phase One Interim Report on Current Practices of Unemployment Insurance Wage Record Collection and Use.'' This report analyzed the results of a State survey on the benefits of and barriers to enhancing labor market information by adding data elements to the quarterly wage reports employers submit to States as defined in 20 CFR 603.2(j). Among other things, the WIC's survey asked States what additional data elements, aside from Federally-required wage information, States require employers to report. The Phase One Interim Report can be found at: *http://www.workforceinfocouncil.org/Documents/Wage%20Report%20Final.pdf.* While not all States responded, Alaska, Iowa, Minnesota, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, the Virgin Islands, Washington, and Wyoming reported already collecting additional data elements in the quarterly wage reports. The additional elements included the Code, total hours worked in a quarter, total number of weeks worked in a quarter, pay type (salary or hourly), hourly pay rate, gender, job title, worksite address, zip code, and tips. Some of the responding States reported that the additional data elements are extremely helpful for estimating hourly earnings, understanding career progression from occupation to occupation, assessing the effectiveness of workforce training, and making occupational projections. One State pointed out that knowing the employee worksite information helped with UC claim filing.

Asking employers to report and States to collect additional data or data categories through quarterly wage reports, would expand the data collections for many States. The Department is committed to strong stakeholder consultation as strategies are developed to improve and enhance wage records and to striking the appropriate balance between the burden of any new data collection and the value of any additional data elements. In the event the WIAC and/or other stakeholder consultations generate recommendations for such enhancements, the Department will consider additional rulemaking or seek legislative authority, if appropriate.

*Request for comment.* The Department is interested in receiving comments from States that responded to the survey, and any other States that require additional data elements in quarterly wage reports, on the challenges and benefits of requiring additional data elements in the quarterly wage reports. The Department is also interested in receiving comments from employers and payroll processors who provide occupational data for the quarterly wage records.

*Applying 20 CFR part 603 to wage records.* Finally, the regulation proposed for new § 652.303 would clarify that wage records are subject to and protected by the Department's regulations at 20 CFR part 603, which govern confidentiality and disclosure for confidential UC information, including the ''wage information'' that make up ''wage records.'' Nothing in §§ 652.300 through 652.302 changes the confidentiality requirements of 20 CFR part 603. Information contained in ''wage records'' that is confidential under §§ 603.2(b) and 603.4 remains confidential in accordance with those sections of the confidentiality and disclosure requirements of subparts A and B of part 603. The Department proposes this provision to further ensure the confidentiality of the information in the State UC system.

*O. Part 653—Services of the Employment Service System*

In subparts B and F, the Department proposes to implement the WIOA title III amendments to the Wagner-Peyser Act and to streamline and update certain sections to eliminate duplicative and obsolete provisions. Despite these changes, part 653 will remain consistent with the ''Richey Order'', which allows revisions as long as they are consistent with the Richey Order. *NAACP* v. *Brennan,* 9174 WL 229, at *7.

Section 653.100 Purpose and Scope of Subpart

Proposed § 653.100 explains that the regulations under part 653 seek to ensure that all services of the workforce development system be available to all job seekers in an equitable fashion. This section includes language currently at § 653.101 that explains the purpose and scope of part 653. This approach is consistent with the Department's current policy and requiring equal access and treatment to all services available through the workforce development system is also consistent with the purpose and terms of the Richey Order.

Section 653.101 Provision of Services to Migrant and Seasonal Farmworkers

The Department proposes to delete § 653.101 because its provisions have been moved to § 653.100 or concern itinerant or satellite offices that have been replaced by one-stop centers that provide services to both MSFWs and non-MSFWs.

Section 653.102 Job Information

The Department proposes to make several changes to § 653.102:

(1) That State agencies make job order information conspicuous and available to MSFWs ''. . . *by all reasonable means*'' rather than ''*in all local offices*'' to reflect the obligation of State agencies to contact MSFWs who are not being reached by the normal intake activities including at their working, living or gathering areas to explain the services available at the local one-stop center;

(2) That the language in § 653.102 referring to ''computer terminal, microfiche, hard copy, or other equally effective means'' be replaced with ''internet labor exchange systems and through the one-stop centers'' to conform to technological advances and current techniques of States' internet-based labor exchange systems;

(3) That the reference to ''each significant MSFW local office'' be replaced with ''employment service offices'' to require each ES office to provide adequate staff assistance to MSFWs to more fully conform with the Richey Order, which requires the Department to ensure that MSFWs are serviced in a quantitatively proportionate and qualitatively equivalent way to non-MSFWs;

(4) That offices designated as significant MSFW multilingual ES offices must provide services to MSFWs in their native language, whenever requested or necessary and to acknowledge that Spanish is not the only native language spoken by MSFWs whose first language is not English.

Section 653.103 Process for Migrant and Seasonal Farmworkers To Participate in Workforce Development Activities

The Department proposes to revise the heading in § 653.103 to ''Process for migrant and seasonal farmworkers to participate in workforce development activities'' to align it with language used in titles I and III of WIOA, which refer to ''workforce development activities.''

Proposed § 653.103(b) includes new language requiring that persons with LEP receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by one-stop centers. The Department also proposes to remove the reference to § 653.105 because we propose to eliminate that section.

In proposed § 653.103(c), the Department proposes to add the words ''or in their native language'' to further

acknowledge that Spanish is not the only native language spoken by MSFWs whose first language is not English, and to remove language regarding checking the accuracy and quality of applications because such actions are part of compliance reviews which are addressed in § 653.108.

The Department also proposes to remove paragraphs (d) through (h) from § 653.103, that refer to application cards and an application process that are generally no longer used, having been replaced by online resources. Instead, it is proposed in paragraph (d) that local ES offices ''refer and/or register the MSFW in accordance with the established procedures defined in the relevant regulations(s) or guidance.''

The Department proposes to remove § 653.104(a) because MSFWs receive equitable ESs regardless of family status. The provision of services for all Wagner-Peyser participants is not dependent upon whether their family members are participating in the ES system. It is also proposed that paragraphs (b) and (c) regarding applications from an individual for employment as a farm labor contractor, and agricultural job orders submitted by a farm labor contractor or farm labor contractor employee, be relocated to § 653.500 because that addresses the ARS.

It is proposed that §§ 653.105 and 653.106 be deleted as they are generally obsolete and because State agencies no longer make referrals to or operate day-haul facilities. Additionally, it is not anticipated that State agencies will make referrals to or operate day-haul facilities in the foreseeable future in part because WIOA title I, sec. 121(e)(3) requires the colocation of Wagner-Peyser services. Should those activities resume in the future, however, the Department will ensure compliance with the requirements of the Richey Order concerning any day-haul referrals and day-haul locations operating under ES supervision. The Department also proposes to remove paragraph (c) of § 653.106 as it is unnecessary because it references §§ 653.107(j) and 653.108(p) concerning outreach visits to, and monitoring of day-haul facilities. Those outreach obligations remain, as revised, in proposed § 653.107.

Section 653.107 Outreach and Agricultural Outreach Plan

The Department proposes to restructure and reorganize § 653.107 to facilitate a better understanding of State agency responsibilities, outreach worker responsibilities, and ES office responsibilities relating to outreach and the Agricultural Outreach Plan (AOP). The Department anticipates that the reorganization will allow the relevant entities to identify their responsibilities under this section.

Currently, the AOP is submitted annually as a modification to the WIA under title I and the Wagner-Peyser Integrated or Unified Workforce Plan. As required by sec. 8 of the Wagner-Peyser Act, and as amended by sec. 306 of WIOA, States must now submit their Wagner-Peyser plan as part of the Unified or Combined State Plan described in WIOA secs. 102 and 103, respectively. In order to streamline the plan submission process for States, the Department proposes to require that States include their AOP with their Unified or Combined State Plan. As the State Plans are required every 4 years, the Department proposes to require that the AOP be submitted every 4 years. The Department notes, however, that the Richey Order requires much of the information submitted through the AOP to be submitted annually. Therefore, in order to balance the goal of streamlining the State planning process with the need to comply with the Richey Order, the Department proposes that the Annual Summary required at 20 CFR 653.108(s) include outreach data and an update on the State's progress toward accomplishing its goals set forth in the AOP. In proposed paragraph (d), the Department explains the basic requirements of the AOP and the Annual Summaries and explain that official guidance will be forthcoming. Additionally, terminology in proposed § 653.107 is revised, when appropriate, to better align its terms with corresponding terms in WIOA which will be used in the Unified State Plan.

The Department also proposes the following changes to § 653.107:

(1) The heading is proposed to be replaced with ''Outreach and Agricultural Outreach Plan (AOP)'' to make clear that information regarding the AOP can be found in this section;

(2) The term ''Outreach Program'' used in paragraph (a) is proposed to be replaced by ''Outreach'' to broaden the scope of the section to accurately reflect the various requirements regarding outreach and that the section is not a formulaic program;

(3) References in paragraph (a) to the Outreach Plan have been relocated, in revised form, to paragraph (d) that concerns the ''Agricultural Outreach Plan (AOP)'' or ''Annual Summaries,'' or reserved for use in future official Department guidance (the Department will include AOP guidance as part of its Unified State Plan guidance);

(4) A requirement has been added to paragraph (a) for each State agency to employ outreach workers to conduct outreach in their service areas (full or part time staff may be hired depending on whether the State has a significant MSFW population). This addition is proposed to help each State meet its requirement under the current 20 CFR 653.107(a) to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices. The Richey Order influenced the language for this proposed addition, as it states that ''each State agency shall employ an adequate number of staff who shall be assigned to ES offices. . . . ;''

(5) Paragraph (a)(4) has been revised to clarify that the Department, through guidance, will identify the 20 States with the highest estimated year-round MSFW activity;

(6) Delete paragraph (b)(2) because all outreach efforts must be vigorous. This change does not signal a reduction in the required intensity of outreach activities;

(7) The language in paragraph (h)(3)(i) be relocated to § 653.107(a)(4) and be revised to require the ''top 20 States,'' that is the 20 States with the highest estimated year-round MSFW activity, to hire year-round full-time outreach staff to help ensure that more farmworkers will be reached on a year-round basis in high activity areas than are reached at present. The remaining States must hire part-time outreach staff year-round and must hire full-time outreach staff during periods of peak MSFW activity. These provisions are proposed to balance the urgent need for outreach with the reality of limited staff resources available to the States. Additionally, it is proposed that the option for the Regional Administrator to grant a deviation from the requirements in this paragraph be deleted to ensure that States have a means to contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices and to encourage them to strive for ''the development of strategies for providing effective outreach to and improve access for individuals and employers who could benefit from services provided through the workforce development system,'' as stated at WIOA sec. 101(d)(3)(c);

(8) The reference to local offices in § 653.107(b)(4)(vi) has been updated to ''one-stop center.'' In this section ''one-stop centers'' refers to both comprehensive and affiliate one-stop centers;

(9) The language in current § 653.107(j)(1)(v) be relocated to proposed § 653.107(b)(2) and revised by inserting the words ''employer's property or work area'' and changing the words ''permission of the employer'' to

''permission of the employer, owner or farm labor contractor'' because the employer may not always be the appropriate person to grant such permission;

(10) The reference to unemployed and employed MSFWs in current paragraph (j)(2)(ii) be deleted because all MSFWs contacted through outreach activities must receive information on current and future employment opportunities;

(11) A sentence was added to paragraph (b)(6) requiring outreach workers to document and refer apparent violations that are non-employment related; and

(12) Language was added to paragraph (b)(7) regarding training outreach workers on protecting farmworkers against sexual harassment in the fields. While such abuse is not often considered when contemplating the protection of, and advocacy for, MSFWs, it is increasingly prevalent and the addition is intended to further a concerted effort to deter such abuse. To that end, the Department wishes to ensure that outreach workers are aware of the issue and able to appropriately refer MSFWs.

Section 653.108 State Workforce Agency and State Monitor Advocate Responsibilities

The Department proposes the following changes to § 653.108:

(1) The heading is proposed to be revised to *State Workforce Agency and State monitor advocate (SMA) responsibilities* to better describe the contents of this section;

(2) The requirement in paragraph (c) for SMAs to work in the State central office was removed because there are instances where it may be more productive and logical for them to work in an office that is more centrally located to the State's MSFW population;

(3) The language in paragraph (d) allowing an Office of Workforce Investment (OWI) Administrator to reallocate SMA positions and approve the use of less than full-time work be deleted because the OWI administrator does not have authority over these determinations. It is also proposed that the last sentence in this paragraph be modified to clarify that a State agency that deems SMA functions appropriate on a part-time basis must demonstrate to the Regional Administrator that part-time staffing will be sufficient for carrying out his/her duties;

(4) Language has been added to paragraph (g)(1) authorizing SMAs to request a corrective action plan from the ES office to address any deficiencies found in their review and allowing the SMAs to advise the State agency on means to improve the delivery of services to MSFWs;

(5) That the words ''local office MSFW formal monitoring'' be deleted from paragraph (g)(2) because the Department has proposed to include a definition for onsite reviews in 20 CFR 651.10;

(6) In paragraph (g)(3) the words ''significant MSFW local office'' are proposed to be replaced with ''significant MSFW one-stop center'' to conform with the proposed definition in 20 CFR 651.10;

(7) In paragraph (g)(4) it is proposed that the sentence referring to applications be deleted because such information can be more effectively provided and updated, as necessary, via Department-published guidance materials. It is also proposed this paragraph include language requiring the SMA to clear the State's AOP to ensure that the SMA reviews, provides necessary input, and supports the final version of the State's AOP;

(8) That paragraph (g)(6) be created to require SMAs to write and submit Annual Summaries to the State Administrator with a copy to the Regional Administrator because it is a duty originally located in § 653.108(t) but appropriately falls under § 653.108(g) as one of the SMA duties;

(9) In paragraphs (h)(2) and (h)(3) the references to ''reviews'' be replaced with ''onsite review(s)'' for clarity, and that the reference to ''ETA'' in paragraph (h)(3) be replaced with ''the Department;''

(10) It is proposed that in paragraph (j) the SMAs must ensure that local ES office managers submit copies of the MSFW complaint logs to the State agency quarterly pursuant to 20 CFR 658 subpart E instead of the regional office, as was originally required. This change is proposed because the regional office does not need to review each complaint log, rather it reviews the information in aggregate, as is the current practice. This helps to avoid overburdening the regional offices with more detail than is necessary. Additional details concerning the submission of complaint logs will be provided and updated, as necessary, via Department official guidance;

(11) Current paragraph (k) has been broken into separate paragraphs (proposed paragraphs (j), (k), and (l)), to clarify the intent of the respective duties under this subpart. Paragraph (j) will require SMAs to serve as advocates to improve services to MSFWs; paragraph (k) will strengthen the requirement for SMAs to liaise with WIOA sec. 167 grantees to encourage increased collaboration between SMAs and grantees that provide services to MSFWs; paragraph (l) proposes that SMAs meet at least quarterly and establish an MOU with WIOA sec. 167 grantees and other organizations serving farmworkers, the Department intends to foster a better working relationship between the SMAs, the grantees, and the other organizations while harmonizing the delivery of services to MSFWs and minimizing the duplication of services;

(12) Language to include committees other than DOL Regional Farm Labor Coordinated Enforcement Committee has been added to paragraph (l) to broaden the scope of appropriate regional meetings the SMA must attend.

(13) Paragraph (o) has been deleted because affirmative action staffing plans are no longer required. In their place, each State agency must provide an assurance that it is complying with its affirmative action requirements set forth in 20 CFR 653.111 through the AOP. Additionally, the requirement under proposed paragraph (g)(1) for SMAs to conduct an ongoing review of and advise the State agency on its affirmative action goals will meet the need for SMAs to ensure that their respective States are complying with the affirmative action staffing requirements outlined in the Richey Order;

(14) Paragraph (p) concerning day-haul sites has been deleted for the same reasons provided for deleting §§ 653.105 and 653.106; and

(15) A new paragraph (s) has been added to outline the purpose and scope of required Annual Summaries, and a list of what the summaries must include. The requirements for the Annual Summary have been expanded to include information that would be relevant for the Department's review of how the States are providing services to MSFW. Many of the added requirements are taken from other sections under this chapter. Specifically, the Annual Summary would include assurances or summaries of SMA duties taken from current § 653.108(c), (g)(1), (h)(2), (j), (k), (q), and (r). This section also requires that the Annual Summaries include a summary of the activities conducted over the course of the previous year that relate to meeting the goals of the AOP. At the end of the AOP, this section would require that the SMA provide a synopsis of the State agency's achievements in meetings its goals set forth in the AOP. This will help keep each State agency on track toward achieving its AOP goals and help the Department track such progress.

In addition, related to proposed § 653.108(g)(4), the Department notes that the process by which the SMA will receive, review, and approve the AOP

will be described in the joint planning guidance issued by the Departments of Labor and Education.

Section 653.109 Data Collection and Performance Accountability Measures

For § 653.109, *Data collection,* the Department proposes to include the equity indicators and minimum service level indicators currently at § 653.112 as they are data elements that appropriately fit under § 653.109, with the exception of the contents of current § 653.112(c)(3) that will be deleted because ETA does not publish a list of priorities that State agencies can use as a basis for the minimum service levels required of significant MSFW States. The Department also proposes to add ''and performance accountability measures'' to § 653.109 so the part may appropriately include the additional measures.

The Department proposes to make several other changes to § 653.109:

(1) Paragraph (a) specifies that State agencies must collect career service indicator data for services described in WIOA sec. 134(c)(2)(A)(xii) because WIOA sec. 134(c)(2)(A)(xii) includes several of the existing requirements under § 653.109;

(2) Paragraph (b) has been revised to specify that data collection will include the number of non-MSFWs and MSFWs registered for Wagner-Peyser services and MSFW average earnings, and will remove the requirement to collect data on the number of MSFWs referred to training, receiving job development, receiving testing, receiving employment counseling, and referred for supportive services or other services, as those are already required data elements under WIOA; and

(3) Paragraph (b) also replaces the terms ''wage rates'' and ''duration of employment'' with the terms ''entered employment rate'' and ''employment retention rate,'' respectively to conform with the terminology by the Department's data collection mechanism (currently the Labor Exchange Agricultural Reporting System 9002a form).

Section 653.110 Disclosure of Data

Proposed § 653.110 contains minor changes to clarify the provisions and to update terminology.

Section 653.111 State Agency Staffing Requirements

In § 653.111 it is proposed that the requirement for each State agency with significant MSFW offices to submit an affirmative action plan be replaced with the requirement that each such State agency submit assurances, as part of its Unified State Plan and as part of its Annual Summaries, that it is implementing an affirmative action staffing program. This change is proposed because it will help each State agency with significant MSFW offices to streamline implementation of its affirmative action program while ensuring that the Department remains in compliance with the relevant requirements under the Richey Order. It is proposed that the regulation providing the formula for determining the racial and ethnic characteristics of the workforce be deleted from the regulation because this will be provided in subsequently issued guidance.

It is proposed that § 653.112 be deleted because PBPs are obsolete as each State agency is required to submit a Unified or Combined State Plan pursuant to WIOA title I. The text in paragraphs (b) and (c) concerning equity indicators and minimum level service requirements is proposed to be relocated, with minor revisions, to § 653.109.

It is proposed that § 653.113 be deleted and its contents relocated to 20 CFR 658.419 because it relates to the ES and Employment-Related Law Complaint System (Complaint System).

In subpart F, the Department proposes the following changes to clarify the requirements of this subpart:

(1) The paragraphs under the ARS have been reorganized into subcategories based on each stakeholder's respective responsibilities (the subcategories are ES Office Responsibilities, State Agency Responsibilities, and Processing Job Orders). The proposed restructuring of this subpart is intended to help stakeholders better understand how the system works and more easily identify and comprehend their respective responsibilities. The reorganizing is also proposed to help clarify the meaning of the regulations;

(2) The paragraphs have been revised to state requirements in the positive and active voice, versus the negative passive voice from which they were originally drafted;

(3) References to information that needs to be provided to MSFWs in Spanish be changed to ''native language'' to conform to TEGL 26–02; and

(4) The heading for subpart F has been revised and supplemented by adding the words ''for US Workers'' to clarify that ARS is meant for U.S. workers versus foreign workers. It is a common misconception that the ARS is for foreign workers who may be hired by U.S. employers through visa programs such as the H–2A or H–2B visa programs, and the Department intends the proposed change to help eliminate this misconception. For the same reason, any references to the temporary employment of foreign workers in the United States (that would otherwise fall under 20 CFR 655) have been deleted.

Section 653.501 Requirements for Processing Clearance Orders

The Department proposes the following changes to § 653.501:

(1) In paragraph (c)(1)(iv)(I), currently paragraph (d)(2)(x), it is proposed that the sentence regarding the contingency of payments made beyond the period of employment specified in the job order be deleted because such terms are already specified in the job order and the language is duplicative;

(2) In paragraph (c)(3)(iv), currently paragraph (d)(2)(xiii), it is proposed that the sentence referring to requests for foreign workers be deleted because this section should only cover information regarding ARS and the requirements for foreign workers are covered under 20 CFR 655; and

(3) In paragraph (j), it is proposed that the Regional Administrator notify the national monitor advocate instead of the OWI Administrator when a potential labor supply State agency rejects a clearance order and the Regional Administrator does not concur with the reasons for rejection. In this case, the national monitor advocate, in consultation with the OWI Administrator, is the appropriate person to make the final determination because it is the common practice for the national monitor advocate to provide the State agencies with guidance regarding ARS.

Section 653.502 Conditional Access to the Agricultural Recruitment System

The Department proposes to delete current § 653.502 concerning changes in crop and recruitment situations and fold its contents without change into proposed § 653.501.

The Department proposes to add a new § 653.502 which contains the relocated provisions of 20 CFR 654.403. While the housing standards at 20 CFR 654 subpart E, including current § 654.403, will expire 1 year after the publication of the final rule, the Department proposes moving current § 654.403 into this new section because those requirements remain necessary and relevant, and because that section is related to the terms and requirements of this subpart. Accordingly, the provisions of 20 CFR 654.403 have been relocated to proposed 20 CFR 653.502.

Section 653.503 Field Checks

Proposed § 653.503(b) has been revised to clarify that State agencies must conduct field checks on at least 25 percent of agricultural worksites to align with common practice. The Department also proposes to add language requiring a State agency with fewer than 10 ES placements to conduct field checks on all agricultural worksites where the placements have been made. This change is proposed to ensure that all worksites are checked whenever feasible. In paragraph (e), it is proposed that the word ''shall'' be changed to ''may'' because it is not a requirement, rather State agencies may choose to enter into an agreement with an enforcement agency if they believe it is necessary or helpful.

*P. Part 654—Special Responsibilities of the Employment Service System*

1. Introduction

The Department proposes to revise the ETA regulations governing Housing for Agricultural Workers at 20 CFR 654, subpart E, issued under the authority of the 1933 Wagner-Peyser Act by updating outdated terminology and by establishing an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the Occupational Safety and Health Administration (OHSA) regulations governing temporary labor camps for agricultural workers.

2. Subpart E—Housing for Agricultural Workers

Section 654.401 Applicability

The Department proposes to amend § 654.401 to require that housing covered by the regulations in this subpart be subject to the relevant OSHA housing standards for agricultural workers beginning 1 year after the publication of the final rule.

In 1951 the U.S. ES Bureau of Employment Security established the ETA housing standards for farmworkers. These standards were updated in 1959 and again in 1968. However, despite the Department's intention to ''make every effort to ensure that 'housing and facilities are hygienic and adequate to the climatic conditions of the area of employment''' and that such housing ''conformed to applicable State or local housing codes, and in the absence of such codes, that the housing would not endanger the health or safety of the workers,'' farmworkers continued to face inadequate, unsafe, and unsanitary housing. In 1970, Congress passed the Occupational Health and Safety Act (OSHA) which was intended to assure that every person working in the United States has safe and healthful working conditions.'' In this light, OSHA adopted a set of national consensus standards for temporary labor camps which was published in August 1971. Therefore, since 1971 the Department has had in effect two sets of agricultural housing standards for farmworkers: Those under the ETA regulations (originally at 20 CFR part 620, later at 20 CFR part 654) and those under the OSHA regulations (at 29 CFR 1910.142). The dual set of standards has long resulted in confusion with respect to their applicability and enforcement. In view of these problems, the Department held hearings in 1976 with stakeholders, developed several proposals to arrive at a single set of standards, and, on December 9, 1977, rescinded the ETA regulations and standards.

While the rescission was effective immediately, employers whose housing met the ETA standards on the date of their rescission were given until January 1, 1979 to come into compliance with the OSHA housing regulations. Later, the Department received numerous complaints objecting to the rescission of the ETA housing regulations, including those from employers who had constructed housing to conform to the ETA standards and complained that the shift from ETA to OSHA standards would require costly modifications to housing which the Department had previously approved. In response to these comments, the Department proposed on September 1, 1978 to revise the December 9, 1977 rescission action by adding an indefinite extension of time for employers already following the ETA standards to bring their housing into compliance with the OSHA standards and a transitional provision for housing built in reliance on the ETA regulations.

On March 4, 1980, the Department issued a final rule providing that the OSHA standards and regulations applied to all temporary housing for farmworkers except that ''[e]mployers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to March 4, 1980 a contract for the construction of the specific housing was signed.'' 45 FR 14180, 14182 (Mar. 4, 1980).

The Department proposes that the remaining housing currently governed under the standards and provisions at 20 CFR part 654 subpart E (Housing for Agricultural Workers) be subject to the OSHA standards and provisions beginning 1 year after the publication of the final rule, except that mobile range housing for sheepherders and goatherders must continue to meet existing Departmental guidelines and/or applicable regulations. The proposed expiration date will provide sufficient time for affected employers to transition into compliance with the OSHA standards.

Pursuant to the January 19, 1981 agreement between OSHA, the WHD (replacing the abolished Employment Standards Administration (ESA)), and ETA for Inspections of Migrant Agricultural Worker Housing, the Department's WHD will continue to be responsible for enforcing the provisions under 29 CFR 1910.142. Beginning 1 year after the publication of the final rule, the Department will not apply or enforce the standards of this subpart, other than in cases relating to events predating that expiration date.

Requiring all housing to meet the relevant OSHA standards and eliminating the ETA standards will reduce administrative and enforcement burdens on employers, workers, State agencies, and the Department because they will need to reference and rely on only one set of applicable standards located in one place. Enforcement agency staff and State agency staff that conduct housing inspections will only need to understand one set of standards which will ease the learning process. Additionally, the change will benefit MSFWs as the regulations under 29 CFR 1910.142 conform to more modern housing standards than those under 20 CFR part 654 subpart E. The Department acknowledges that the change will mean that some employers will need to upgrade their farmworker housing to meet the OSHA standards. However, the benefit to farmworkers and the administrative benefits to State agencies and the Department outweigh the adjustments employers will need to make to comply with the OSHA standards. In order to assist employers, the Department will provide technical assistance to facilitate the transition to the OSHA housing standards.

Having been in place for 34 years, it is the Department's opinion that it is appropriate to complete the transition to the OSHA standards begun in 1980 and to phase out in full the ETA standards grandfathered for 34 years for farmworker housing completed or under construction prior to March 3, 1980, or under contract for construction prior to April 3, 1980. As in 1980, the Department continues to believe that the OSHA regulations provide for superior standards of safety and habitability for

MSFWs and do not overly burden employers.

In addition to the change described above, the Department proposes to amend the following sections:

Section 654.400 Scope and Purpose

The Department proposes to amend § 654.400 to update terminology and explain that housing covered under the standards and provisions of subpart E will be subject to different regulations without grandfathering beginning 1 year after the date that this final regulation is published.

In addition to the amendment described above, the Department proposes to revise § 654.401 for clarity, to add a new paragraph (b), and to shorten the section heading by eliminating unnecessary language.

Section 654.402 Variances

The Department proposes to amend § 654.402 to update terminology and remove the term ''permanent'' because, as proposed, variances will expire on the given expiration date for the standards and provisions of subpart E; therefore, employers will no longer be entitled to a permanent variance. The deadline of June 2, 1980 is removed because the Department proposes to receive applications for temporary variances from the ETA standards until the date on which the standards and provisions of subpart E will expire. Additionally, paragraph (f) has been added to state that all variances and requests for variances will expire 1 year after the publication of the final rule requiring this change, and that no applications will be accepted as of that date. After this change takes effect, the Department will return any pending requests for variances to the appropriate applicant noting that all variances and variance requests expired on that date and are therefore stale.

Section 654.403 [Reserved]

Finally, the Department proposes that the provisions of § 654.403 be deleted and relocated to 20 CFR 653.502 because they more directly relate to the governance and operation of the ARS rather than the condition of worker housing. Section 654.403 provides for conditional access to the clearance order system administered by the relevant State workforce agency which is needed to effectively service employers whose housing has fallen temporarily out of compliance with the applicable housing standards during a period of use in the previous year, and where the employer has not had an opportunity to bring the housing back into compliance.

The following sections of part 654 remain unchanged: §§ 654.404, 654.405, 654.406, 654.407, 654.408, 654.409, 654.410, 654.411, 654.412, 654.413, 654.414, 654.415, 654.416, and 654.417.

*Q. Part 658—Administrative Provisions Governing the Employment Service System*

20 CFR part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of State agencies.

The Department's proposed changes update terminology and responsibilities and reorganize various regulations to increase the clarity and efficiency of the provisions involved. Additionally, headings have been revised, when necessary, to reflect proposed changes to the regulations, and language has been added to permit, where relevant, the use of electronic mail and electronic signatures. The complaint system under 20 CFR part 658 does not apply to complaints filed under WIOA title I.

During the 1980 rulemaking, the Department received numerous comments about the proposed complaint system at 20 CFR part 658 subpart E (Complaint System) including comments that focused on the limited staff resources available to provide all labor exchange services including the handling of complaints. The Department took those comments into account and limited the complaint system to only take in writing those complaints that were ''Job Service (JS) related or those non-JS related complaints that [were] filed by MSFWs alleging violations of laws enforced by ESA or OSHA.'' (Since the dissolution of ESA on Nov. 8, 2009, the WHD has taken on the relevant enforcement responsibilities (45 FR 39454, 39456 (June 10, 1980.)) The Department now believes it is appropriate and consistent with the Richey Order to allow most employment-related law complaints by MSFWs to be recorded, referred, and tracked to resolution (except those that relate to WIOA title I complaints which follow a different process—see WIOA title I sec. 181(c)). Technological advances in the workplace since 1980, such as the widespread use of computer software and systems, have made performing such work feasible with limited staff resources. Additionally, recording, referring, and tracking to resolution the additional complaints will help, directly or indirectly, to deter the employment-related discrimination and abuses that MSFWs continue to suffer throughout the United States.

The Department proposes to revise the heading for 20 CFR part 658 subpart E from ''Job Service Complaint System'' to ''Employment Service and Employment-Related Law Complaint System (Complaint System)'' to accurately reflect what the Complaint System covers. The Department proposes to eliminate § 658.401 and fold its revised provisions that relate to the purpose and scope of the subpart into § 658.400.

Regarding provisions concerning the complaint system at the State level, the Department proposes to restructure the previous §§ 658.410 through 658.418 by placing them in § 658.411 and breaking them down into subsections for complaints alleging violation(s) of employment-related laws and subsections on complaints alleging violation(s) of the ES regulations. Those subsections are further broken down based on whether the complainant is an MSFW or not. Proposed new §§ 658.410 and 658.411 provide an overview of the Complaint System as it pertains to all persons who submit a complaint and as it pertains specifically to MSFWs who submit a complaint.

Section 658.410 Establishment of Local and State Complaint Systems

In § 658.410(c)(2), it is proposed that quarterly complaint logs be submitted to the SMA and the State Administrator rather than to the Regional Administrator, unless requested. This change is proposed to increase the efficiency of the Regional Administrator's position that does not require the routine review of the multitude of highly detailed logs.

Section 658.411 Action on Complaints

Section 658.411 is expanded to incorporate the majority of the provisions currently in §§ 658.412 through 658.417 in the interest of streamlining and clarity. The Department proposes to eliminate §§ 659.412 through 658.417 as separate sections. Not included in § 658.411, however, is the reference currently in § 658.414(a) to 29 CFR part 42 because the proposed revisions to the complaint system call for coordination with all relevant enforcement agencies concerning MSFW complaints, and provisions at 29 CFR part 42 discuss such coordination only between WHD, OSHA, and the ETA. This new approach ensures that State and local officials will consider forwarding employment-related law complaints to a broader group of enforcement agencies. Also excluded from proposed § 658.411 is the

text of current § 658.414(c) that has become redundant because proposed § 658.410 also states that all complaints filed by an MSFW must be recorded. The Department proposes to add new § 658.419 that will incorporate the relocated provisions of 20 CFR 653.113 (Apparent Violations) because those provisions set forth the procedures for State agency employees to follow when they become aware of an apparent violation of employment-related law or of the ES regulations which is more appropriately located in 20 CFR part 658 subpart E than in 20 CFR part 653 subpart B that concerns services for MSFWs.

Proposed § 658.411(d)(6) indicates that complaints alleging violations of the ES regulations will be handled to resolution if the complaint was made within 2 years from the date of occurrence, versus the 1 year provided currently at § 658.401. A 2-year limitations period would be consistent with the limitations period for non-willful violations of the Fair Labor Standards Act, a worker protective statute of general application that applies to employment in agriculture and from which the definition of farmwork in 20 CFR 651.10 is largely drawn. Increasing the limitations period to 2 years will provide greater protections to those participating in the ES system by accommodating those individuals that do not feel comfortable filing or are not able to file complaints within a year from the alleged occurrence. Increasing the limitations period by 1 year will not increase the burden on State agencies or employers because the Uniform Administrative Requirements for the Wagner-Peyser grant already requires the retention of all financial and programmatic records, supporting documents, and statistical records for 3 years, and those records, in many cases, will contain information bearing on complaints filed within the 2-year limitations period. Finally, as with complaints filed under the FLSA, there is little risk that a complaint will become stale if it is filed 2 years after an alleged occurrence. The 2-year limitations period would not apply to employment-related law complaints as each enforcement agency has its own respective limitations period for which it can process complaints.

It is proposed that §§ 658.420 through 658.426 be restructured to conform to the restructured regulations for the Complaint System at the State level in which the system is broken down into employment law-related complaints and complaints relating to the ES regulations.

Section 658.422 Handling of Employment-Related Law Complaints by the Regional Administrator

The Department proposes to revise § 658.422 by replacing in § 658.422(a) the reference to ''ESA or OSHA'' with ''the appropriate enforcement agency'' to allow for complaints to be referred to the appropriate agency and not confined to two agencies within the Department. Also proposed is the elimination of § 658.422(d) because its requirement to log all complaints and related correspondence is already set forth in § 658.420(d). The Department also proposes to eliminate § 658.423 as a separate section and incorporate its provisions in § 658.420 that addresses the handling and other treatment of complaints.

Section 658.424 Proceedings Before the Office of Administrative Law Judges

Per § 658.424(b), the Department proposes to clarify that the rules governing procedures before the Department's OALJ at subpart A of 29 CFR part 18 govern proceedings under § 658.424, except where the provisions of §§ 658.424 and 658.425 conflict with the provisions of that subpart. However, the rules of evidence at subpart B of 29 CFR part 18 do not apply to this section. This change is proposed to ensure consistency with other ETA programs.

Section 658.501 Basis for Discontinuation of Services

In 20 CFR part 658 subpart F, it is proposed that language be added to § 658.501(c) to clarify the procedures a State agency must follow when an employer participating in the ES system has allegedly not complied with the terms of the temporary labor certification.

In 20 CFR part 658 subpart G, it is proposed that the references to §§ 658.620 and 658.621 be deleted from § 658.600 because those sections are reserved. It is also proposed that under § 658.601(a)(1)(ii), ''Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports'' be replaced with ''the Department's ETA 9002A report, or any successor report required by the Department'' to conform to what is currently utilized.

In 20 CFR part 658 subpart H, the Department proposes to replace outdated or otherwise incorrect terminology. For example, ETA is replaced by the Department, State agency is replaced by State Workforce Agency (SWA), and JS is replaced with ES.

Finally, recognizing that almost all correspondence, formal filings and submissions, and other exchanges of documents and information between the public and the Department are conducted electronically, these regulations clarify that any required filing or submission of documents, etc. via mail or hard copy may also be accomplished electronically.

## V. Rulemaking Analyses and Notices

### *A. Executive Orders 12866 and 13563: Regulatory Planning and Review*

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying present and future benefits and costs; directs that regulations be adopted with public participation; and where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits are to include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. OMB determines whether a regulatory action is significant and, therefore, subject to review.

Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as any action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

*Summary of the analysis.* The Department provides the following summary of the regulatory impact analysis:

(1) The proposed rule is a ''significant regulatory action'' under WIOA sec. 3(f)(4) of E.O. 12866; therefore, OMB has reviewed the proposed rule.

(2) The proposed rule would have no cost impact on small entities.

(3) The proposed rule would not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Department estimates that this NPRM would have an average annual cost of $38,437,779 and a total 10-year cost of $305,556,353 (with 7-percent discounting). The largest contributor to the cost is the requirement related to the development and continuous improvement of the workforce development system, followed by the career pathways development and the colocation of Wagner-Peyser services.

The Department was unable to quantify several important benefits to society due to data limitations or lack of existing data or evaluation findings on particular items. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), we identified a variety of societal benefits: (1) Training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. We identified several channels through which these benefits might be achieved: (1) Better information about training providers will enable workers to make better informed choices about programs to pursue; (2) sanctions to under-performing States will serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

The Department requests comment on the costs and benefits of this NPRM with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

1. Need for Regulation

Public Law 113–128, the Workforce Innovation and Opportunity Act, enacted on July 22, 2014, statutorily requires publication of proposed implementation regulations not later than 180 days after the date of enactment. The Department has determined that implementing regulations are necessary in order for the WIOA program to be efficiently and effectively operated and that such regulations shall provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

2. Alternatives in Light of the Required Publication of Proposed Regulations

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. While the WIOA provides little regulatory discretion, the Department assessed, to the extent feasible, alternatives to the proposed regulations.

In this NPRM, the Department considered significant alternatives to accomplish the stated objectives of the WIOA while also attempting to minimize any significant economic impact of the proposed rule on small entities. This analysis considered the extent to which WIOA's prescriptive language presented any regulatory options which would also allow for achieving the Act's articulated program goals. The Department, in many instances, has reiterated the Act's language in the regulatory text and expansions are offered for clarification and guidance to the regulated community. The additional regulatory guidance should create more efficient administration of the program by reducing ambiguities and subsequent State and local revisions as a result of unclear statutory language.

In addition, the Department considered and, where feasible, proposed to issue sub-regulatory guidance in lieu of additional regulatory requirements. This policy option has two primary benefits to small entities. First, guidance will be issued following publication of the rules, thereby allowing States, local areas, and small entities additional time to prepare their compliance efforts. Second, this level of guidance is more flexible in nature, allowing for faster modifications and any subsequent issuances, as necessary.

The Department considered three possible alternatives:

(1) To implement the changes prescribed in WIOA, as noted in this NPRM, thereby satisfying the statutory mandate; or

(2) To take no action, that is, to attempt to implement the WIOA utilizing existing Workforce Innovation Act (WIA) regulations; or

(3) To not publish regulation and rescind existing WIA final regulations and, thereby ignoring the WIOA statutory requirement to publish implementing regulations thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Department considered these three options in accordance with the provisions of E.O. 12866 and chose to publish the WIOA NPRM, that is, the first alternative. The Department considered the second alternative, that is, retaining existing WIA regulations as the guide for WIOA implementation, but believes that the requirements have changed substantially enough that new implementing regulations are necessary for the workforce system to achieve program compliance. The Department considered the third alternative, that is, to not publish an implementing regulation and rescind existing WIA final regulations, but rejected it because the WIOA legislative language in and of itself does not provide sufficient detailed guidance to effectively implement WIOA; thus, regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Department also considered whether certain aspects of the WIOA could be phased in over a prescribed period of time (different compliance dates), thereby allowing States and localities additional time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and where feasible (*e.g.,* Wagner-Peyser colocation of services), the Department has recognized and made allowances for different schedules of implementation. However, upon further discussion and in order to begin to achieve the intended legislative benefits of the WIOA, additional implementation delays beyond those noted in this NPRM may create potentially more issues than the benefit of alternative starting dates. Specifically, as many critical WIOA elements follow upon the implementation of other provisions (*e.g.,* technology and performance reporting are intrinsically related), discussions around delaying additional aspects became quite complicated such that the interrelatedness of the WIOA's requirements suggested that the alternative of delaying additional aspects was not operationally feasible.

Furthermore, the data necessary to fully review this option does not yet exist, and will not until local workforce development boards (WDBs) conduct procurements and announce awards.

Similarly, performance standards will be negotiated at a future time and based upon a variety of factors including State and local economic conditions, resources, and priorities. Establishing proposed standards in advance of this statutorily-defined process may not be an efficient or effective action. The enforcement methods described in the proposed rule are a reflection of prescribed WIOA requirements and entity size should not in and of itself create alternative methods for compliance or different time periods for achieving compliance. Although the Department has not determined sufficiently valid reasons for altering compliance timeframes in addition to those described in the proposed rule for small entities, we seek comment on this issue.

The Department's initial impact analysis has concluded that by virtue of WIOA's prescriptive language, particularly the requirement to publish implementing regulations within 180 days, there are no viable regulatory alternatives available other than those discussed above.

The Department requests comment on these or other alternatives, including alternatives on the specific provisions contained in this NPRM, with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

3. Analysis Considerations

The Department derives its estimates by comparing the existing program baseline, *i.e.,* the benefits and costs associated with current practices, which at a minimum, must comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000), against the additional benefits and costs associated with implementation of provisions contained in this WIOA-required NPRM.

For a proper evaluation of the additional benefits and costs of this NPRM, the Department explains how the required actions of States, WDBs, employers and training entities, government agencies, and other related entities are linked to the expected benefits and estimated costs. We also considered, where appropriate, the unintended consequences of the proposed regulations introduced by this NPRM. The Department makes every effort, when feasible, to quantify and monetize the benefits and costs of this NPRM. The Department was unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the proposed rule or WIOA in general. Therefore, we describe the benefits qualitatively. We followed the same approach when we were unable to quantify the costs.

Throughout the benefit-cost analysis, the Department made every effort to identify and quantify all potential incremental costs associated with the implementation of WIOA as distinct from what already exist under WIA, WIOA's predecessor statute. Despite our best estimation efforts, however, the Department might be double-counting some activities that are already happening under WIA. Thus, the costs itemized below represent an upper bound of the potential cost of implementing the statute. The Department requests comment on its cost estimates, specifically in terms of whether it has accurately captured the additional costs associated with the implementation of WIOA.

In addition to this NPRM, the Departments of Labor and Education have proposed a joint NPRM to implement specific requirements of WIOA that fall under both Departments' purviews. While we acknowledge that these proposed rules and their associated impacts may not be wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, our analysis does not capture the correlated impacts of the benefits and costs of this proposed rule and those associated with the other NPRMs. We request comments from the public about the appropriateness of this assumption.

In accordance with the regulatory analysis guidance contained in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to citizens and residents of the United States) of this WIOA-required NPRM. The analysis covers 10 years (2015 through 2024) to ensure it captures major additional benefits and costs that accrue over time. The Department expresses all quantifiable impacts in 2013 dollars and use 3-percent and 7-percent discounting following OMB Circular A–4.

Exhibit 1 presents the estimated number of entities expected to experience an increase in level of effort (workload) due to the proposed requirements contained in this NPRM. These estimates are provided by the Department and are used extensively throughout this analysis to calculate the estimated cost of each proposed provision.

EXHIBIT 1—NUMBER OF AFFECTED ENTITIES BY TYPE

| Entity type | Number of entities |
|---|---|
| States impacted by DOL program requirements | [6] 56 |
| States without collocated Wagner-Peyser offices and one-stops | [7] 10 |
| States without sector strategies | [2] 21 |
| States that need to create Unified State Plans | [2] 14 |
| States that must pay their share for proportionate use of one-stop delivery systems | [2] 54 |
| Local areas without collocated Wagner-Peyser offices and one-stops | [2] 100 |
| Workforce development boards | [2] 580 |
| Workforce development boards selecting one-stop operators | [2] 250 |
| Local Boards performing regional plan modifications | [2] 300 |

Transfer Payments

In addition, the Department provides an assessment of transfer payments associated with transitioning the nation's public workforce system from the requirements of WIA to new requirements imposed by WIOA. In accordance with OMB Circular A–4, we consider transfer payments as payments from one group to another that do not affect total resources available to society. For example, under WIOA, partners are required to pay their share for proportionate use of one-stop delivery systems. Partners receive sufficient Federal funding to cover these payments, rendering this payment a transfer rather than a new cost. Under-performing States will also receive sanctions under WIOA, which are similarly classified as transfers as they result in the de-obligation of funds from the State's set-aside. In accordance with the State allotment provisions noted in WIOA sec. 127, the interstate funding formula methodology is not significantly different than that utilized for the distribution of WIA funds. Final program year grant allocations will reflect WIOA requirements and are under development.

One example of transfer payments is the expectation that available U.S. workers trained and hired who were previously unemployed will no longer need to seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Department expects State unemployment insurance expenditures to decline because of the hiring of U.S.

[6] *Ibid.*

[7] Department of Labor estimate.

workers following WIOA implementation. The Department, however, cannot quantify these transfer payments due to a lack of adequate data.

In the subject-by-subject analysis, the Department presents the additional labor and other costs associated with the implementation of each of the proposed provisions in this NPRM. Exhibit 2 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the proposed rule. We used wage rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for private and State employees.[8] For simplicity, we applied State-level wages to local employees. We also used wage rates from the Office of Personnel Management's Salary Table for the 2013 General Schedule for Federal employees.[9] We adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For the State and local sectors, we used a loaded wage factor of 1.55, which represents the ratio of total compensation[10] to wages.[11] For Federal employees, we used a loaded wage factor of 1.69 based on internal data from DOL. We then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Department invites comments regarding the assumptions used to estimate the level of additional effort required for the various proposed new activities, as well as data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis.

The Department uses the hourly compensation rates presented in Exhibit 2 throughout this analysis to estimate the additional labor costs for each proposed provision.

EXHIBIT 2—CALCULATION OF HOURLY COMPENSATION RATES

| Position | Grade level | Average hourly wage<br>a | Loaded wage factor<br>b | Hourly compensation rate<br>c = a × b |
|---|---|---|---|---|
| State and Local Employees | | | | |
| Administrative staff[12] | N/A | $17.96 | 1.55 | $27.84 |
| Legal counsel staff[13] | | 40.68 | | 63.05 |
| IT reprogramming or database development staff[14] | | 38.91 | | 60.31 |
| Managers[15] | | 45.32 | | 70.25 |
| Technical staff[16] | | 43.38 | | 67.24 |

The section-by-section analysis presents the total incremental cost of the proposed rule relative to the baseline, *i.e.,* the current practice. At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities may already be in compliance with some provisions of the proposed rule. This analysis estimates the incremental costs that would be incurred by affected entities which are not yet compliant with the proposed rule. The equation below shows the method by which the Department calculated the incremental total cost for each provision over the 10-year analysis period.

$$\text{Total Cost} = \sum_{T=1}^{10}\left(A_l \sum_{i=1}^{n}(\mathrm{N_i} \text{ x } \mathrm{H_i} \text{ x } \mathrm{W}_i \text{ x } \mathrm{L}_i) + \sum_{j=1}^{m} \mathrm{A_j} \text{ x } \mathrm{C_j}\right)$$

*Where,*

$A_l$ Number of affected entities that would incur labor costs,

$N_i$ Number of staff of labor type *i,*

$H_i$ Hours required per staff of labor type *i,*

$W_i$ Mean hourly wage of staff of labor type *i,*

$L_i$ Loaded wage factor of staff of labor type *i,*

$A_j$ Number of affected entities incurring non-labor costs of type *j,*

$C_j$ Non-labor cost of type *j,*

*i* Staff type,

*n* Number of staff types,

*j* Non-labor cost type,

*m* Number of non-labor cost types,

*T* Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 3 for the 10-year cost of the proposed rule by provision). The total labor cost is the sum of the labor costs for each labor type *i* (*e.g.,* administrative

[8] Bureau of Labor Statistics, May 2013, National Occupational Employment and Wage Estimates, retrieved from: *http://www.bls.gov/oes/current/oes_nat.htm.*

[9] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2013, Salary Table for the 2013 General Schedule, retrieved from: *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/gs_h.pdf*).

[10] BLS Employment Cost Index, 2013 Average Series ID CMU3010000000000D, CMU3010000000000P (source: Bureau of Labor Statistics, 2013 Employer Costs for Employee Compensation, retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm*).

[11] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Department used the State and local-sector loaded wage factor (1.55) instead of the private-sector wage factor (1.42) for all non-Federal employees to avoid underestimating the costs.

[12] BLS OES, May 2013, 43–0000 Office and Administrative Support Occupations (*http://www.bls.gov/oes/current/999201.htm#43-0000*).

[13] BLS OES, May 2013, 23–10111 Lawyers (*http://www.bls.gov/oes/current/999201.htm#23-0000*).

[14] BLS OES, May 2013, 15–1131 Computer Programmers (*http://www.bls.gov/oes/current/oes151131.htm*).

[15] BLS OES, May 2013, 11–1021 General and Operations Managers (*http://www.bls.gov/oes/current/999201.htm#11-0000*).

[16] BLS OES, May 2013, average for the following occupational categories weighted by the number of employees in State government: 15–1131 Computer Programmers; 15–1132 Software Developers, Applications; 15–1133 Software Developers, Systems Software; and 15–1134 Web Developers (*http://www.bls.gov/oes/current/999201.htm#15-0000*).

staff, legal counsel staff, and managers) multiplied by the number of affected entities that will incur labor costs, $A_l$. The labor cost for each labor type *i* is calculated by multiplying the number of staff required to perform the proposed activity, $N_i$; the hours required per staff member to perform the proposed activity, $H_i$; the mean hourly wage of staff of labor type *i,* $W_i$; and the loaded wage factor of staff of labor type i, $L_i$. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (*e.g.,* consulting costs) multiplied by the number of affected entities that will incur non-labor costs, $A_j$.

4. Subject-by-Subject Analysis

The Department's analysis below covers the expected impacts of the following proposed provisions of the WIOA NPRM against the baseline of the current practice under WIA: (a) New State Workforce Development Board Membership Requirements; (b) Development and Continuous Improvement of the Workforce Development System; (c) Development of Statewide Policies Affecting the State's One-stop System; (d) Development of Strategies for Technological Improvements; (e) State Plan Modification; (f) Identification of Regions; (g) Appoint New Local Workforce Development Board and Appropriate Firewalls; (h) Career Pathways Development; (i) Development of Proven and Promising Practices; (j) Technology; (k) Selection of the One-stop Operator; (l) Coordination with Education Providers; (m) Regional Plans; (n) Local and Regional Plan Modification; (o) Improved Information about Potential Training Program Providers; (p) Sanctions on Under-performing States; (q) Colocation of Wagner-Peyser Services; (r) Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System; (s) Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship; (t) Determining Eligibility of New and Previously Eligible Providers; (u) Biennial Review of Eligibility; (v) Disseminating the Training Provider List with Accompanying Information; and (w) Migrant and Seasonal Farmworker (MSFW) Housing.

The Department emphasizes that many of the proposed provisions in this WIOA-required NPRM are also existing requirements under WIA. For example, the requirement that States ''prepare annual reports'' is a current requirement under WIA that States routinely undertake. Accordingly, our regulatory analysis focuses on ''new'' benefits, costs, and transfers that can be attributed exclusively to the enactment of WIOA, as addressed in this NPRM. Much of WIA's infrastructure and operations are carried forward under WIOA and, therefore, are not considered ''new'' cost burdens under this NPRM.

a. New State Workforce Development Board Membership Requirements

States must establish State WDBs in accordance with the requirements of WIOA sec. 101. Under WIOA sec. 101(b)(1)(C)(i), the majority of the State WDB representatives must be from businesses or organizations in the State. These representatives must be owners or chief executives or operating officers of the businesses or executives with optimum policy-making or hiring authority. WIOA sec. 101(b)(1)(C)(iii)(I) requires the Governor to appoint to the State WDB representatives of government that include the lead State officials with primary responsibility for each core program and two or more Chief Elected Officials (CEOs) that represent both cities and counties, where appropriate. In accordance with WIOA sec. 101(b)(2), State WDB membership must represent the diverse geographic areas of the State.

Costs

To estimate State WDB costs, the Department multiplied the estimated average number of managers per State (1) by the time required to adjust the State WDB membership (20 hours) and by the hourly compensation rate. We repeated the calculation for the following occupational categories: Legal counsel staff (1 staff member for 15 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($5,597) and multiplied the result by the number of States (56). This would result in a one-time cost of $313,435 in the first year of the proposed rule, which amounts to an average annual cost of $31,343.

b. Development and Continuous Improvement of the Workforce Development System

WIOA sec. 101(d)(3)(A) through (G) require that the State WDB assist the Governor in the development and continuous improvement of the State's workforce development system, including identifying barriers and means for removing barriers to aligning programs and activities; developing or expanding sector-based training and career pathways proven to support individuals to seeking to enter and retain employment; developing customer outreach strategies; identifying regions and designating local workforce development areas; developing and continuously improving the one-stop system; and developing strategies to train and inform staff.

Costs

The Department estimated the State WDBs' annual labor costs for developing or expanding sector strategies by multiplying the estimated average number of managers per State (1) by the time required to review the workforce development system (300 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 1,260 hours each). We summed the labor cost for both categories ($190,516) and multiplied the result by the number of States that do not have extensive and systematic sector strategies (21). Over the 10-year period, this calculation yields an estimated recurring annual cost of $4,000,838.

Similarly, the State WDBs' annual labor cost for expanding career pathways strategies was estimated by multiplying the estimated average number of managers per State (1) by the time required to review the workforce development system (300 hours) and the hourly compensation rate. The Department repeated the calculation for the technical staff (2 staff for 1,260 hours each). We summed the labor cost for the two occupational categories ($190,516) and multiplied the result by the number of States that do not have policies for career pathways (27).[17] Over the 10-year period, this calculation yields an estimated recurring annual cost of $5,143,934.

The Department estimated the labor cost that State WDBs would incur to identify regions by multiplying the estimated average number of managers per State (1) by the time required to review the workforce development system (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 40 hours), technical staff (1 staff member for 80 hours), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($11,268) and multiplied the result by the number of States (56) to estimate this one-time cost of $631,001. Over the 10-year period, this calculation

[17] The number of States that have not established career pathways is provided in the ''National Dialogue on Career Pathways Viewing Party Guide.''

yields an average annual cost of $63,100.

The sum of these costs yields a total one-time cost of $631,001 and an annual cost of $9,144,772, which results in a total average annual cost of $9,207,872 for individuals from the State level to review the workforce development system.

c. Development of Statewide Policies Affecting the State's One-Stop System

Under WIOA sec. 101(d)(6), State WDBs must assist State Governors in developing and reviewing statewide policies affecting the coordinated provision of services through the State's one-stop delivery system, including policies concerning objective criteria for Local Boards to assess one-stop centers, guidance for the allocation of one-stop center infrastructure funds, and policies relating to the roles and contributions of one-stop partners within the one-stop delivery system.

Costs

The Department estimated the labor cost that State WDBs would incur by multiplying the estimated average number of managers per State (1) by the time required to provide objective criteria and procedures (40 hours) and the hourly compensation rate. We performed the same calculation for the legal counsel staff (1 staff member for 40 hours) and technical staff (2 staff for 120 hours). We summed the labor cost for all three personnel categories ($21,469) and multiplied the result by the number of States (56) to estimate this one-time cost at $1,202,284, which results in an average annual cost of $120,228.

d. Development of Strategies for Technological Improvements

Under WIOA sec. 101(d)(7), State WDBs must assist State Governors in the development of strategies for technological improvements to facilitate access and quality of services and activities provided through the one-stop delivery system. These strategies include improvements to enhance digital literacy skills, accelerate acquisition of skills and recognized post-secondary credentials by participants, strengthen professional development of providers and workforce professionals, and ensure technology is accessible to individuals with disabilities and individuals residing in remote areas.

Costs

The Department estimated the labor cost that State WDBs would incur by multiplying the estimated average number of managers per State (1) by the time required to develop strategies (20 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (1 staff member for 40 hours). We summed the labor cost for both categories ($4,094) and multiplied the result by the number of States (56) to estimate a recurring annual cost of $229,291.

e. State Plan Modification

Under WIOA sec. 102(c)(3)(B), a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the Plan. Under WIOA sec. 102(c)(3)(A), at a minimum, a State is required to submit modifications to its Unified State Plan at the end of the first 2-year period of any 4-year plan and also under specific circumstances.

The Department expects that the initial 4-year State Plans would be highly speculative. Therefore, we anticipate that some States would make substantial modifications to the State Plans based on the experiences gained by operating under WIOA for the first two years. Based on past experience, we do not expect any subsequent modifications to present a substantial burden.

Costs

The Department estimated the labor cost the State WDBs would incur by multiplying the estimated average number of managers per State (1) by the time required to review and modify a 4-year State Plan (10 hours) and the hourly compensation rate. We repeated the calculation for the following labor categories: legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 10 hours each), and administrative staff (1 staff member for 4 hours). We summed the labor cost for all four personnel categories ($2,411) and multiplied the result by the number of States (56) to estimate this one-time cost as $135,005, which results in an average annual cost of $13,501.

f. Identification of Regions

Under WIOA sec. 101(d)(3)(E), State WDBs must assist State Governors in the identification of regions, including planning regions, for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local Boards and CEOs. According to WIOA sec. 106(a)(1), identification of regions is part of the process for developing the State Plan, and is necessary to receive an allotment under other provisions of the statute.

Costs

The Department estimated this labor cost for State WDBs by first multiplying the estimated average number of managers per State (2) by the time required to identify regions in the State (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (3 staff for 15 hours each), and administrative staff (2 staff for 10 hours each). We summed the labor cost for all four personnel categories ($9,833) and multiplied the result by the number of States (56) to estimate this cost as $550,633, occurring in 2016 and 2020 and resulting in an average annual cost of $110,127.

g. Appoint New Local Workforce Development Board and Appropriate Firewalls

The Local WDB is appointed by the CEOs in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every two years, in accordance with WIOA sec. 107(c)(2). The procedures for sole-source selection of one-stop operators include requirements about maintaining written documentation and developing appropriate firewalls and conflict-of-interest policies. A Local Board can be selected as a one-stop operator through a sole-source procurement only if the board establishes sufficient firewalls and conflict-of-interest policies and procedures that are approved by the Governor.

Costs

The Department estimated the labor costs incurred by WDBs by multiplying the estimated average number of managers per WDB (1) by the time required to appoint a new Local Board (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 15 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 20 hours). We summed the labor cost for the four occupational categories ($5,597) and multiplied the result by the number of WDBs (580) to estimate this one-time cost as $3,246,289, which results in an average annual cost of $324,629.

Additionally, the Department estimated the labor cost for WDBs to develop written agreements by multiplying the estimated average number of managers per WDB (1) by the time required to develop written

agreements (8 hours) and the hourly compensation rate. We repeated the calculation for the legal counsel staff (1 staff member for 8 hours) and technical staff (1 staff member for 20 hours). We summed the labor cost for the three occupational categories ($2,411) and multiplied the result by the number of WDBs (580) to estimate this one-time cost as $1,398,484, which results in an average annual cost of $139,848.

In total, these calculations yield a one-time cost of $4,644,773 which results in an average annual cost of $464,477 for individuals from the local level to appoint new boards and set administrative firewalls that avoid conflicts of interest.

h. Career Pathways Development

Under WIOA sec. 107(d)(5), Local Boards must, with representatives of secondary and post-secondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.

Costs

The Department estimated the labor cost for WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to develop and implement career pathways (80 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 80 hours), and administrative staff (1 staff member for 20 hours). We summed the labor cost for all four personnel categories ($12,186) and multiplied the result by the number of WDBs (580) to estimate this recurring annual cost of $7,067,938.

i. Development of Proven and Promising Practices

Under WIOA sec. 107(d)(6), Local Boards must lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers, and jobseekers (including individuals with barriers to employment), and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs.

Costs

For State WDBs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to identify and promote proven strategies (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 40 hours), and administrative staff (1 staff member for 15 hours). We summed the labor cost for all four personnel categories ($5,143) and multiplied the result by the number of States (56) to estimate this recurring annual cost of $287,985.

j. Technology

Under WIOA sec. 107(d)(7), Local Boards must develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and jobseekers by facilitating access to services provided through the one-stop delivery system, facilitating connections among the intake and case-management information systems of the one-stop partner programs, identifying strategies for better meeting the needs of individuals with barriers to employment, and leveraging resources and capacity within the local workforce development system.

Costs

The Department estimated the cost for Local WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to develop technology strategies (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff member for 40 hours). We summed the labor cost for these two categories ($4,094) and multiplied the result by the number of WDBs (580) to estimate this recurring annual cost of $2,374,798.

k. Selection of One-Stop Operators

Under WIOA sec. 107(d)(10)(A), consistent with WIOA sec. 121(d), and with the agreement of the CEO for the local area, Local Boards must designate or certify one-stop operators and may terminate for cause the eligibility of such operators. WIOA sec. 121(d)(2)(A) allows for selection of a one-stop operator only through a competitive process.

Costs

The Department estimated the cost for Local WDBs by first multiplying the estimated average number of managers per WDB (1) by the time required to designate one-stop operators (80 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 40 hours), technical staff (2 staff for 120 hours each), and administrative staff (1 staff member for 40 hours). We summed the labor costs for these four personnel categories ($25,393) and multiplied the result by the number of WDBs (580) to estimate this quadrennial cost of $6,348,180. Over the 10-year period, this calculation yields an average annual cost of $1,904,454.

l. Coordination With Education Providers

Under WIOA sec. 107(d)(11), Local Boards must coordinate activities with education and training providers in the local area, including providers of workforce investment activities, providers of adult education and literacy activities under title II of WIOA, certain providers of career and technical education, and local agencies administering certain plans under the Rehabilitation Act of 1973.

Costs

For State WDBs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to coordinate activities with local education and training providers (30 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 10 hours), technical staff (1 staff member for 40 hours), and administrative staff (1 staff member for 10 hours). We summed the labor cost for all four personnel categories ($5,706) and multiplied the result by the number of States (56) to estimate this recurring annual cost of $319,528.

m. Regional Plans

WIOA sec. 106(c)(2) requires Local Boards and CEOs within a planning region to prepare, submit, and obtain approval of a single regional plan that includes a description of the activities described in the statute and that incorporates local plans for each of the local areas in the planning region.

Costs

For Local WDBs, the Department estimated this cost by first multiplying the estimated average number of managers per WDB (2) by the time required to prepare, submit, and obtain approval of a single regional plan (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff

member for 8 hours), technical staff (2 staff for 40 hours), and administrative staff (1 staff member for 8 hours). We summed the labor cost for the four occupational categories ($8,916) and multiplied the result by the number of WDBs (580) to estimate this cost as $5,171,336, which occurs in 2016 and 2020. This results in an average annual cost of $1,034,267.

n. Local and Regional Plan Modification

Under WIOA sec. 108(a), each Local Board, in partnership with the CEO, must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors. These factors include changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals. If the local area is part of a planning region, the Local Board must comply with WIOA sec. 106(c) in the preparation and submission of a regional plan.

Costs

For Local WDBs, the Department estimated the local plan modification cost by first multiplying the estimated average number of managers per WDB (1) by the time required to review and modify the 4-year plan (10 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: Legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 10 hours), and administrative staff (1 staff member for 4 hours). We summed the labor cost for all four personnel categories ($2,411) and multiplied the result by the number of WDBs (580) to estimate this one-time cost of $1,398,269, occurring in 2018. Over the 10-year period, this calculation yields an average annual cost of $139,827.

Similarly, the Department estimated the regional plan modification cost for Local WDBs by first multiplying the estimated average number of managers per regional board (2) by the time required to review and modify the 4-year plan (10 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: legal counsel staff (1 staff member for 4 hours), technical staff (2 staff for 20 hours each), and administrative staff (1 staff member for 5 hours). We summed the labor cost for all four personnel categories ($4,486) and multiplied the result by the number of regional boards (580) to estimate a cost of $1,345,766, occurring once every four years. Over the 10-year period, this calculation yields an average annual cost of $269,153.

The sum of these costs yields a 10-year cost of $4,089,800, which results in an average annual cost of $408,980 for individuals from the Local WDBs to review and modify the 4-year plan.

o. Improved Information About Potential Training Program Providers

WIOA sec. 116 establishes performance accountability measures and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The performance accountability measures will provide workers with better information about potential training program providers and enable them to make more informed choices about programs to pursue. The information analyzed and published by the boards about local labor markets also will assist trainees and providers in targeting their efforts and developing reasonable expectations about outcomes.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to provide additional information about eligible training program providers (32 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours each) and administrative staff (1 staff member for 80 hours). We summed the labor cost for all three personnel categories ($9,854) and multiplied the result by the number of States (56) to estimate this recurring annual cost of $551,826.

p. Sanctions on Under-Performing States

Section 116(f)(1)(B) of WIOA requires the Department to assess a sanction if ''a State fails to submit a report under subsection (d) for any program year.'' Three reports are required under WIOA sec. 116(d): The State annual performance reports, the local area performance reports, and the ETP performance reports. Of these, only the State annual performance reports must be submitted by the State to the Secretary of Labor. Section 116(f)(1) of WIOA requires that sanctions for performance failure be based on the primary indicators of performance.

The sanctions will alter Federal transfer payments.[18] Transfer payments, as defined by OMB Circular A–4, are payments from one group to another that do not affect total resources available to society. The Department requests comment and data that would allow for estimation of the transfer that would result from the sanctions provision.

Costs

At the State level, the Department estimated the costs resulting from labor requirements by first multiplying the estimated average number of managers per State (1), the time required to evaluate State performance (40 hours), and the hourly compensation rate. We performed the same calculation for technical staff (1 staff member for 80 hours) and administrative staff (1 staff member for 40 hours). We summed the labor cost for all three personnel categories ($9,302) and multiplied the result by the number of States (56) to estimate a recurring annual transfer of $520,939.

The Department estimates that 56 States will be impacted by this annual cost because we have determined that 56 States will calculate, annually, the performance levels of each State's core programs. Each State will do this on an annual basis in order to determine if the State is subject to sanctions, as discussed in proposed § 677.190 of this part, by comparing those levels against the negotiated levels of performance that the State has provided for in the State Plan.

q. Colocation of Wagner-Peyser Services

WIOA sec. 121(e)(3) requires colocation of Wagner-Peyser Employment Service offices and one-stop centers established under title I of WIOA. Colocation is intended to improve service delivery, avoid duplication of services, and enhance coordination of services, including location of staff to ensure access to services in underserved areas.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (10), the time required to collocate Wagner-Peyser Services (40 hours), and the hourly compensation rate. We

[18] The Department transfers funds to each State through a formal grant process. States may set aside a portion of these funds for discretionary use under WIOA. If a State were sanctioned, we would de-obligate the funds comprising the penalty from the State's set-aside, thereby reducing funding without incurring additional costs.

performed the same calculation for the following occupational categories: legal counsel staff (10 staff for 10 hours each), technical staff (20 staff at 25 hours each), and administrative staff (10 staff for 5 hours each). We summed the labor cost for all four personnel categories ($69,415) and multiplied the result by the number of States without collocated Wagner-Peyser Services (10) to estimate a one-time cost of $694,152, which results in an annual cost of $69,415.

At the State level, the Department estimated consultant costs by multiplying the estimated consultant costs ($10,000) by the number of States without collocated Wagner-Peyser Services (10). This calculation yields an estimated one-time cost of $100,000, resulting in an average annual cost of $10,000.

At the local level, the Department estimated labor costs by first multiplying the estimated average number of managers for all local entities within a State (100), the time required to collocate Wagner-Peyser Services (40 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (200 staff for 25 hours each) and administrative staff (100 staff for 5 hours each). We summed the labor cost for all three personnel categories ($631,098) and multiplied the result by the number of local areas without collocated Wagner-Peyser offices and one-stops (100) to estimate a one-time cost of $63,109,800, resulting in an annual cost of $6,310,980.

The sum of these costs yields a one-time cost of $63,903,952, which results in an average annual cost of $6,390,395 for individuals from the State and local levels to collocate Wagner-Peyser Services.

r. Partners Required To Pay Their Share for Proportionate Use of One-stop Delivery System

An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportional share to the funding of one-stop infrastructure costs, consistent with Federal cost principles. Under WIOA sec. 121(h), in general, State Governors must ensure that costs are appropriately shared by one-stop partners. Contributions must be based on proportional share of use and all funds must be spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including Federal cost principles.

This provision will alter Federal transfer payments, and the Department requests comment and data that would allow for estimation of this rule-induced transfer.[19]

Costs

At the State level, the Department estimated costs related to this provision (*e.g.,* the cost of developing memoranda of understanding) by first multiplying the estimated average number of managers per State (50), the time required for States to comply with payment requirements proportional to use of one-stop delivery systems (40 hours), and the hourly compensation rate. We performed the same calculation for the following occupational categories: Legal counsel staff (50 staff for 1 hour each), technical staff (100 staff for 40 hours each), and administrative staff (50 staff for 5 hours each). We summed these products for all four personnel categories ($419,560) and multiplied the result by the number of States that need to pay their proportional share (54) to estimate transfer of $22,656,251 occurring once every three years, resulting in an average annual transfer of $6,796,875.

s. Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship

Under WIOA sec. 122, the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State. Training providers, including those operating under the individual training account exceptions, must qualify as ETPs, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures). Registered apprenticeship programs are included in the ETPL, provided the program remains eligible. Only providers that the State determines to be eligible under WIOA sec. 122 may receive training funds under WIOA title I–B.

Costs

At the State level, the Department estimated this cost by first multiplying the estimated average number of managers per State (1), the time needed to establish procedures for training provider eligibility (40 hours), and the hourly compensation rate. We performed the same calculation for the legal counsel staff (1 staff member for 20 hours) and technical staff (1 staff member for 80 hours). We summed the labor cost for all three personnel categories ($9,450) and multiplied the result by the number of States that need to pay their proportional share (56) to estimate this one-time cost of $529,202, resulting in an annual cost of $52,920.

t. Determining Eligibility of New and Previously Eligible Providers

Under the requirements of WIOA sec. 122, the procedures for determining eligibility of providers are established by the Governor, after consultation with the State WDB and include application and renewal procedures, eligibility criteria, and information requirements.

Costs

At the State level for DOL programs, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to determine provider eligibility (40 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 110 hours each) and administrative staff (2 staff for 50 hours each). We summed the labor cost for all three personnel categories ($20,386) and multiplied the result by the number of States (56) to estimate a one-time cost of $1,141,628, resulting in an annual cost of $114,163.

u. Biennial Review of Eligibility

Under WIOA sec. 122(c)(2), training provider eligibility criteria established under this provision must include procedures for biennial review and renewal of eligibility for providers of training services.

Costs

At the State level, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to perform the eligibility review (30 hours), and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 60 hours each) and administrative staff (2 staff for 30 hours each). We summed the labor cost for all three personnel categories ($11,846) and multiplied the result by the number of States (56) to estimate cost of $663,395 that occurs four times over the 10-year analysis period, that is, an annual cost of $265,358.

[19] The Department distributes funds through a combination of multi-step formula distributions, Title III (Wagner-Peyser) distribution, and national grant competitions that award funds directly to partners. The Department supplies funding to cover payments for partners proportionate to their use of one-stop delivery systems, although partners may instead opt to use pay-in-kind or other leveraged funds.

v. Disseminating the Training Provider List With Accompanying Information

Under WIOA sec. 122(d), the Governor must ensure preparation of an appropriate list of providers determined to be eligible under this section to offer a program in the State (and, as appropriate, in a local area), accompanied by information identifying the recognized post-secondary credential offered by the provider and other appropriate information. The list must be provided to the Local Boards in the State, and made available to such participants and to members of the public through the one-stop delivery system in the State.

Costs

At the State level, the Department estimated this labor cost by first multiplying the estimated average number of managers per State (1), the time needed to disseminate the ETPL with accompanying information (30 hours), and the hourly compensation rate. We performed the same calculation for the following occupational categories: Technical staff (2 staff for 80 hours each), administrative staff (2 staff for 45 hours), and IT reprogramming (database development) staff (2 staff for 125 hours each). We summed the labor cost for all four personnel categories ($30,449) and multiplied the result by the number of States (56) to estimate a one-time cost of $1,705,125, resulting in an annual cost of $170,513.

w. Migrant and Seasonal Farmworker Housing

While bringing the Department's housing standards at 20 CFR 654 (ETA Standards) under the Occupational Safety and Health Administration (OSHA) provisions set forth in 29 CFR 1910.142 will not completely remedy many of the inadequate housing conditions common among agricultural housing facilities, the Department anticipates the change will: (1) Update the housing standards as the OSHA provisions conform to slightly more modern standards; (2) streamline the compliance process for employers who will only need to look to one place to comply with housing standards; and (3) ease the administrative burden on State and Federal employees who conduct housing inspections as they will only need to learn and rely upon one set of housing standards.

In estimating the impact of the proposed changes to 20 CFR 654, the Department consulted various agencies within DOL to uncover pertinent data. Such data includes the number of H–2A employers approved through the Office of Foreign Labor Certification (OFLC). The Department believes that reviewing H–2A employer data is useful as it represents a subset of population (and, therefore, a minimum) of the total number of employers that may be offering housing to agricultural workers and who may be affected by the proposed changes. The Department estimates that of the approximately 6,400 [20] employers nationally who hire foreign workers under the H–2A program and who provide housing, the majority will not be affected by the proposed changes because it estimates that, nationally, OSHA housing standards apply more frequently than the ETA Standards in the context of housing investigations. Specifically, the Department estimates that every region, except the Northeast and Pacific Northwest, has agricultural housing that predominantly falls under the OSHA standards. However, the situation will vary from State to State. For example, Colorado reported that approximately 84 percent of the agricultural housing inspected in the State from July 1, 2014 to January 29, 2015 falls under the ETA standards. Wyoming reported that 64 percent of the housing inspections over the course of a year fell under ETA standards.

However, the housing data currently available to DOL is limited. The Department collects agricultural housing information as it pertains to employers' compliance with the appropriate standards. The Department does not collect or track the number of agricultural housing units nationally that fall under the ETA versus the OSHA standards. To better understand the impact of the proposed regulations, the Department would like to know: (1) The approximate number of agricultural housing units in the United States provided by agricultural employers for farmworkers; (2) the approximate percentage of the total farmworker housing units that currently fall under the ETA Standards set forth in 20 CFR 654; and (3) the estimated cost of bringing those housing units from the ETA Standards into compliance with the OSHA Standards. The Department would appreciate public feedback on the aforementioned data elements.

Specifically, it would be helpful for DOL's analysis if: (1) There are State Workforce Agencies or States that would share any data on the total number of employer-provided agricultural housing units in the State and the percentage of those that are subject to the ETA Standards; and (2) agricultural employers would furnish estimated costs for bringing their farmworker housing units from ETA to OSHA Standards. The Department appreciates any such information that could assist in the development of the overall impact analysis.

5. Summary of Analysis

Exhibit 3 summarizes the annual and total costs of the proposed rule. It summarizes the total 10-year total costs and the average annualized costs for each provision of the proposed rule. The exhibit also presents high-level benefits resulting from full WIOA implementation for each provision. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. The Department estimates the average annual cost of the proposed rule over the 10-year period of analysis at $38.4 million. The largest contributor to this cost is the provision related to the development and improvement of the workforce development system, which amounts to an estimated $9.2 million per year. The next largest cost results from career pathways development at $7.1 million per year, followed by the cost of partners required to pay their share for proportionate use of one-stop delivery system at an estimated $6.8 million per year.

[20] This number is derived from OFLC data on employers that have submitted H–2A applications. The Department extrapolated the number of unique employers from the full list of applications to avoid duplication and to identify the fewest employers that may be impacted by these proposed changes.

EXHIBIT 3—COSTS OF THE PROPOSED RULE BY PROVISION

| Provision | Total 10-year cost (undiscounted) | Average annual cost (undiscounted) | Percent of total cost | Qualitative benefit highlights |
|---|---|---|---|---|
| (a) New State Workforce Development Board Membership Requirements. | $313,435 | $31,343 | 0.08 | Policy implementation efficiencies from reduced size and maneuverability. |
| (b) Development and Continuous Improvement of the Workforce Development System. | 92,078,720 | 9,207,872 | 23.96 | Mission clarification and ongoing commitment should foster future envisioned benefits continuing to accrue. |
| (c) Development of Statewide Policies Affecting the State's One-stop System. | 1,202,284 | 120,228 | 0.31 | Mission clarification for State WDBs and overall system building capacity. |
| (d) Development of Strategies for Technological Improvements. | 2,292,909 | 229,291 | 0.60 | Recognition of the efficiencies generated by technology and enhanced management capabilities especially utilizing outcome data. |
| (e) State Plan Modification | 135,005 | 13,501 | 0.04 | More efficient use of public resources; enhanced customer service; improved program management based on actual client data. |
| (f) Identification of Regions | 1,101,266 | 110,127 | 0.29 | Enhanced employer and employee services as a result of recognition of real labor markets (without artificial jurisdictional boundaries). |
| (g) Appoint New Local Workforce Development Board and Appropriate Firewalls. | 4,644,773 | 464,477 | 1.21 | Efficient use of board time; avoids conflicts of interest and negative publicity; administrative savings. |
| (h) Career Pathways Development | 70,679,380 | 7,067,938 | 18.39 | Improved educational and employment outcomes; potential employees are better prepared for jobs. |
| (i) Development of Proven and Promising Practices. | 2,879,850 | 287,985 | 0.75 | Improved job placements and customer service. |
| (j) Technology | 23,747,984 | 2,374,798 | 6.18 | Improved customer service; better decision-making from improved service level data; reduced paper costs, improved collaboration across service partners; improved customer service planning; reduced duplication of service intakes. |
| (k) Selection of the One-stop Operator | 19,044,540 | 1,904,454 | 4.95 | Improved public confidence in the process; avoided conflicts of interest. |
| (l) Coordination with Education Providers | 3,195,282 | 319,528 | 0.83 | Improved preparation of workers and youth for future jobs; enhanced placements and outcomes. |
| (m) Regional Plans | 10,342,671 | 1,034,267 | 2.69 | Savings from expanded collaboration; increased services to customers; reduced administrative overhead. |
| (n) Local and Regional Plan Modification | 4,089,800 | 408,980 | 1.06 | Increased coordination of services leading to resource efficiencies; transparency. |
| (o) Improved Information about Potential Training Program Providers. | 5,518,258 | 551,826 | 1.44 | Improved customer decision-making; linkage of resources to outcomes and accountability for training and improved placement outcomes. |
| (p) Sanctions on Under-performing States | 5,209,389 | 520,939 | 1.36 | Improved services; better use of WIOA funds; enhanced recognition of performance imperatives by States and local areas; more accountability. |
| (q) Co-location of Wagner-Peyser Services | 63,903,952 | 6,390,395 | 16.63 | Reduced administrative overhead; improved service delivery and customer service; more efficient and effective public administration. |
| (r) Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System. | 67,968,752 | 6,796,875 | 17.68 | Expanded system cohesion; improved service delivery; avoidance of fragmented or duplication of services. |
| (s) Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship. | 529,202 | 52,920 | 0.14 | Increased training opportunities, especially for youth; effective administration linking to accountability and outcomes. |
| (t) Determining Eligibility of New and Previously Eligible Providers. | 1,141,628 | 114,163 | 0.30 | Increased transparency; uniform treatment of ETPs; reduced incidents of non-meritorious performance. |
| (u) Biennial Review of Eligibility | 2,653,580 | 265,358 | 0.69 | Increased competition leading to more and better placements. |
| (v) Disseminating the Training Provider List with Accompanying Information. | 1,705,125 | 170,513 | 0.44 | More informed customer choice; clearer link of training resources to desired outcomes; more transparency. |

EXHIBIT 3—COSTS OF THE PROPOSED RULE BY PROVISION—Continued

| Provision | Total 10-year cost (undiscounted) | Average annual cost (undiscounted) | Percent of total cost | Qualitative benefit highlights |
|---|---|---|---|---|
| (w) Migrant and Seasonal Farmworker Housing. | Not quantified. | | | More streamlined compliance process for employers who will only need to look to one place to comply with housing standards. Eased administrative burden on State and Federal employees who conduct housing inspections as they will only need to learn and rely on one set of housing standards. |
| Total | 384,377,787 | 38,437,778 | 100.00 | |

**Note:** Totals might not sum due to rounding.

Exhibit 4 summarizes the first-year cost of each provision of the proposed rule. The Department estimates the total first-year cost of the proposed rule at $94.6 million. The largest contributor to the first-year cost is the provision related to the colocation of Wagner-Peyser services $63.9 million. The next largest first-year cost results from development and continuous improvement of the workforce development system, amounting to $9.8 million, followed by the cost of career pathways development at $7.1 million.

EXHIBIT 4—FIRST-YEAR COST OF THE PROPOSED RULE BY PROVISION

| | Total first-year cost | Percent of total first-year cost |
|---|---|---|
| (a) New State Workforce Development Board Membership Requirements | $313,435 | 0.33 |
| (b) Development and Continuous Improvement of the Workforce Development System | 9,775,773 | 10.34 |
| (c) Development of Statewide Policies Affecting the State's One-stop System | 1,202,284 | 1.27 |
| (d) Development of Strategies for Technological Improvements | 229,291 | 0.24 |
| (e) State Plan Modification | 0 | 0.00 |
| (f) Identification of Regions | 0 | 0.00 |
| (g) Appoint New Local Workforce Development Board and Appropriate Firewalls | 4,644,773 | 4.91 |
| (h) Career Pathways Development | 7,067,938 | 7.47 |
| (i) Development of Proven and Promising Practices | 287,985 | 0.30 |
| (j) Technology | 2,374,798 | 2.51 |
| (k) Selection of the One-stop Operator | 0 | 0.00 |
| (l) Coordination with Education Providers | 319,528 | 0.34 |
| (m) Regional Plans | 0 | 0.00 |
| (n) Local and Regional Plan Modification | 0 | 0.00 |
| (o) Improved Information about Potential Training Program Providers | 551,826 | 0.58 |
| (p) Sanctions on Under-performing States | 520,939 | 0.55 |
| (q) Co-location of Wagner-Peyser Services | 63,903,952 | 67.57 |
| (r) Partners Required to Pay their Share for Proportionate Use of One-stop Delivery System | 0 | 0.00 |
| (s) Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship | 529,202 | 0.56 |
| (t) Determining Eligibility of New and Previously Eligible Providers | 1,141,628 | 1.21 |
| (u) Biennial Review of Eligibility | 0 | 0.00 |
| (v) Disseminating the Training Provider List with Accompanying Information | 1,705,125 | 1.80 |
| (w) Migrant and Seasonal Farmworker (MSFW) Housing | Not quantified. | |
| Total | 94,568,477 | 100.00 |

**Note:** Totals might not sum due to rounding.

Exhibit 5 presents the per-year and total estimated costs of the proposed rule. The total undiscounted cost of the rule sums to $384.4 million over the 10-year analysis period, which is an average annual cost of $38.4 million per year. In total, the 10-year discounted costs of the proposed rule range from $305.6 million to $345.9 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the proposed rule, the Department of Labor's average annual budget for WIA over the past three fiscal years was $2.8 billion. Thus, the annual additional cost of implementing the proposed rule is between 1.1 percent and 1.2 percent of the average annual cost of implementing WIA over the last three fiscal years (with 3 percent and 7 percent discounting, respectively).

EXHIBIT 5—MONETIZED COSTS OF THE PROPOSED DOL RULE

[2013 dollars]

| Year | Total costs |
|---|---|
| 2015 | $94,568,478 |
| 2016 | 32,567,226 |
| 2017 | 43,153,328 |
| 2018 | 24,039,512 |
| 2019 | 20,497,077 |
| 2020 | 55,886,872 |
| 2021 | 20,497,077 |
| 2022 | 22,506,238 |

EXHIBIT 5—MONETIZED COSTS OF THE PROPOSED DOL RULE—Continued

[2013 dollars]

| Year | Total costs |
|---|---|
| 2023 | 43,153,328 |
| 2024 | 27,508,652 |
| Undiscounted 10-year Total | 384,377,787 |
| 10-year Total with 3% Discounting | 345,897,084 |
| 10-year Total with 7% Discounting | 305,556,353 |
| 10-year Average | 38,437,778 |
| Annualized with 3% Discounting | 40,549,690 |
| Annualized with 7% Discounting | 43,504,350 |

**Note:** Totals might not sum due to rounding.

Benefits

The Department was unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational (WIOA) data or evaluation findings on the provisions of the proposed rule. Thus, the Department is unable to provide monetary estimates of several important benefits to society, including the increased employment opportunities for unemployed or under-employed U.S. workers, benefits of colocation of Wagner-Peyser Services, enhanced ETP process, regional planning, and evaluation of State programs. In support of a State's strategic plan and goals, State-conducted evaluation and research of programs would enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness and, thus, potentially lead to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective could also lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt to improve participant results, lower unit costs, or increase the number served.

The Department invites comments regarding possible data sources or methodologies for estimating these benefits. In addition, the Department invites comments regarding other benefits that might arise from the proposed rule and how these benefits could be estimated.

The Department provides a qualitative description of the anticipated WIOA benefits below. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. Although these studies are largely based on programs and their existing requirements under WIA, we believe that they capture the essence of the societal benefits that can be expected from this proposed rule.

*Training's impact on placement.* A recent study found that flexible and innovative training which is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[21] However, the study noted that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[22] The WIA youth program remains largely untested.[23] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[24] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[25]

Participants in occupational training had a ''5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage points.'' [26] However, the study found that training did not correspond to higher employment retention or earnings.[27] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[28] Department-sponsored research found that participants who received core services (often funded by Employment Services) and other services in American Job Centers were more likely to enter and retain employment.[29]

*Training's impact on wages.* Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[30] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond two years and were largest among women.[31] WIA adult program participants who received core services (*e.g.* skill assessment, labor market information) or intensive services (*e.g.* specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants. Participants who received training services in addition to core and intensive services initially earned less but caught up within 10 quarters with the earnings of participants who only received core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the

[21] Department of Labor et al. ''What Works In Job Training: A Synthesis of the Evidence.'' July 2014.

[22] *Ibid.*

[23] Decker, Paul T. and Jillian A. Berk. 2011. ''Ten Years of the Workforce Investment Act (WIA): Interpreting the Research on WIA and Related Programs.'' Journal of Policy Analysis and Management 30 (4): 906–926.

[24] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id* =2367&mp=y&start=81&sort=7.

[25] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009.

[26] Park, Jooyoun. ''Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching.'' Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.

[27] Park, Jooyoun. ''Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching.'' Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.

[28] Jackson, Russell H., Jamie Diamandopoulos, Carol Pistorino, Paul Zador, John Lopdell, Juanita Lucas-McLean, and Lee Bruno. ''Youth Opportunity Grant Initiative (YO).'' Houston, TX: Decision Information Resources, Inc., 2008. Available at *http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20Synthesis%20Report.pdf.*

[29] Office of Policy Development and Research, U.S. Department of Labor. ''Five-Year Research and Evaluation Strategic Plan Program Years 2012–2017.'' May 2013. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2516&mp=y.*

[30] Barnow, Burt, and Daniel Gubits. ''Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act.'' Baltimore, MD: Johns Hopkins University, 2003. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2365&mp=y&start=81&sort=7.*

[31] Barnow, Burt, and Daniel Gubits. ''Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act.'' Baltimore, MD: Johns Hopkins University, 2003. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp__puListingDetails&pub__id=2365&mp=y&start=81&sort=7.*

labor exchange only.[32] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[33] However, WIA participants who did not receive training earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[34]

Another Department program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[35]

Another publication also noted that, on average, adults experienced a $743 quarterly post-exit earnings boost.[36]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[37] Participation in WIA training also had a distinct positive, but smaller, impact on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than comparison group members.

The following are channels through which these benefits might be achieved:

*Better information for workers.* The accountability measures would provide workers with higher-quality information about potential training program providers and enable them to make better informed choices about which programs to pursue. The information analyzed and published by the WDBs about local labor markets also would help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest financial return.[38] Given these information gaps and financial pressures, it is important that displaced workers learn of the returns to various training plans.[39] Still, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is ''modestly positive'' due perhaps to the limited sample of States on which the research was based.[40]

*Sanctions to under-performing States.* WIOA requires the Department to place sanctions on States that under-perform for two consecutive years. The sanction would be five percent of set-aside funding. Having a clear and credible sanction will serve as an incentive for States and local entities to monitor performance more effectively and to intervene early in order to avoid the loss of funding.

Evaluations of WIA indicate that sanctions have a larger influence on programs than incentives. Two-thirds of local workforce investment areas have indicated that the possibility of sanctions influenced their programs, whereas only slightly more than half indicated that incentives had an influence.[41] Further, several Job Centers consider student placement outcomes in staff performance evaluations and pay for vocational instructors.[42] This practice has significantly increased staff interest in successful student placement following program completion.[43]

Researchers expressed concerns over current WIA metrics for workforce development program performance. For example, in issuing high performance bonuses to States in recognition of high performance achievements, the metric negotiation process does not appropriately adjust for variations in economic and demographic characteristics or service mix.[44] Additionally, the distribution of these bonuses does not directly correlate with program performance, with some lower performing States receiving larger bonuses than higher performing States.[45]

It is possible that the proposed rule might result in unintended consequences. For example, the efficacy of incentives may be reduced with poor measures, as compensation or recognition may not be commensurate with effort and subsequent performance, which could dampen employee motivation.[46] Other unintended consequences may include distortion involving behavior intended to insure against the loss of compensation; also, misrepresentation of outcomes may occur.[47] Researchers have expressed concerns about the current measures used to evaluate performance.[48] High performance incentives may unintentionally impact performance negatively if they encourage programs to focus on receiving the award rather than improving program design, delivery, and outcomes. High performance

[32] Earnings Progression among Workforce Development Participants: Evidence from Washington State.'' Eugene, OR: University of Oregon, 2011. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp__puListingDetails&pub__id=2468&mp=y&start=1&sort=7.*

[33] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009.

[34] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009. Available at *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[35] Gritz, Mark, and Terry Johnson. ''National Job Corps Study: Assessing Program Effects on Earnings for Students Achieving Key Program Milestones.'' Seattle, WA: Battelle Memorial Institute, 2001. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2257&mp=y&start=141&sort=7.*

[36] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[37] Needels, Karen, Jeanne Bellotti, Mina Dadgar, and Walter Nicholson. ''Evaluation of the Military Base National Emergency Grants: Final Report.'' Princeton, NJ: Mathematica Policy Research, 2006.

[38] Greenstone, Michael, and Adam Looney. ''Building America's Job Skills with Effective Workforce Programs: A Training Strategy to Raise Wages and Increase Work Opportunities.'' Washington, DC: Brookings Institution, 2011.

[39] Jacobson, Louis, Robert LaLonde, and Daniel Sullivan. ''Policies to reduce high-tenured displaced workers' earnings losses through retraining.'' Discussion Paper 2011–11, The Hamilton Project, Brookings Institution, Washington, DC, 2011.

[40] Heinrich, Carolyn J., Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, Daver C. Kahvecioglu. 2009 (November). ''New Estimates of Public Employment and Training Program Net Impacts: A Nonexperimental Evaluation of the Workforce Investment Act Program.'' Discussion Paper 4569, Institute for the Study of Labor (IZA), Bonn, Germany.

[41] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. ''Evaluation of the WIA Performance Measurement System: Survey Report.'' Oakland, CA: SPR Associates, 2005. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.*

[42] Johnson, Terry, Mark Gritz, Russell Jackson, John Burghardt, Carol Boussy, Jan Leonard, and Carlyn Orians. ''National Job Corps Study: Report on the Process Analysis.'' Princeton, NJ: Mathematica Policy Research, 1999. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2213&mp=y&start=201&sort=7.*

[43] *Ibid.*

[44] Heinrich, Carolyn J. 2007. ''False or Fitting Recognition? The Use of High Performance Bonuses in Motivating Organizational Achievements.'' *Journal of Policy Analysis and Management* 26(2) 281–304.

[45] *Ibid.*

[46] *Ibid.*

[47] *Ibid.*

[48] *Ibid.*

bonuses, therefore, could represent an inefficient use of resources.[49]

*State performance accountability measures.* This requirement would include significant data collection for Local Boards to address performance measures for the core programs in their jurisdictions. This data collection would permit the State WDBs to assess performance across each State. Training providers would be required to provide data to Local Boards, which would represent a cost in the form of increased data collection and processing. Employers and employees also would have to provide information to the training providers, which would take time. This provision, in combination with the board membership provision requiring employer/business representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[50]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[51] The study found that value added net of social cost is one objective that is too difficult to measure on a regular basis. With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[52] In addition, the study noted evidence that the performance-standards can be ''gamed'' in an attempt to maximize their centers' measured performance.[53]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[54]

The following subsections present additional channels by which economic benefits may be associated with various aspects of the proposed rule.

*Dislocated workers.* A study found that for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings by $951.[55] However, another study found that training in the WIA dislocated worker program had a net benefit close to zero or even negative.[56]

*Self-employed individuals.* Job seekers who received self-employment services started businesses sooner and had longer lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants.[57]

*Workers with disabilities.* A study of individuals with disabilities enrolled in training for a broad array of occupations (including wastewater treatment, auto body repair, meat cutter/wrapper, clerical support staff, surgical tools technician, and veterinary assistant) found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this NPRM, the Department has determined that the societal benefits justify the anticipated costs.

*B. Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must also be submitted to the OMB for approval.

The Department notes that a Federal agency may not conduct or sponsor a collection of information unless it is approved by the OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The information collections in this rule are summarized as follows. (Detailed information about the information collections identified in this summary is available in the section-

[49] Wandner, Stephen, and Michael Wiseman. ''Financial performance incentives for United States government programs: Lessons learned from the Workforce Investment Act, Temporary Assistance to Needy Families, and food stamps.'' What the European Social Fund can learn from the WIA experience, Washington, DC Retrieved January 16 (2009): 2011.

[50] Courty, Pascal, and Gerald Marschke. ''Making Government Accountable: Lessons from a Federal Job Training Program.'' *Public Administration Review* 67.5 (2007): 904–916.

[51] Heckman, James J., Carolyn Heinrich, and Jeffrey A. Smith. 1997. ''Assessing the Performance of Performance Standards in Public Bureaucracies.'' *American Economic Review* 87(2): 389–95.

[52] *Ibid.*

[53] *Ibid.*

[54] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. ''Evaluation of the WIA Performance Measurement System: Survey Report.'' Oakland, CA: SPR Associates, 2005. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.*

[55] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. ''Net Impact Estimates for Services Provided through the Workforce Investment Act.'' Washington, DC: U.S. Department of Labor, 2005. Available at *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[56] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. ''Workforce Investment Act Non-Experimental Net Impact Evaluation.'' Columbia, MD: IMPAQ International, LLC, 2009. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2419&mp=y&start=41&sort=7.*

[57] Kosanovich, William, Heather Fleck, Berwood Yost, Wendy Armon, and Sandra Siliezar. ''Comprehensive Assessment of Self-Employment Assistance Programs.'' Arlington, VA: DTI Associates, 2002. Available at *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2293&mp=y&start=121&sort=7.*

by-section discussion of this NPRM, Section IV.) The table below captures the current and proposed burden hours associated with the information collections.

CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

| OMB approval No. | Burden hours currently approved | Burden hours proposed | Change |
|---|---|---|---|
| 1205–0NEW | 0 | 8,550 | 8,550 |
| 1205–3NEW | * 161,373 | 161,373 | 0 |
| 1205–0001 | 416 | 416 | 0 |
| 1205–0039 | 8,521 | 8,521 | 0 |
| 1205–0219 | 38,610 | 38,610 | 0 |
| 1205–0426 | 11,440 | 19,153 | 7,713 |
| 1205–0439 | 1,006 | 1,066 | 60 |
| 1205–0461 | 3,392 | 5,088 | 1,696 |
| Total | 224,758 | 242,777 | 18,019 |

* OMB 1205–3NEW would not increase burden hours because it would consolidate information collections from three currently approved information collections: OMB 1205–0422, OMB 1205–0425, OMB 1205–0464.

The Department anticipates that the above collections may be phased out or modified, as appropriate, as WIOA requirements are fully implemented.

*Agency:* DOL–ETA.

*Title of Collection:* State Training Provider Eligibility Collection.

*OMB Control Number:* 1205–0NEW.

Description: Under WIOA sec. 122, the Governor, after consultation with the State Board, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State. The proposed rule describes the process for adding ''new''' providers to the ETPL, explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA, describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, and explains the requirements for distributing the ETPL and accompanying information about the programs and providers on the list.

*Affected Public:* State, local, and tribal governments, and private sector.

*Obligation to Respond:* Required to obtain or retain a benefit (WIOA sec. 122).

*Total Estimated Number of Respondents Annually:* 11,400 (11,400 additional respondents resulting from this rulemaking).

*Total Estimated Number of Annual Responses:* 11,400 (11,400 additional responses resulting from this rulemaking).

*Total Estimated Annual Time Burden:* 8,550 hours (8,550 additional hours resulting from this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 680.450, § 680.460, § 680.490, § 680.500.

*Title of Collection:* WIOA Performance Management and Information and Reporting System (YouthBuild, National Farmworkers Jobs Program, Indian and Native Americans Program).

*OMB Control Number:* 1205–3NEW.

Description: This new information collection will consolidate the existing information collections for YouthBuild, National Farmworkers Jobs Program, Indian and Native Americans Program participants. These information collections are currently approved under OMB Control Numbers 1205–0422, 1205–0425, and 1205–0464. The WIOA Performance Management and Information and Reporting System would standardize the initial application, quarterly, and annual reporting processes for program participants.

*Affected Public:* State, local, and tribal governments, and private sector.

*Obligation to Respond:* Required to obtain or retain benefits (WIOA, sections 166, 167, and 171).

*Total Estimated Number of Respondents Annually:* 377 (no additional respondents resulting from this rulemaking).

*Total Estimated Number of Annual Responses:* 29,682 (no additional respondents resulting from this rulemaking).

*Total Estimated Annual Time Burden:* 161,373 hours (no additional respondents resulting from this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610.

*Title of Collection:* Work Application and Job Order Recordkeeping.

*OMB Control Number:* 1205–0001.

*Description:* The proposed rule would not affect the burden hours associated with creating work application and job order records. However, the rule would change the record retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner-Peyser record retention requirements.

*Affected Public:* State governments.

*Obligation to Respond:* Required to obtain or retain a benefit (WIOA sec. 121).

*Total Estimated Number of Respondents Annually:* 52 (no change as a result of this rulemaking).

*Total Estimated Number of Annual Responses:* 52 (no change as a result of this rulemaking).

*Total Estimated Annual Time Burden:* 416 hours (no change as a result of this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 652.8.

*Title of Collection:* Migrant and Seasonal Farmworker Monitoring Report and One-Stop Career Center Complaint/Referral Record.

*OMB Control Number:* 1205–0039.

*Description:* WIOA expands the existing complaint system under 20 CFR

part 658 subpart E to require most employment-related law complaints by MSFWs to be recorded, referred, and tracked to resolution. Under existing regulations, employment-related law complaints by MSFWs are not recorded, referred, and tracked to resolution.

*Affected Public:* State and local governments, and individuals.

*Obligation to Respond:* Required to obtain or retain a benefit (WIOA sec. 167).

*Total Estimated Number of Respondents Annually:* 3,586 (no change as a result of this rulemaking).

*Total Estimated Number of Annual Responses:* 3,786 (no change as a result of this rulemaking).

*Total Estimated Annual Time Burden:* 8,521 hours (no change as a result of this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 653.107, § 653.108(g)(6), § 653.108(s), § 653.108(i), § 653.108(m), § 653.410, § 658.601, § 658.601(a).

*Title of Collection:* Standard Job Corps Contractor Gathering Information.

*OMB Control Number:* 1205–0219.

*Description:* The proposed rule would retain the same information collection requirements as those currently found at 20 CFR 670.960, but would relocate the requirements to 20 CFR 686.945. Consistent with existing rules, the proposed rule would require the Department to provide guidelines for maintaining records for each student during enrollment and for disposition of records after separation. As a result, the Department does not anticipate any changes in the information collection.

*Affected Public:* Private sector.

*Obligation to Respond:* Required to obtain or retain a benefit (WIOA sec. 147).

*Total Estimated Number of Respondents Annually:* 97 (no change as a result of this rulemaking).

*Total Estimated Number of Annual Responses:* 184,628 (no change as a result of this rulemaking).

*Total Estimated Annual Time Burden:* 38,610 hours (no change as a result of this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 686.945.

*Title of Collection:* Placement Verification and Follow-up of Job Corps Participants.

*OMB Control Number:* 1205–0426.

*Description:* Job Corps' performance management system, which includes the OMS, is a well-established measurement system the Job Corps community has been using to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators. As a result, additional information would be collected from respondents.

*Affected Public:* Individuals or households and private sector.

*Obligation to Respond:* Voluntary.

*Total Estimated Number of Respondents Annually:* 88,060 (34,737 additional respondents resulting from this rulemaking).

*Total Estimated Number of Annual Responses:* 88,060 (34,737 additional responses resulting from this rulemaking).

*Total Estimated Annual Time Burden:* 19,153 hours (7,713 additional hours resulting from this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 686.945, § 686.955, § 686.1000, § 686.1010, § 686.1020, § 686.1030, and § 686.1040.

*Title of Collection:* National Emergency Grant Assistance—Application and Reporting Procedures.

*OMB Control Number:* 1205–0439.

*Description:* Specified activities must be conducted before an application for a National Dislocated Worker Grant (NDWG) is submitted. The proposed rule requires that a project implementation plan, which is already required for all NEGs under WIA, be submitted post-NDWG award. However, currently this requirement is included only in guidance; this NPRM proposes to add this requirement to the regulations. The project implementation plan includes more detailed information about project operations than is required for the initial application. This information allows the Department to provide grantees with targeted technical assistance, and to exercise appropriate oversight and monitoring over the NDWG award.

*Affected Public:* State, local, and tribal governments.

*Obligation to Respond:* Required to obtain or retain a benefit (WIOA sec. 170).

*Total Estimated Number of Respondents Annually:* 159 (9 additional respondents resulting from this rulemaking).

*Total Estimated Number of Annual Responses:* 1,574 (89 additional responses resulting from this rulemaking).

*Total Estimated Annual Time Burden:* 1,066 hours (60 additional hours resulting from this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 687.150.

*Title of Collection:* Employment and Training Administration Financial Report Form 9130.

*OMB Control Number:* 1205–0461.

*Description:* Existing rules require grantees to submit quarterly financial reports. The proposed rule reflects OMB's Uniform Guidance, which standardizes the administrative, cost, and audit provisions for all grants and cooperative agreements provided under part 683. The proposed rule would establish consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication in the quarterly financial reports.

*Affected Public:* State, local, and tribal governments, and private sector.

*Obligation to Respond:* Required to obtain or retain a benefit (2 CFR 200.327).

*Total Estimated Number of Respondents Annually:* 848 (no change as a result of this rulemaking).

*Total Estimated Number of Annual Responses:* 6,784 (no change as a result of this rulemaking).

*Total Estimated Annual Time Burden:* 5,088 hours (1,696 additional hours as a result of this rulemaking).

*Total Estimated Annual Other Costs Burden:* $0 (no change as a result of this rulemaking).

NPRM Sections Containing Information Collections Approved Under this Control Number: § 681.430, § 683.150, § 683.200, § 683.300, § 683.730, § 683.740, § 683.750.

Interested parties may obtain a copy free of charge of one or more of the information collection requests submitted to the OMB on the reginfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain.* From the *Information Collection Review* tab, select *Information Collection Review.* Then select *Department of Labor* from the *Currently Under Review* dropdown menu, and look up the Control Number. A free copy of the requests may also be obtained by contacting the person named in the **ADDRESSES** section of this preamble.

As noted in the **ADDRESSES** section of this NPRM, interested parties may send comments about the information collections to the Department throughout the 60-day comment period and/or to the OMB within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention the applicable OMB Control Number(s). The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Department notes that in order to meet WIOA requirements, several information collections mentioned in this NPRM need to be in place prior to the final rule taking effect. The Department will follow PRA requirements in clearing the collections (emergency procedures, as appropriate), including providing appropriate public engagement and taking into account the comments received as part of this rulemaking.

*C. Executive Order 13132: Federalism*

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies shall strictly adhere to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they shall carefully assess the necessity for any such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Department has reviewed the WIOA NPRM in light of these requirements and have determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, that E.O. sec. 3(b) has been fully reviewed and its requirement satisfied.

Accordingly, the Department has reviewed this WIOA-required NPRM and has determined that the proposed rulemaking has no Federalism implications. The proposed rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Department has determined that this proposed rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

*D. Unfunded Mandates Reform Act of 1995*

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

The WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds and accordingly are not considered unfunded mandates. Similarly, migrant and seasonal farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal Government under the WIOA program and will be reimbursed (grant funding) for the resources required to perform those responsibilities. The same process and grant relationship exists between States and Local WDBs under the WIA program and shall continue under the WIOA program and as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program. It also contains clear State information collection requirements for training entities, for example, submission of appropriate, accurate, and timely information. A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and therefore information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

The Department's following consideration of these factors has determined that this proposed rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.''

*E. Plain Language*

The Department drafted this WIOA NPRM in plain language.

*F. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this proposed rule in light of this requirement and determined that the WIOA NPRM would not have a negative effect on families.

*G. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to

industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Department has adopted the SBA definition for the purposes of this certification.

The Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and proposes to certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this NPRM.

Affected Small Entities

The proposed rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) An institution of higher education; (2) an employment service State agency established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local Board, with the approval of the local CEO and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

Impact on Small Entities

The Department indicates that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. We have highlighted costs that are new to WIOA implementation and this NPRM. Therefore, the Department expects that the WIOA NPRM will have no cost impact on small entities.

*H. Small Business Regulatory Enforcement Fairness Act of 1996*

The Department has determined that this proposed rulemaking does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA.

*I. Executive Order 13175 (Indian Tribal Governments)*

The Department reviewed this proposed rule under the terms of E.O. 13175 and has determined it to have no tribal implications in addition to those created through the reimbursement of WIA and future WIOA program expenses via Federally disbursed formula grant funds. The proposed rule would have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. As a result, a tribal summary impact statement has been prepared.

Prior to developing this proposed rule, the Department held three events to talk with the tribal institutions about their concerns about the current state of Indian and Native American Programs (INAP) as well as what concerns they see in the future. These three events consisted of a consultation webinar and two in-person town hall meetings. The consultation webinar, entitled ''Listening session on Indian and Native American Programs,'' occurred on September 15, 2014. Two other consultations were held, including an October 21, 2014, town hall meeting with Indian and Native American leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives, and a formal consultation December 17, 2014, with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.

The Department received feedback from the Indian and Native American (INA) community and the general public that established several areas of interest concerning the Department of Labor's relationship with Indian and Native American Tribes and Tribal Governments. These areas of interest are summarized below.

Services Received in American Job Centers

Specifically, the INA community expressed interest in learning how American Job Centers will account for the use of their INA funding dollars and how to ensure that the funds intended for the INA population will be dedicated to that population. In addition, there were also several individuals that had concerns that INA individuals that enter an American Job Center may not get the general assistance that is intended for all people that seek assistance. In other words, several commenters wanted to ensure that INA individuals should receive assistance intended for other populations that they may qualify for when seeking service. Finally, several commenters were interested in learning more about how INA programs may be required to contribute to American Job Center infrastructure funding and how American Job Centers will account for INA members served to ensure that the American Job Center network is responding to the relevant INA population needs.

Funding Per Participant Was Low for INA Programs Especially When Compared to Other Job Training Programs

Many of the commenters expressed concern that the funds made available on a per participant basis for INA programs were not sufficient to meet the needs of the populations being served. Specifically, many commenters stated that funds available for INA youth are inadequate to fully meet their needs. In addition, commenters felt that more funds were needed for INA job training programs to ensure that career pathway training could be carried out. Several commenters compared the cost per participant funding for other programs, such as Job Corps, as evidence of the lack of funding for INA programs. The commenters went on to request a comparison of other WIA-funded programs and the INA programs. Finally, one commenter felt that because of the lack of funds, INA youth were being served instead of INA adults.

The majority of comments focused on the use of new funding streams and the requirements attached to those funds. Commenters expressed concern about the issue of using and transferring WIOA funding to support activities under Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended (Pub. L. 102–477). Specifically, commenters talked about the importance of flexibility in adherence to the requirements because Public Law 102–477 programs are tribal programs, may be located in rural areas, and have been effectively and efficiently reporting through existing processes, including a single reporting feature in the annual report. Additionally, commenters suggested that vocational rehabilitation, adult education reentry, and other applicable job/education-related program funding also should be allowed to support Public Law 102–477 programs. Clarity around which funding streams are allowable also was suggested. Commenters also expressed hope that the Department of Education

will integrate Carl D. Perkins funding under Public Law 102–477 which allows Federally-recognized Tribes and Alaska Native entities to combine formula-funded Federal grant funds administered by the Department of Interior, which are employment and training-related into a single plan with a single budget and a single reporting system. Commenters noted that the Native American Career and Technical Education Program (NACTEP) is a required partner, and that NACTEP has limited the partner funds available to fund supportive services and work experiences. One commenter asked if statutory language regarding key investments in vulnerable populations would result in an increase in funding for Division of Indian and Native American Programs (DINAP) programs. Lastly, it was suggested that the 166 Advisory Council continue, and DINAP programs continue to be staffed with Native Americans and Native American Chiefs.

Concerns About the Effects of the New Performance Reporting Requirements Established in WIOA on the INA Community

Many commenters expressed concern that INA programs would not be able to meet the performance reporting requirements established by WIOA for several reasons, including limited funds to train individuals for the new performance standards and the need to purchase new technology and equipment to meet the reporting requirements. In addition, several commenters said that INA programs will have to be more selective in determining eligibility for training programs because of insufficient of funding and the increased focus on performance outcomes.

Lack of Funding To Hire and Effectively Train Staff and Ensuring Policy Is Responsive to INA Community Needs

Commenters stated concerns that INA programs will not be able to achieve expected performance levels because they lacked funding to adequately staff programs. Several commenters stated concerns about the limited number of staff, increased training needs for staff, and the need to ensure that technical assistance is made available to staff. Specifically, commenters are concerned that INA programs may transition slower than States to the new WIOA requirements because of funding and staff needs. In addition, they stated that INA programs need more funds to implement new administrative tasks as well as provide services to the INA community.

Working With States and Other Programs

Commenters expressed concerns about States' accountability to the INA community and how to make other training programs administered by the State work comprehensively with INA programs. Others encouraged flexibility and freedom in funding in working with these same entities and lauded this flexibility as a way to get more out of funds. Furthermore, the commenters emphasized how important it is for Indian and Native American Leaders to have a voice in the policy and guidance formulation process so that policy is directly responsive to the needs and funding has to go hand in hand with the needs identified. Some commenters suggested an on-going dialogue between Indian and Native American leaders, Workforce Investment Boards, local and State agencies, and the American Job Centers to discuss training and education that leads to jobs. Some commenters stated that State-run programs need to be more accountable for how they interact with INA populations. Other commenters expressed frustration that some State programs do not see a need to work with INA programs because the States think that the INA programs get money from other sources, such as casinos. Many of the commenters said that they wanted better collaboration with State-run programs and increased networking among INA programs and State agencies. Finally, one commenter stated that collaboration between INA programs and the State-run training systems would make services to individuals more efficient because it would prevent ''double-dipping'' in programs.

The Department invites public comment about what can be done to address the areas summarized above.

*J. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights*

The Department has determined that this WIOA NPRM is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

*K. Executive Order 12988 (Civil Justice Reform)*

This NPRM was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Department has determined that the proposed rule will not burden the Federal court system. The proposed WIOA regulation was written to minimize litigation and to the extent feasible, provides a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*L. Executive Order 13211 (Energy Supply)*

This NPRM was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Department has determined the NPRM will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

**List of Subjects**

*20 CFR Part 603*

Grant programs-labor, Privacy, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

*20 CFR Part 651*

Employment, Grant programs-labor.

*20 CFR Part 652*

Employment, Grant programs-labor, Reporting and recordkeeping requirements.

*20 CFR Part 653*

Agriculture, Employment, Equal employment opportunity, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements.

*20 CFR Part 654*

Employment, Government procurement, Housing standards, Manpower, Migrant labor, Reporting and recordkeeping requirements.

*20 CFR Part 658*

Administrative practice and procedure, Employment, Grant programs-labor, Reporting and recordkeeping requirements.

*20 CFR Part 675*

Employment, Grant programs-labor.

*20 CFR Parts 679–680*

Employment, Grant programs-labor.

*20 CFR Part 681*

Employment, Grant programs-labor, Youth.

*20 CFR Part 682*

Employment, Grant programs-labor.

*20 CFR Part 683*

Employment, Grant programs-labor, Reporting and recordkeeping requirements.

*20 CFR Part 684*

Employment, Grant programs-labor, Indians, Reporting and recordkeeping requirements.

*20 CFR Part 685*

Employment, Grant programs-labor, Migrant labor, Reporting and recordkeeping requirements.

*20 CFR Part 686*

Employment, Grant programs-labor, Job Corps.

*20 CFR Part 687*

Employment, Grant programs-labor.

*20 CFR Part 688*

Employment, Grant programs-labor, Youth, YouthBuild.

For the reasons stated in the preamble, ETA proposes to amend title 20 CFR, chapter V, as follows:

## PART 603—FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

■ 1. Revise the authority citation for part 603 to read as follows:

**Authority:** Secs. 116, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 20 U.S.C 1232g.

■ 2. Amend § 603.2 by revising paragraph (d) to read as follows:

### § 603.2 What definitions apply to this part?

* * * * *

(d) *Public official* means:

(1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(2) Public post-secondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State Board, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local Workforce Development Area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

* * * * *

■ 3. Amend § 603.5 by revising paragraph (e) to read as follows:

### § 603.5 What are the exceptions to the confidentiality requirement?

* * * * *

(e) *Public official.* Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible.

(1) ''Performance of official duties'' means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(2) For purposes of § 603.2(d)(2) through (5), ''performance of official duties'' includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA sec. 116, including eligible training provider performance accountability under WIOA secs. 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

* * * * *

■ 4. Amend § 603.6 by adding paragraph (b)(8) to read as follows:

### § 603.6 What disclosures are required by this subpart?

* * * * *

(b) * * *

(8) To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). For purposes of this part, States must disclose confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information in the course of such evaluations. This disclosure must be done in accordance with appropriate privacy and confidentiality protections established in this part. This disclosure must be made to the ''extent practicable'', which means that the disclosure would not interfere with the efficient administration of the State UC law, as required by § 603.5.

* * * * *

■ 5. Add part 675 to read as follows:

## PART 675—INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE INNOVATION AND OPPORTUNITY SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?
675.200 What do the regulations for workforce investment systems under title I of the Workforce Innovation and Opportunity Act cover?
675.300 What definitions apply to these regulations?

**Authority:** Secs. 2, 3, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

### § 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

The purposes of title I of the Workforce Innovation and Opportunity Act (WIOA) include:

(a) Increasing access to, and opportunities for individuals to receive, the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school

youth with the goal of improving their outcomes;

(b) Enhancing the strategic role for States and elected officials, and Local Workforce Development Boards in the workforce system by increasing flexibility to tailor services to meet employer and worker needs at State, regional, and local levels;

(c) Streamlining service delivery across multiple programs by requiring colocation, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including people with disabilities and those with other barriers to employment, and businesses.

(d) Supporting the alignment of the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system at the Federal, State, and local and regional levels;

(e) Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and sector partnerships, career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

(f) Promoting accountability using core indicators of performance measured across all WIOA authorized programs, sanctions, and high quality evaluations to improve the structure and delivery of services through the workforce development system to address and improve the employment and skill needs of workers, jobseekers, and employers;

(g) Increasing the prosperity and economic growth of workers, employers, communities, regions, and States; and

(h) Providing workforce development activities through statewide and local workforce development systems to increase employment, retention and earnings of participants and to increase industry-recognized post-secondary credential attainment to improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

**§ 675.200 What do the regulations for workforce investment systems under title I of the Workforce Innovation and Opportunity Act cover?**

The regulations found in 20 CFR parts 675 through 687 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIOA. This part 675 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 676 contains regulations relating to statewide and local governance of the workforce investment system. Part 677 describes the one-stop system and the roles of one-stop partners. Part 678 sets forth requirements applicable to WIOA title I programs serving adults and dislocated workers. Part 679 sets forth requirements applicable to WIOA title I programs serving youth. Part 680 contains regulations relating to statewide activities. Part 681 describes the WIOA performance accountability system. Part 682 sets forth the administrative requirements applicable to programs funded under WIOA title I. Parts 684 and 685 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 686 and 687 describe the particular requirements applicable to the Job Corps and the national dislocated worker grant programs, respectively. Part 687 contains the regulations governing the YouthBuild program. In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementing WIA sec. 188.

**§ 675.300 What definitions apply to these regulations?**

In addition to the definitions set forth in WIOA and the WIOA Regulations the following definitions apply to the regulations in 20 CFR parts 675 through 687:

*Consultation* means an interactive discussion between two or more parties for the purpose of exchanging viewpoints and ideas.

*Contract* means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward as defined in this section.

*Contractor* means an entity that receives a contract as defined in this section.

*Cooperative Agreement* means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

*Department or DOL* means the U.S. Department of Labor, including its agencies and organizational units.

*Employment and training activity* means a workforce investment activity that is carried out for an adult or dislocated worker under 20 CFR part 678.

*Equal opportunity data* or *EO data* means data on race and ethnicity, age, sex, and disability required by 29 CFR part 37 of the DOL regulations implementing sec. 188 of WIA, governing nondiscrimination.

*Employment and Training Administration or ETA* means the Employment and Training Administration of the U.S. Department of Labor, or its successor organization.

*Federal Award means:*

(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 Applicability;

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a

pass-through entity, as described in 2 CFR 200.101 Applicability; and

(3) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(4) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

*Federal Financial Assistance means:*

(1) For grants and cooperative agreements, assistance in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance, except assistance listed in paragraph (2) of this definition.

(2) For purposes of the audit requirements at 2 CFR part 200, subpart F, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in 2 CFR 200.502, which outlines the basis for determining Federal awards expended.

*Grant or Grant Agreement* means a legal instrument of financial assistance between a Federal awarding agency and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Grant agreement does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

*Grantee* means the direct recipient of grant funds from the Department of Labor under a grant or grant agreement. A grantee may also be referred to as a recipient.

*Individual with a disability* means an individual with any disability (as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIOA sec. 188, this term is defined at 29 CFR 37.4.

*Labor Federation* means an alliance of two or more organized labor unions for the purpose of mutual support and action.

*Literacy* means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

*Local Board* means a Local Workforce Development Board established under WIOA sec. 107, to set policy for the local workforce investment system.

*Non-Federal entity,* as defined in 2 CFR part 2900.2, means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

*Obligations* when used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

*Outlying area means:*

(1) The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands; and

(2) The Republic of Palau, except during a period that the Secretaries determine both that a Compact of Free Association is in effect and that the Compact contains provisions for training and education assistance prohibiting the assistance provided under the Workforce Innovation and Opportunity Act.

*Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

*Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

*Register* means the process for collecting information, including identifying information, to determine an individual's eligibility for services under WIOA title I. Individuals may be registered in a variety ways, as described in 20 CFR parts 678.105.

*Secretary* means the Secretary of the U.S. Department of Labor, or their designee.

*Secretaries* means the Secretaries of the U.S. Department Labor and the U.S. Department of Education, or their designees.

*Self-certification* means an individual's signed attestation that the information they submit to demonstrate eligibility for a program under title I of WIOA is true and accurate.

*State* means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term ''State'' does not include outlying areas.

*State Board* means a State Workforce Development Board established under WIOA sec. 101.

*Subgrant or subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

*Unliquidated obligations* means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

*Unobligated balance* means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-

through entity authorized the non-Federal entity to obligate.

*Wagner-Peyser Act* means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

*WIA Regulations* mean the regulations in 20 CFR parts 660 through 672, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

*WIOA regulations* mean the regulations in 20 CFR parts 675 through 687, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

*Workforce investment activities* mean the array of activities permitted under title I of WIOA, which include employment and training activities for adults and dislocated workers, as described in WIOA sec. 134, and youth activities, as described in WIOA sec. 129.

*Youth Workforce Investment Activity* means a workforce investment activity that is carried out for eligible youth under 20 CFR part 679.

■ 6. Add part 679 to read as follows:

## PART 679—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—State Workforce Development Board

Sec.
679.100 What is the vision and purpose of the State Board?
679.110 What is the State Workforce Development Board?
679.120 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?
679.130 What are the functions of the State Board?
679.140 How does the State Board meet its requirement to conduct business in an open manner under ''sunshine provision'' of the Workforce Innovation and Opportunity Act?
679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?
679.160 Under what circumstances may the State Board hire staff?

### Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

679.200 What is the purpose of requiring States to identify regions?
679.210 What are the requirements for identifying a region?
679.220 What is the purpose of the local workforce development area?
679.230 What are the general procedural requirements for designation of local workforce development areas?
679.240 What are the substantive requirements for designation of local workforce development areas that were not designated as local areas under the Workforce Investment Act of 1998?
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**Authority:** Secs. 101, 106, 107, 108, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—State Workforce Development Board

### § 679.100 What the purpose of the State Board?

The purpose of the State Board is to convene State, regional, and local workforce system and partners, to—

(a) Enhance the capacity and performance of the workforce development system;

(b) Align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments; and

(c) Through these efforts, promote economic growth.

(d) Engage workforce system representatives, including businesses, education providers, economic development, labor representatives, and other stakeholders to help the workforce development system achieve the purpose of the Workforce Innovation and Security Act (WIOA); and

(e) Assist to achieve the State's strategic and operational vision and goals as outlined in the State Plan.

**§ 679.110 What is the State Workforce Development Board?**

(a) The State Board is a board established by the Governor in accordance with the requirements of WIOA sec. 101 and this section.

(b) The membership of the State Board must meet the requirements of WIOA 101(b) and must represent diverse geographic areas of the State, including urban, rural, and suburban areas. The Board membership and must include:

(1) The Governor;

(2) A member of each chamber of the State legislature, appointed by the appropriate presiding officers of such chamber, as appropriate under State law; and

(3) Members appointed by the Governor, which must include:

(i) A majority of representatives of businesses or organizations who:

(A) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and may also be members of a Local Board as described in WIOA sec. 107(b)(2)(A)(i);

(B) Represent businesses, or organizations that represent businesses described in 679.110(b)(3)(i), that, at a minimum, provide employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the State; and

(C) Are appointed from a list of potential members nominated by State business organizations and business trade associations; and

(D) At a minimum, one member representing small businesses as defined by the U.S. Small Business Administration.

(ii) Not less than 20 percent who are representatives of the workforce within the State, which:

(A) Must include two or more representatives of labor organizations nominated by State labor federations;

(B) Must include one representative who must be a member of a labor organization or training director from a joint labor-management apprenticeship program, or, if no such joint program exists in the State, a member of a labor organization or training director who is a representative of an apprenticeship program;

(C) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(D) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(iii) The balance of the members:

(A) Must include representatives of the Government including:

(*1*) The lead State officials with primary responsibility for each of the core programs. Where the lead official represents more than one core program, that official must ensure adequate representation of the needs of all core programs under his or her jurisdiction.

(*2*) Two or more chief elected officials (collectively representing both cities and counties, where appropriate).

(B) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, State agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the State, individuals who represent an Indian tribe or tribal organization as defined in WIOA sec. 166(b), and State agency officials responsible for education programs in the State, including chief executive officers of community colleges and other institutions of higher education.

(c) The Governor must select a chairperson for the State Board from the business representatives on the board described in paragraph (b)(3)(i) of this section).

(d) The Governor must establish by-laws that at a minimum address:

(1) The nomination process used by the Governor to select the State Board chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the Governor of a board member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at 679.110(d)(4);

(i) If the alternative designee is a business representative, he or she must have optimum policy-making hiring authority.

(ii) Other alternative designees should have demonstrated experience and expertise and optimum policy-making authority.

(5) The use of technology, such as phone and Web-based meetings, that must be used to promote board member participation; and

(6) The process to ensure members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) Other conditions governing appointment or membership on the State Board as deemed appropriate by the Governor.

(e) Members who represent organizations, agencies or other entities described in (b)(3)(ii) through (iii) above must be individuals who have optimum policy-making authority in the organizations that they represent.

(f)(1) A State Board member may not represent more than one of the categories described in:

(i) Paragraph (b)(3)(i) of this section (business representatives);

(ii) Paragraph (b)(3)(ii) of this section (workforce representatives); or

(iii) Paragraph (b)(3)(iii) of this section (government representatives).

(2) A State Board member may not serve as a representative of more than one subcategory under paragraph (b)(3)(ii) of this section.

(3) A State Board member may not serve as a representative of more than one subcategory under paragraph (b)(3)(iii) of this section, except that where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required board members must have voting privileges. The Governor may also convey voting privileges to non-required members.

**§ 679.120 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?**

For purposes of § 679.110:

(a) A representative with ''optimum policy-making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with ''demonstrated experience and expertise'' means an individual with documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function.

**§ 679.130 What are the functions of the State Board?**

Under WIOA sec. 101(d), the State Board must assist the Governor in the:

(a) Development, implementation, and modification of the 4-year State Plan;

(b) Review of statewide policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations must include a review and provision of comments on the State plans, if any, for programs and activities of one-stop partners that are not core programs.

(c) Development and continuous improvement of the workforce development system, including—

(1) Identification of barriers and means for removing barriers to better coordinate, align, and avoid duplication among programs and activities;

(2) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education, and supportive services to enter or retain employment;

(3) Development of strategies to provide effective outreach to and improved access for individuals and employers who could benefit from workforce development system;

(4) Development and expansion of strategies to meet the needs of employers, workers, and jobseekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

(5) Identification of regions, including planning regions for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local Boards and chief elected officials;

(6) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to Local Boards, one-stop operators, one-stop partners, and providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, jobseekers, and employers; and

(7) Development of strategies to support staff training and awareness across the workforce development system and its programs.

(d) Development and updating of comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116(b).

(e) Identification and dissemination of information on best practices, including best practices for—

(1) The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment;

(2) The development of effective Local Boards, which may include information on factors that contribute to enabling Local Boards to exceed negotiated local levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness; and

(3) Effective training programs that respond to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences for adaptability, to support efficient placement into employment or career pathways.

(f) Development and review of statewide policies affecting the coordinated provision of services through the State's one-stop delivery system described in WIOA sec. 121(e), including the development of—

(1) Objective criteria and procedures for use by Local Boards in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a Local Board serves as the one-stop operator, the State Board must use such criteria to assess and certify the one-stop center;

(2) Guidance for the allocation of one-stop center infrastructure funds under 121(h); and

(3) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the system.

(g) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through the one-stop delivery system, including such improvements to—

(1) Enhance digital literacy skills (as defined in sec. 202 of the Museum and Library Service Act, 20 U.S.C. 9101);

(2) Accelerate acquisition of skills and recognized post-secondary credentials by participants;

(3) Strengthen professional development of providers and workforce professionals; and

(4) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(h) Development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(i) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA secs. 128(b)(3) and 133(b)(3);

(j) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA sec. 116(d);

(k) Development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act; and

(l) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the State.

**§ 679.140 How does the State Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of the Workforce Innovation and Opportunity Act?**

(a) The State Board must conduct business in an open manner as required by WIOA sec. 101(g).

(b) The State Board must make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the State Board, including:

(1) The State Plan, or modification to the State Plan, prior to submission of the Plan or modification of the Plan;

(2) Information regarding membership;

(3) Minutes of formal meetings of the State Board upon request;

(4) State Board by-laws as described at § 679.110(d).

**§ 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?**

(a) The State may use any State entity that meets the requirements of WIOA sec. 101(e) to perform the functions of the State Board. This may include:

(1) A State council;

(2) A State Workforce Development Board within the meaning of the Workforce Investment Act of 1998, as in effect on the day before the date of enactment of WIOA; or

(3) A combination of regional Workforce Development Boards or similar entity.

(b) If the State uses an alternative entity, the State Plan must demonstrate that the alternative entity meets all three of the requirements of WIOA sec. 101(e)(1):

(1) Was in existence on the day before the date of enactment of the Workforce Investment Act of 1998;

(2) Is substantially similar to the State Board described in WIOA secs. 101(a)–(c) and § 679.110; and

(3) Includes representatives of business and labor organizations in the State.

(c) If the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State Board must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs, by such methods as:

(1) Regularly scheduled consultations with entities within the unrepresented membership groups;

(2) Providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, and

(3) Establishing an advisory committee of unrepresented membership groups.

(d) If the membership structure of the alternative entity had a significant change after August 7, 1998, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIOA sec. 101(b).

(e) A significant change in the membership structure includes a significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made.

(1) A significant change in the membership structure occurs when the alternative entity adds members to represent groups not previously represented on the entity.

(2) A significant change in the membership structure does not occur when the alternative entity adds members to an existing membership category, when it adds non-voting members, or when it adds members to fill a vacancy created in an existing membership category.

(f) In 20 CFR parts 675 through 687, all references to the State Board also apply to an alternative entity used by a State.

#### § 679.160 Under what circumstances may the State Board hire staff?

(a) The State Board may hire a director and other staff to assist in carrying out the functions described in WIOA sec. 101(d) and § 679.130 using funds described in WIOA sec. 129(b)(3) or sec. 134(a)(3)(B)(i).

(b) The State Board must establish and apply a set of objective qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in effectively carrying out the functions of the State Board.

(c) The director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

### Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

#### § 679.200 What is the purpose of requiring States to identify regions?

The purpose of identifying regions is to align workforce development activities and resources with larger regional economic development areas and available resources to provide coordinated and efficient services to both job seekers and employers.

#### § 679.210 What are the requirements for identifying a region?

(a) The Governor must assign local areas to a region prior to submission of the State Unified or Combined Plan, in order for the State to receive WIOA title I–B adult, dislocated worker, and youth allotments.

(b) The Governor must develop a policy and process for identifying regions. Such policy must include:

(1) Consultation with the Local Boards and chief local elected officials in the local area(s) as required in WIOA sec. 102(b)(2)(D)(i)(II) and WIOA sec. 106(a)(1); and

(2) Consideration of the extent to which the local areas in a proposed region:

(i) Share a single labor market;

(ii) Share a common economic development area; and

(iii) Possess the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(c) In addition to the required criteria described in paragraph (b)(2) of this section, other factors the Governor may also consider include:

(1) Population centers

(2) Commuting patterns

(3) Land ownership

(4) Industrial composition

(5) Location quotients

(6) Labor force conditions

(7) Geographic boundaries

(8) Additional factors as determined by the Secretary

(d) Regions must consist of:

(1) One local area;

(2) Two or more contiguous local areas in a single State; or

(3) Two or more contiguous local areas in two or more States.

(e) Planning regions are those regions described in paragraph (d)(2) or (3) of this section. Planning regions are subject to the regional planning requirements in § 679.510.

#### § 679.220 What is the purpose of the local workforce development area?

(a) The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. Such areas may be aligned with a region identified in WIOA sec. 106(a)(1) or may be components of a planning region, each with its own Local Workforce Development Board. Also, significantly, local workforce development areas are the areas within which Local Workforce Development Boards oversee their functions, including strategic planning, operational alignment and service delivery design, and a jurisdiction where partners align resources at a sub-State level to design and implement overall service delivery strategies.

(b) The Governor must designate local workforce development areas (local areas) in order for the State to receive adult, dislocated worker, and youth funding under title I, subtitle B of WIOA.

#### § 679.230 What are the general procedural requirements for designation of local workforce development areas?

As part of the process of designating or redesignating a local workforce development area, the Governor must develop a policy for designation of local workforce development areas that must include:

(a) Consultation with the State Board;

(b) Consultation with the chief elected officials and affected Local Boards; and

(c) Consideration of comments received through a public comment process which must:

(1) Offer adequate time for public comment prior to designation of the local workforce development area; and

(2) Provide an opportunity for comment by representatives of Local Boards, chief elected officials, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding the designation of the local area.

**§ 679.240 What are the substantive requirements for designation of local workforce development areas that were not designated as local areas under the Workforce Investment Act of 1998?**

(a) Except as provided in § 679.250, the Governor may designate or redesignate a local workforce development area in accordance with policies and procedures developed by the Governor, which must include at a minimum consideration of the extent to which the proposed area:

(1) Is consistent with local labor market areas;

(2) Has a common economic development area; and

(3) Has the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(b) The Governor may approve a request at any time for designation as a workforce development area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of paragraph (a)(1) of this section and recommends designation.

(c) Regardless of whether a local area has been designated under this section or § 679.250, the Governor may redesignate a local area if the redesignation has been requested by a local area and the Governor approves the request.

**§ 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?**

(a) If the chief elected official and Local Board in a local area submits a request for initial designation, the Governor must approve the request if, for the 2 program years preceding the date of enactment of WIOA, the following criteria are met:

(1) The local area was designated as a local area for purposes of WIA;

(2) The local area performed successfully; and

(3) The local area sustained fiscal integrity.

(b) If a local area is approved for initial designation, the period of initial designation applies to program years 2015 and 2016.

(c) After the period of initial designation, if the chief elected official and Local Board in a local area submits a request for subsequent designation, the Governor must approve the request if the following criteria are met for the 2 program years of initial designation:

(1) The local area performed successfully;

(2) The local area sustained fiscal integrity; and

(3) In the case of a local area in a planning region, the local area met the regional planning requirements described in WIOA sec.106(c) paragraph (1).

(d) The Governor:

(1) May review a local area designated under paragraph (c) of this section at any time to evaluate whether that the area continues to meet the requirements for subsequent designation under that paragraph; and

(2) Must review a local area designated under paragraph (c) of this section before submitting its State Plan during each 4-year State planning cycle to evaluate whether the area continues to meet the requirements for subsequent designation under that paragraph.

(e) For purposes of subsequent designation under paragraphs (c) and (d) of this section, the local area and chief elected official must be considered to have requested continued designation unless the local area and chief elected official notify the Governor that they no longer seek designation.

(f) Local areas designated under § 679.240 or States designated as single-area States under § 679.270 are not subject to the requirements described in paragraph (c) of this section related to the subsequent designation of a local area.

(g) Rural concentrated employment programs are not eligible to apply for initial designation as a local area under paragraph (c) of this section.

**§ 679.260 What do the terms ''performed successfully'' and ''sustained fiscal integrity'' mean for purposes of designating local areas?**

(a) For the purpose of initial local area designation, the term ''performed successfully'' means that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and chief elected official under WIA sec. 136(c) for the last 2 full program years before the enactment of WIOA, and that the local area has not failed any individual measure for the last 2 consecutive program years before the enactment of WIOA.

(1) The terms ''met or exceeded'' and ''failure'' must be defined by the Governor consistent with how those terms were defined at the time the performance levels were negotiated.

(2) When designating local areas, the Governor may not retroactively apply any higher WIOA threshold to performance negotiated and achieved under WIA.

(b) For the purpose of determining subsequent local area designation, the term ''performed successfully'' means that the local area met or exceeded the levels of performance the Governor negotiated with Local Board and chief elected official for core indicators of performance described under WIA sec. 136(c) or WIOA sec. 116(b)(2)(A), as appropriate, and in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

(c) For the purpose of determining initial and subsequent local area designation under § 679.250(a) and (c), the term ''sustained fiscal integrity'' means that the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

**§ 679.270 What are the special designation provisions for single-area States?**

(a) The Governor of any State that was a single-State local area under the Workforce Investment Act as in effect on July 1, 2013 may designate the State as a single-State local workforce development area under WIOA.

(b) The Governor of a State local workforce development area under paragraph (a) of this section who seeks to designate the State as a single-State local workforce development area under WIOA must:

(1) Identify the State as a single State local area in the Unified or Combined State Plan; and

(2) Include the local plan for approval as part of the Unified or Combined State Plan.

(c) The State Board for a single-State local workforce development area must act as the Local Board and carry out the

functions of the Local Board in accordance with WIOA sec. 107 and § 679.370, except that the State is not required to meet and report on a set of local performance accountability measures.

**§ 679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?**

(a) When the chief elected officials and Local Boards of each local area within a planning region make a request to the Governor to redesignate into a single local area, the State Workforce Development Board must authorize statewide adult, dislocated worker (WIOA sec. 133(a)(1)), and youth program (WIOA sec. 128(a)) funds to facilitate such redesignation.

(b) When statewide funds are not available, the State may provide funds for redesignation in the next available program year.

(c) Redesignation activities that may be carried out by the local areas include:

(1) Convening sessions and conferences;

(2) Renegotiation of contracts and agreements; and

(3) Other activities directly associated with the redesignation as deemed appropriate by the State Board.

**§ 679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?**

(a) A unit of local government (or combination of units) or a local area which has requested but has been denied its request for designation as a workforce development area under § 679.250 may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan and 20 CFR 683.630(a).

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 683.640.

## Subpart C—Local Boards

**§ 679.300 What is the vision and purpose of the Local Workforce Development Board?**

(a) The vision for the Local Workforce Development Board (Local Board) is to serve as a strategic leader and convener of local workforce development system stakeholders. The Local Board partners with employers and the workforce development system to develop policies and investments that support workforce system strategies that support regional economies, the development of effective approaches including local and regional sector partnerships and career pathways, and high quality, customer centered service delivery and service delivery approaches;

(b) The purpose of the Local Board is to—

(1) Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;

(2) Assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and

(3) Maximize and continue to improve the quality of services, customer satisfaction, effectiveness of the services provided.

**§ 679.310 What is the Local Workforce Development Board?**

(a) The Local Board is appointed by the chief elected official(s) in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the statewide workforce investment system within the local area and consistent with State policies.

(c) The Local Board and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local Board, in partnership with the chief elected official(s), develops the local plan and performs the functions described in WIOA sec. 107(d) and § 679.370.

(e) If a local area includes more than one unit of general local government in accordance with WIOA sec. 107(c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If the chief elected officials are unable to reach agreement after a reasonable effort, the Governor may appoint the members of the Local Board from individuals nominated or recommended as specified in WIOA sec. 107(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIOA, the State Board must carry out the roles of the Local Board in accordance with WIOA sec. 107, except that the State is not required to meet and report on a set of local performance accountability measures.

(g) The chief local elected official must establish by-laws, consistent with State policy for Local Board membership, that at a minimum address:

(1) The nomination process used by the chief local elected official to elect the Local Board chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the chief local elected official of a board member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at § 679.110(d)(4);

(5) The use of technology, such as phone and Web-based meetings, that will be used to promote board member participation; and

(6) The process to ensure board members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities.

(7) A description of any other conditions governing appointment or membership on the State Board as deemed appropriate by the chief local elected official.

**§ 679.320 Who are the required members of the Local Workforce Development Board?**

(a) For each local area in the State, the members of Local Board must be selected by the chief elected official consistent with criteria established under WIOA sec. 107(b)(1) and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(b)(2).

(b) A majority of the members of the Local Board must be representatives of business in the local area. At a minimum, two members must represent small business as defined by the U.S. Small Business Administration. Business representatives serving on Local Boards may also serve on the State Board. Each business representative must meet the following criteria:

(1) Be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making or hiring authority; and

(2) provide employment opportunities in in-demand industry sectors or occupations, as those terms are defined in WIOA sec. 3(23).

(c) At least 20 percent of the members of the Local Board must be workforce representatives. These representatives:

(1) Must include two or more representatives of labor organizations, where such organizations exist in the local area. Where labor organizations do not exist, representatives must be selected from other employee representatives;

(2) Must include one or more representatives of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists;

(3) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities; and

(4) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(d) The Local Board must also include:

(1) At least one eligible provider administering adult education and literacy activities under WIOA title II;

(2) At least one representative from an institution of higher education providing workforce investment activities, including community colleges; and

(3) At least one representative from each of the following governmental and economic and community development entities:

(i) Economic and community development entities;

(ii) The State employment service office under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) serving the local area; and

(iii) The programs carried out under title I of the Rehabilitation Act of 1973, other than sec. 112 or part C of that title;

(e) The membership of Local Boards may include individuals or representatives of other appropriate entities in the local area, including:

(1) Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;

(2) Governmental and economic and community development entities who represent transportation, housing, and public assistance programs;

(3) Philanthropic organizations serving the local area; and

(4) Other appropriate individuals as determined by the chief elected official.

(f) Members must be individuals with optimum policy-making authority within the entities they represent.

(g) Chief elected officials must establish a formal nomination and appointment process, consistent with the criteria established by the Governor and State Board under sec. 107(b)(1) of WIOA for appointment of members of the Local Boards, that ensures:

(1) Business representatives are appointed from among individuals who are nominated by local business organizations and business trade associations.

(2) Labor representatives are appointed from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees); and

(3) When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities. (WIOA sec. 107(b)(6))

(h) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (g) of this section, for each entity.

(i) All required board members must have voting privilege. The chief elected official may convey voting privileges to non-required members.

**§ 679.330 Who must chair a Local Board?**

The Local Board must elect a chairperson from among the business representatives on the board. (WIOA sec. 107(b)(3))

**§ 679.340 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?**

For purposes of selecting representatives to Local Workforce Development Boards:

(a) A representative with ''optimum policy-making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with ''demonstrated experience and expertise'' means an individual who:–

(1) Is a workplace learning advisor as defined in WIOA sec. 3(70);

(2) Contributes to the field of workforce development, human resources, training and development, or a core program function; or

(3) The Local Board recognizes for valuable contributions in education or workforce development related fields.

**§ 679.350 What criteria will be used to establish the membership of the Local Board?**

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

**§ 679.360 What is a standing committee, and what is its relationship to the Local Board?**

(a) Standing committees may be established by the Local Board to provide information and assist the Local Board in carrying out its responsibilities under WIOA sec. 107. Standing committees must be chaired by a member of the Local Board, may include other members of the Local Board, and must include other individuals appointed by the Local Board who are not members of the Local Board and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local Board. Standing committees may include each of the following:

(1) A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of the one-stop partners.

(2) A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth.

(3) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101

*et seq.*) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities.

(b) The Local Board may designate other standing committees in addition to those specified in paragraph (a) of this section.

(c) Local Boards may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of WIOA sec. 107(b)(4).

**§ 679.370 What are the functions of the Local Board?**

As provided in WIOA sec. 107(d), the Local Board must:

(a) Develop and submit a 4-year local plan for the local area, in partnership with the chief elected official and consistent with WIOA sec. 108;

(b) If the local area is part of a planning region that includes other local areas, develop and submit a regional plan in collaboration with other local areas. If the local area is part of a planning region, the local plan must be submitted as a part of the regional plan;

(c) Conduct workforce research and regional labor market analysis to include:

(1) analyses and regular updates of economic conditions, needed knowledge and skills, workforce, and workforce development (including education and training) activities to include an analysis of the strengths and weaknesses (including the capacity to provide) of such services to address the identified education and skill needs of the workforce and the employment needs of employers;

(2) Assistance to the Governor in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region;

(3) Other research, data collection, and analysis related to the workforce needs of the regional economy as the board, after receiving input from a wide array of stakeholders, determines to be necessary to carry out its functions.

(d) Convene local workforce development system stakeholders to assist in the development of the local plan under § 679.550 and in identifying non-Federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the Local Board and standing committees in carrying out convening, brokering, and leveraging functions at the direction of the Local Board;

(e) Lead efforts to engage with a diverse range of employers and other entities in the region in order to:

(1) Promote business representation (particularly representatives with optimum policy-making or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the Local Board;

(2) Develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support local workforce investment activities;

(3) Ensure that workforce investment activities meet the needs of employers and support economic growth in the region by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and

(4) Develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnerships), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations.

(f) With representatives of secondary and post-secondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment.

(g) Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and jobseekers, and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs.

(h) Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and jobseekers, by:

(1) Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;

(2) Facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;

(3) Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and

(4) Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment.

(i) In partnership with the chief elected official for the local area:

(1) Conduct oversight of youth workforce investment activities authorized under WIOA sec. 129(c), adult and dislocated worker employment and training activities under WIOA secs. 134 (c) and (d); and entire one-stop delivery system in the local area; and

(2) Ensure the appropriate use and management of the funds provided under WIOA subtitle B for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and

(3) Ensure the appropriate use management, and investment of funds to maximize performance outcomes under WIOA sec. 116.

(j) Negotiate and reach agreement on local performance measures with the chief elected official and the Governor.

(k) Negotiate with CLEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715 or must notify the Governor if they fail to reach agreement at the local level and will use a State infrastructure funding mechanism.

(l) Select the following providers in the local area, and where appropriate terminate such providers in accordance with 2 CFR part 200:

(1) Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established); however, if the Local Board determines there is an insufficient number of eligible providers in a local area, the Local Board may award contracts on a sole-source basis as per the provisions at WIOA sec. 123(b);

(2) Providers of training services consistent with the criteria and information requirements established by the Governor and WIOA sec. 122;

(3) Providers of career services through the award of contracts, if the one-stop operator does not provide such services; and

(4) One-stop operators in accordance with §§ 678.600 through 678.635.

(m) In accordance with WIOA sec. 107(d)(10)(E) work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities.

(n) Coordinate activities with education and training providers in the local area, including:

(1) Reviewing applications to provide adult education and literacy activities under title II for the local area to determine whether such applications are consistent with the local plan;

(2) making recommendations to the eligible agency to promote alignment with such plan; and

(3) Replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination.

(o) Develop a budget for the activities of the Local Board, with approval of the chief elected official and consistent with the local plan and the duties of the Local Board.

(p) Assess, on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area, in accordance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(q) Certification of one-stop centers in accordance with § 678.800.

**§ 679.380 How does the Local Board satisfy the consumer choice requirements for career services and training services?**

(a) In accordance with WIOA sec. 122 and in working with the State, the Local Board satisfies the consumer choice requirement for training services by:

(1) Determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA;

(2) Working with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area;

(3) Ensuring the dissemination and appropriate use of the State list through the local one-stop system.

(4) Receiving performance and cost information from the State and disseminating this information through the one-stop delivery systems within the State; and

(5) Providing adequate access to services for individuals with disabilities.

(b) Working with the State, the Local Board satisfies the consumer choice requirement for career services by:

(1) Determining the career services that are best performed by the one-stop operator consistent with §§ 678.620 and 678.625 and career services that require contracting with a career service provider;

(2) Identifying a wide-array of potential career service providers and awarding contracts where appropriate including to providers to ensure:

(i) Sufficient access to services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for people with disabilities;

(ii) Sufficient access for Adult Education and literacy activities.

**§ 679.390 How does the Local Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?**

The Local Board must conduct its business in an open manner as required by WIOA sec. 107(e), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local Board. This includes:

(a) Information about the Local Plan, or modification to the Local Plan, before submission of the plan;

(b) List and affiliation of Local Board members;

(c) Selection of one-stop operators;

(d) Award of grants or contracts to eligible providers of workforce investment activities including providers of youth workforce investment activities;

(e) Minutes of formal meetings of the Local Board; and

(f) Local Board by-laws, consistent with § 679.310(g).

**§ 679.400 Who are the staff to the Local Board and what is their role?**

(a) WIOA sec. 107(f) grants Local Boards authority to hire a director and other staff to assist in carrying out the functions of the Local Board.

(b) Local Boards must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the Local Board.

(c) The Local Board director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

(d) In general, Local Board staff may only assist the Local Board fulfill the required functions at WIOA sec. 107(d).

(e) Should the board select an entity to staff the board that provides additional workforce functions beyond the functions described at WIOA sec. 107(d), such an entity is required to enter into a written agreement with the Local Board and chief elected official(s) to clarify their roles and responsibilities as required by § 679.430.

**§ 679.410 Under what conditions may a Local Board directly be a provider of career services, or training services, or act as a one-stop operator?**

(a)(1) A Local Board may be selected as a one-stop operator:

(i) Through sole source procurement in accordance with § 678.610; or

(ii) Through successful competition in accordance with § 678.615.

(2) The chief elected official in the local area and the Governor must agree to the selection described in paragraph (a)(1) of this section.

(3) Where a Local Board acts as a one-stop operator, the State must ensure certification of one-stop centers in accordance with § 662.600.

(b) A Local Board may act as a provider career services only with the agreement of the chief elected official in the local area and the Governor.

(c) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIOA sec. 107(g)(1).

(1) The State must develop a procedure for approving waivers that includes the criteria at WIOA sec. 107(g)(1)(B)(i):

(i) Satisfactory evidence that there is an insufficient number of eligible providers of such a program of training services to meet local demand in the local area;

(ii) Information demonstrating that the board meets the requirements for an

eligible provider of training services under WIOA sec. 122; and

(iii) Information demonstrating that the program of training services prepares participants for an in-demand industry sector or occupation in the local area.

(2) The local area must make the proposed request for a waiver available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days and includes any comments received during this time in the final request for the waiver.

(3) The waiver must not exceed the duration of the local plan and may be renewed by submitting a new waiver request consistent with paragraphs (c)(1) and (2) of this section for additional periods, not to exceed the durations of such subsequent plans.

(4) The Governor may revoke the waiver if the Governor determines the waiver is no longer needed or that the Local Board involved has engaged in a pattern of inappropriate referrals to training services operated by the Local Board.

(d) The restrictions on the provision of career and training services by the Local Board, and on as one-stop operator, also apply to staff of the Local Board.

**§ 679.420 What are the functions of the local fiscal agent?**

(a) In order to assist in administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent. Designation of a fiscal agent does not relieve the chief elected official or Governor of liability for the misuse of grant funds. If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities.

(b) In general the fiscal agent is responsible for the following functions:

(1) Receive funds.

(2) Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget circulars, WIOA and the corresponding Federal Regulations and State policies.

(3) Respond to audit financial findings.

(4) Maintain proper accounting records and adequate documentation.

(5) Prepare financial reports.

(6) Provide technical assistance to subrecipients regarding fiscal issues.

(c) At the direction of the Local Board or the State Board in single State areas, the fiscal agent may have the following additional functions:

(1) Procure contracts or obtain written agreements.

(2) Conduct financial monitoring of service providers.

(3) Ensure independent audit of all employment and training programs.

**§ 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?**

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local Board staff, one-stop operator, and direct provider of career services or training services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local Board and chief local elected official to clarify how the organization will carry out its responsibilities while demonstrating compliance with the Workforce Innovation and Opportunity Act and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

## Subpart D—Regional and Local Plan

**§ 679.500 What is the purpose of the regional and local plan?**

(a) The local plan serves as 4-year action plan to develop, align, and integrate service delivery strategies and to support the State's vision and strategic and operational goals. The local plan sets forth the strategy to:

(1) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(2) Apply job-driven strategies in the one-stop system;

(3) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs; and

(4) Incorporate the local plan into the regional plan per 20 CFR 679.540.

(b) In the case of planning regions, a regional plan is required to meet the purposes described in paragraph (a) of this section and to coordinate resources among multiple boards in a region.

**§ 679.510 What are the requirements for regional planning?**

(a) Local Boards and chief elected officials within an identified planning region (as defined in WIOA secs. 106(a)(2)(B)–(C) and § 679.200 of this part) must:

(1) Participate in a regional planning process that results in:

(i) The preparation of a regional plan, as described in paragraph (a)(2) of this section and consistent with any guidance issued by the Department;

(ii) The establishment of regional service strategies, including use of cooperative service delivery agreements;

(iii) The development and implementation of sector initiatives for in-demand industry sectors or occupations for the planning region;

(iv) The collection and analysis of regional labor market data (in conjunction with the State) which must include the local planning requirements at § 679.560(a)(1)(i) and (ii);

(v) The coordination of administrative cost arrangements, including the pooling of funds for administrative costs, as appropriate;

(vi) The coordination of transportation and other supportive services as appropriate;

(vii) The coordination of services with regional economic development services and providers; and

(viii) The establishment of an agreement concerning how the planning region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures described in WIOA sec. 116(c) for local areas or the planning region.

(2) Prepare, submit, and obtain approval of a single regional plan that:

(i) Includes a description of the activities described in paragraph (a)(1) of this section; and

(ii) Incorporates local plans for each of the local areas in the planning region, consistent with § 679.540(a).

(b) Consistent with § 679.550(b), the Local Boards representing each local area in the planning region must provide an opportunity for public comment on the development of the regional plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local Boards must:

(1) Make copies of the proposed regional plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor,

beginning on the date on which the proposed plan is made available; and

(4) The Local Boards must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent with WIOA sec. 107(e), the Local Board must make information about the plan available to the public on a regular basis through electronic means and open meetings.

(c) The State must provide technical assistance and labor market data, as requested by local areas, to assist with regional planning and subsequent service delivery efforts.

(d) As they relate to regional areas and regional plans, the terms local area and local plan are defined in WIOA secs. 106(c)(3)(A)–(B).

**§ 679.520 What are the requirements for approval of a regional plan?**

Consistent with § 679.570, the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after submission unless the Governor determines in writing that:

(a) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(b) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(c) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and 20 CFR 676.105.

**§ 679.530 When must the regional plan be modified?**

(a) Consistent with § 679.580, the Governor must establish procedures governing the modification of regional plans.

(b) At the end of the first 2-year period of the 4-year local plan, the Local Boards within a planning region, in partnership with the appropriate chief elected officials, must review the regional plan and prepare and submit modifications to the regional plan to reflect changes:

(1) In regional labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services.

**§ 679.540 How are local planning requirements reflected in a regional plan?**

(a) The regional plan must address the requirements at WIOA secs. 106(c)(1)(A)–(H), and incorporate the local planning requirements identified for local plans at WIOA secs. 108(b)(1)–(22).

(b) The Governor may issue regional planning guidance that allows Local Boards and chief elected officials in a planning region to address any local plan requirements through the regional plan where there is a shared regional responsibility.

**§ 679.550 What are the requirements for the development of the local plan?**

(a) Under WIOA sec. 108, each Local Board must, in partnership with the appropriate chief elected officials, develop and submit a comprehensive 4-year plan to the Governor.

(1) The plan must identify and describe the policies, procedures, and local activities that are carried out in the local area, consistent with the State Plan.

(2) If the local area is part of a planning region, the Local Board must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan.

(b) Consistent with 679.510(b), the Local Board must provide an opportunity for public comment on the development of the local plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local Board must:

(1) Make copies of the proposed local plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent WIOA sec. 107(e), the Local Board must make information about the plan available to the public on a regular basis through electronic means and open meetings.

**§ 679.560 What are the contents of the local plan?**

(a) The local workforce investment plan must describe strategic planning elements, including:

(1) A regional analysis of:

(i) Economic conditions including existing and emerging in-demand industry sectors and occupations; and

(ii) Employment needs of employers in existing and emerging in-demand industry sectors and occupations.

(iii) As appropriate, a local area may use an existing analysis, which is a timely current description of the regional economy, to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section.

(2) Knowledge and skills needed to meet the employment needs of the employers in the region, including employment needs in in-demand industry sectors and occupations;

(3) An analysis of the regional workforce, including current labor force employment and unemployment data, information on labor market trends, and educational and skill levels of the workforce, including individuals with barriers to employment;

(4) An analysis of workforce development activities, including education and training, in the region. This analysis must include the strengths and weaknesses of workforce development activities and capacity to provide the workforce development activities to address the education and skill needs of the workforce, including individuals with barriers to employment, and the employment needs of employers;

(5) A description of the Local Board's strategic vision to support regional economic growth and economic self-sufficiency. This must include goals for preparing an educated and skilled workforce (including youth and individuals with barriers to employment), and goals relating to the performance accountability measures based on performance indicators described in 20 CFR 677.155(a)(1); and

(6) Taking into account analyses described in paragraphs (a)(1) through (4) of this section, a strategy to work with the entities that carry out the core programs and required partners to align resources available to the local area, to achieve the strategic vision and goals described in paragraph (a)(5) of this section;

(b) The plan must include a description of the following requirements at WIOA secs. 108(b)(2)–(21):

(1) The workforce development system in the local area that identifies:

(i) The programs that are included in the system; and

(ii) How the Local Board will support the strategy identified in the State Plan under 20 CFR 676.105 and work with the entities carrying out core programs and other workforce development programs, including programs of study authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*) to support service alignment.

(2) How the Local Board will work with entities carrying out core programs to:

(i) Expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;

(ii) Facilitate the development of career pathways and co-enrollment, as appropriate, in core programs; and

(iii) Improve access to activities leading to a recognized post-secondary credential (including a credential that is an industry-recognized certificate or certification, portable, and stackable);

(3) The strategies and services that will be used in the local area:

(i) To facilitate engagement of employers in workforce development programs, including small employers and employers in in-demand industry sectors and occupations;

(ii) To support a local workforce development system that meets the needs of businesses in the local area;

(iii) To better coordinate workforce development programs and economic development;

(iv) To strengthen linkages between the one-stop delivery system and unemployment insurance programs; and

(v) That may include the implementation of initiatives such as incumbent worker training programs, on-the-job training programs, customized training programs, industry and sector strategies, career pathways initiatives, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of regional employers. These initiatives should support the strategy described in this paragraph (b)(3).

(4) An examination of how the Local Board will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local Board will promote entrepreneurial skills training and microenterprise services;

(5) The one-stop delivery system in the local area, including:

(i) How the Local Board will ensure the continuous improvement of eligible providers of services through the system and that such providers will meet the employment needs of local employers, workers, and jobseekers;

(ii) How the Local Board will facilitate access to services provided through the one-stop delivery system, including in remote areas, through the use of technology and other means;

(iii) How entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials for individuals with disabilities, including providing staff training and support for addressing the needs of individuals with disabilities; and

(iv) The roles and resource contributions of the one-stop partners;

(6) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(7) A description of how the Local Board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities;

(8) A description and assessment of the type and availability of youth workforce investment activities in the local area including activities for youth who are individuals with disabilities, which must include an identification of successful models of such activities;

(9) How the Local Board will coordinate relevant secondary and post-secondary education programs and activities with education and workforce investment activities to coordinate strategies, enhance services, and avoid duplication of services;

(10) How the Local Board will coordinate WIOA title I workforce investment activities with the provision of transportation and other appropriate supportive services in the local area;

(11) Plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) services and other services provided through the one-stop delivery system;

(12) How the Local Board will coordinate WIOA title I workforce investment activities with adult education and literacy activities under WIOA title II. This description must include how the Local Board will carry out the review of local applications submitted under title II consistent with WIOA secs. 107(d)(11)(A) and (B)(i) and WIOA sec. 232;

(13) Copies of executed cooperative agreements which define how all local service providers, including additional providers, will carry out the requirements for integration of and access to the entire set of services available in the local one-stop system. This includes cooperative agreements (as defined in WIOA sec. 107(d)(11)) between the Local Board or other local entities described in WIOA sec. 101(a)(11)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(B)) and the local office of a designated State agency or designated State unit administering programs carried out under title I of such Act (29 U.S.C. 720 *et seq.*) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) and subject to sec. 121(f)) in accordance with sec. 101(a)(11) of such Act (29 U.S.C. 721(a)(11)) with respect to efforts that will enhance the provision of services to individuals with disabilities and to other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

(14) An identification of the entity responsible for the disbursal of grant funds described in WIOA sec. 107(d)(12)(B)(i)(III), as determined by the chief elected official or the Governor under WIOA sec. 107(d)(12)(B)(i).

(15) The competitive process that will be used to award the subgrants and contracts for WIOA title I activities;

(16) The local levels of performance negotiated with the Governor and chief elected official consistent with WIOA sec. 116(c), to be used to measure the performance of the local area and to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers under WIOA title I subtitle B, and the one-stop delivery system in the local area;

(17) The actions the Local Board will take toward becoming or remaining a high-performing board, consistent with the factors developed by the State Board (WIOA sec. 101(d)(6));

(18) How training services outlined in WIOA sec. 134 will be provided through the use of individual training accounts, including, if contracts for training services will be used, how the use of such contracts will be coordinated with the use of individual training accounts under that chapter, and how the Local Board will ensure informed customer choice in the selection of training programs regardless of how the training services are to be provided;

(19) The process used by the Local Board, consistent with WIOA 108(d), to provide a 30-day public comment period prior to submission of the plan, including an opportunity to have input into the development of the local plan, particularly for representatives of businesses, education, and labor organizations;

(20) How one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners; and

(21) The direction given by the Governor and the Local Board to the one-stop operator to ensure priority for adult career and training services will be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient consistent with WIOA 134(c)(3)(E) and § 680.600.

(c) The local plan must include any additional information required by the Governor.

(d) The local plan should identify the portions that the Governor has designated as appropriate for common response in the regional plan where there is a shared regional responsibility, as permitted by § 679.540(b).

(e) Comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

**§ 679.570 What are the requirements for approval of a local plan?**

(a) Consistent with the requirements at § 679.520 the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after submission unless the Governor determines in writing that:

(1) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(2) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(3) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and 20 CFR 676.105.

(b) In cases where the State is a single local area:

(1) The State must incorporate the local plan into the State's Unified or Combined State Plan and submit it to the Department of Labor in accordance with the procedures described in 20 CFR 676.105.

(2) The Secretary of Labor performs the roles assigned to the Governor as they relate to local planning activities.

(3) The Secretary of Labor will issue planning guidance for such States.

**§ 679.580 When must the local plan be modified?**

(a) Consistent with the requirements at § 679.530, the Governor must establish procedures governing the modification of local plans.

(b) At the end of the first 2-year period of the 4-year local plan, each Local Board, in partnership with the appropriate chief elected officials, must review the local plan and prepare and submit modifications to the local plan to reflect changes:

(1) In labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to:

(i) Significant changes in local economic conditions,

(ii) Changes in the financing available to support WIOA title I and partner-provided WIOA services;

(iii) Changes to the Local Board structure; and

(iv) The need to revise strategies to meet local performance goals.

## Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

**§ 679.600 What is the purpose of the General Statutory and Regulatory Waiver Authority in the Workforce Innovation and Opportunity Act?**

(a) The purpose of the general statutory and regulatory waiver authority *provided at sec. 189(i)(3) of the WIOA* is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce investment system to achieve the goals and purposes of WIOA.

(b) A waiver may be requested to address impediments to the implementation of a Unified or Combined State Plan, including the continuous improvement strategy, consistent with the purposes of title I of WIOA as identified in § 675.100.

**§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?**

(a) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of subtitles A, B and E of title I of WIOA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and Local Boards;

(10) Procedures for review and approval of State and Local plans;

(11) The funding of infrastructure costs for one-stop centers; and

(12) Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

(b) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of secs. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

**§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?**

(a) The Secretary will issue guidelines under which the States may request general waivers of WIOA and Wagner-Peyser requirements.

(b) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIOA 4-year Unified or Combined State Plan or 2-year modification; or

(2) After a State's WIOA Plan is approved, by separately submitting a waiver plan.

(c) A Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State.

(d) A Governor requesting a general waiver must submit to the Secretary a plan to improve the statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Unified or Combined State Plan;

(2) Describes the actions that the State or local area, as appropriate, has

undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes how the waiver will align with the Department's policy priorities, such as:

(i) Supporting employer engagement;

(ii) Connecting education and training strategies;

(iii) Supporting work-based learning;

(iv) Improving job and career results, and

(v) Other priorities as articulated in forthcoming guidance.

(5) Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment; and

(6) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver;

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request;

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver; and

(v) Collect and report information about waiver outcomes in the State's WIOA Annual Report.

(7) The Secretary may require that States provide the most recent data available about the outcomes of the existing waiver in cases where the State seeks renewal of a previously approved waiver.

(e) The Secretary will issue a decision on a waiver request within 90 days after the receipt of the original waiver request.

(f) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's Plan to improve the statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIOA sec. 189(i)(3) and §§ 679.600 through 679.620; and

(3) The State has executed a memorandum of understanding (MOU) with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) A waiver may be approved for as long as the Secretary determines appropriate, but for not longer than the duration of the State's existing Unified or Combined State Plan.

(h) The Secretary may revoke a waiver granted under this section if the Secretary determines that the State has failed to meet the agreed upon outcomes, measures, failed to comply with the terms and conditions in the MOU described in paragraph (f) of this section or any other document establishing the terms and conditions of the waiver, or if the waiver no longer meets the requirements of §§ 679.600 through 679.620.

**§ 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?**

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (workflex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIOA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and Local Boards;

(viii) Procedures for review and approval of local plans; and

(ix) Worker rights, participation, and protection.

(2) Any of the statutory or regulatory requirements applicable to the State under secs. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers.

(3) Any of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), to State agencies on aging with respect to activities carried out using funds allotted under OAA sec. 506(b) (42 U.S.C. 3056d(b)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for grant agreements.

(b) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers of requirements under title I of WIOA;

(2) A description of the criteria the State will use to approve local area waiver requests and how such requests support implementation of the goals identified State Plan;

(3) The statutory and regulatory requirements of title I of WIOA that are likely to be waived by the State under the workforce flexibility plan;

(4) The statutory and regulatory requirements of secs. 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(5) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(6) The outcomes to be achieved by the waivers described in paragraphs (b)(1) to (b)(5) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIOA, and a description of the data or other information the State will use to track and assess outcomes; and

(7) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(c) A State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, 2-year modification, or may be submitted separately as a modification to that plan.

(d) The Secretary may approve a workforce flexibility plan consistent with the period of approval of the State's Unified or Combined State Plan, and not for more than 5 years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State. These guidelines may require a State to implement an evaluation of the impact of work-flex in the State.

**§ 679.640 What limitations apply to the State's Workforce Flexibility Plan authority under the Workforce Innovation and Opportunity Act?**

(a)(1) Under work-flex waiver authority a State must not waive the WIOA, Wagner-Peyser or Older

Americans Act requirements which are excepted from the work-flex waiver authority and described in § 679.630(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIOA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 679.610 through 679.620.

(b) As required in § 679.630(b)(6), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. The Secretary may terminate a State's work-flex designation if the State fails to meet agreed-upon outcomes or other terms and conditions contained in its workforce flexibility plan.

■ 7. Add part 680 to read as follows:

## PART 680—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Sec.

680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?
680.110 When must adults and dislocated workers be registered and considered a participant?
680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?
680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?
680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Boards required and permitted to provide?
680.150 What career services must be provided to adults and dislocated workers?
680.160 How are career services delivered?
680.170 What is an internship or work experience for adults and dislocated workers?
680.180 What is the individual employment plan?

### Subpart B—Training Services

680.200 What are training services for adults and dislocated workers?

#### 680.210 Who may receive training services?

680.220 Are there particular career services an individual must receive before receiving training services under Workforce Innovation and Opportunity Act?
680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

### Subpart C—Individual Training Accounts

680.300 How are training services provided?
680.310 Can the duration and amount of Individual Training Accounts be limited?
680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?
680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?
680.340 What are the requirements for consumer choice?

### Subpart D—Eligible Training Providers

680.400 What is the purpose of this subpart?
680.410 What entities are eligible providers of training services?
680.420 What is a ''program of training services''?
680.430 Who is responsible for managing the eligible provider process?
680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?
680.450 What is the initial eligibility procedure for new providers?
680.460 What is the application procedure for continued eligibility?
680.470 What is the procedure for registered apprenticeship programs that seek to be included in a State's eligible training provider list?
680.480 May an eligible training provider lose its eligibility?
680.490 What kind of performance and cost information must eligible training providers provide for each program of training?
680.500 How is the State list of eligible training providers disseminated?
680.510 In what ways can a Local Board supplement the information available from the State list?
680.520 May individuals choose training providers located outside of the local area?
680.530 What requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

### Subpart E—Priority and Special Populations

680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?
680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?
680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?
680.630 How does a displaced homemaker qualify for services under title I?
680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?
680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?
680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

### Subpart F—Work-Based Training

680.700 What are the requirements for on-the-job training?
680.710 What are the requirements for on-the-job training contracts for employed workers?
680.720 What conditions govern on-the-job training payments to employers?
680.730 Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?
680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?
680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?
680.760 What is customized training?
680.770 What are the requirements for customized training for employed workers?
680.780 Who is an ''incumbent worker'' for purposes of statewide and local employment and training activities?
680.790 What is incumbent worker training?
680.800 What funds may be used for incumbent worker training?
680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?
680.820 Are there cost sharing requirements for local area incumbent worker training?
680.830 What is a transitional job?
680.840 What funds may be used for transitional jobs?
680.850 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

### Subpart G—Supportive Services

680.900 What are supportive services for adults and dislocated workers?
680.910 When may supportive services be provided to participants?
680.920 Are there limits on the amounts or duration of funds for supportive services?
680.930 What are needs-related payments?
680.940 What are the eligibility requirements for adults to receive needs-related payments?
680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

680.960 May needs-related payments be paid while a participant is waiting to start training classes?
680.970 How is the level of needs-related payments determined?

**Authority:** Secs. 122, 134, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

### § 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

(a) The one-stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are classified as career and training services.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required one-stop partner and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions:

(1) Career services for adults and dislocated workers must be made available in at least one comprehensive one-stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) Through the one-stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITAs) and access to lists of eligible providers and programs of training. These lists contain quality consumer information, including cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITAs. (ITAs are more fully discussed in subpart C of this part.)

### § 680.110 When must adults and dislocated workers be registered and considered a participant?

(a) Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application. Participation occurs after the registration process of collecting information to support an eligibility determination and begins when the individual receives a staff-assisted WIOA service, which does not include self-service or informational activities.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and must be a participant.

(c) Employment Opportunity data must be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the grant recipient or designated service provider.

### § 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for any dislocated worker programs, an eligible adult must meet the criteria of § 680.130. Eligibility criteria for training services are found at § 680.210.

### § 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive career services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of ''dislocated worker'' at WIOA sec. 3(15). Eligibility criteria for training services are found at § 680.210.

(b) Governors and Local Boards may establish policies and procedures for one-stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15). These policies and procedures may address such conditions as:

(1) What constitutes a ''general announcement'' of plant closing under WIOA sec. 3(15)(B)(ii) or (iii); and

(2) What constitutes ''unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters'' for determining the eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3(15)(C).

### § 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Boards required and permitted to provide?

(a) WIOA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide career and training services through the one-stop delivery system. Local Boards determine the most appropriate mix of these services, but both types must be available for eligible adults and dislocated workers. Different eligibility criteria apply for each type of services. See §§ 680.120, 680.130, and 680.210.

(b) WIOA title I funds may also be used to provide the additional services described in WIOA sec. 134(d), including:

(1) Job seeker services:

(i) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities (WIOA sec. 134(d)(1)(A)(iv));

(ii) Training programs for displaced homemakers and for individuals training for nontraditional occupations (as defined in WIOA sec. 3(37) as occupations or fields of work in which individuals of one gender comprise less than 25 percent of the individuals so employed), in conjunction with programs operated in the local area (WIOA sec. 134(d)(1)(A)(viii));

(iii) Work support activities for low-wage workers, in coordination with one-stop partners, which will provide opportunities for these workers to retain or enhance employment. These activities may include any activities available under the WIOA adult and dislocated worker programs in coordination with activities and resources available through partner programs. These activities may be provided in a manner that enhances the worker's ability to participate, for example by providing them at nontraditional hours or providing on-site child care (WIOA sec. 134(d)(1)(B));

(iv) Supportive services, including needs-related payments, as described in subpart G of this part (WIOA secs. 134(d)(2) and (3)); and

(v) Providing transitional jobs, as described in § 680.830, to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history (WIOA sec. 134(d)(5)).

(2) Employer services:

(i) Customized screening and referral of qualified participants in training services to employers (WIOA sec. 134(d)(1)(A)(i));

(ii) Customized employment-related services to employers, employer associations, or other such organization on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act (WIOA sec. 134(d)(1)(A)(ii));

(iii) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local Board and consistent with the local plan (see § 678.435 and WIOA sec. 134(d)(1)(A)(ix)); and

(3) Coordination activities:

(i) Employment and training activities in coordination with child support enforcement activities, as well as child support services and assistance activities, of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 *et seq.*) (WIOA secs. 134(d)(1)(A)(vi)(I)–(II));

(ii) Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture (WIOA sec. 134(d)(1)(A)(vi)(III));

(iii) Employment and training activities in coordination with activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology (WIOA sec. 134(d)(1)(A)(vi)(IV));

(iv) Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and to promote entrepreneurial skills training and microenterprise services (WIOA sec. 134(d)(1)(A)(vii)(I));

(v) Improving services and linkages between the local workforce investment system (including the local one-stop delivery system) and employers, including small employers, in the local area (WIOA sec. 134(d)(1)(A)(vii)(II));

(vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance programs (WIOA sec. 134(d)(1)(A)(vii)(III)); and

(vii) Improving coordination between employment and training activities and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to intellectual disabilities and developmental disabilities, activities carried out by Statewide Independent Living Councils established under sec. 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), programs funded under part B of chapter 1 of title VII of such Act (29 U.S.C. 796e *et seq.*), and activities carried out by centers for independent living, as defined in sec. 702 of such Act (29 U.S.C. 796a) (WIOA sec. 134(d)(1)(A)(xi)).

(4) Implementing a pay-for-performance contract strategy for training services in accordance with §§ 683.500 through 683.530 for which up to 10 percent of the Local Board's total adult and dislocated worker funds may be used (WIOA sec. 134(d)(1)(A)(iii)).

(5) Technical assistance for one-stop operators, partners, and eligible training providers on the provision of service to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures (WIOA sec. 134(d)(1)(A)(v)).

(6) Activities to adjust the economic self-sufficiency standards referred to in WIOA sec. 134(a)(3)(A)(xii) for local factors or activities to adopt, calculate or commission for approval, economic self-sufficiency standards for the local areas that specify the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations (WIOA sec. 134(d)(1)(A)(x)).

(7) Implementing promising service to workers and businesses, which may include support for education, training, skill upgrading, and statewide networking for employees to become workplace learning advisors and maintain proficiency in carrying out the activities associated with such advising (WIOA sec. 134(d)(1)(A)(xii)).

(8) Incumbent worker training programs, as described in subpart F of this part (WIOA sec. 134(d)(4)).

#### § 680.150 What career services must be provided to adults and dislocated workers?

(a) At a minimum, all of the career services described in WIOA secs. 134(c)(2)(A)(i)–(xi) and § 678.430(a) must be provided in each local area through the one-stop delivery system.

(b) Individualized career services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b) must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(c) Follow-up services, as described in WIOA sec. 134(c)(2)(A)(xiii) and § 678.430(c), must be made available, as appropriate, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

#### § 680.160 How are career services delivered?

Career services must be provided through the one-stop delivery system. Career services may be provided directly by the one-stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of career services when approved by the chief elected official and the Governor in accordance with the requirements of WIOA sec. 107(g)(2) and § 679.410.

#### § 680.170 What is an internship or work experience for adults and dislocated workers?

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), internships or work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. An internship or work experience may be arranged within the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

#### § 680.180 What is the individual employment plan?

The individual employment plan is an individualized career service, under WIOA sec. 134(c)(2)(A)(xii)(II), that is jointly developed by the participant and case manager when determined appropriate by the one-stop operator or one-stop partner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals.

### Subpart B—Training Services

#### § 680.200 What are training services for adults and dislocated workers?

Training services are listed in WIOA sec. 134(c)(3)(D). The list in the Act is not all-inclusive and additional training services may be provided.

#### § 680.210 Who may receive training services?

Under WIOA sec. 134(c)(3)(A) training services may be made available to employed and unemployed adults and dislocated workers who:

(a) A one-stop operator or one-stop partner determines, after an interview, evaluation, or assessment, and career planning, are:

(1) Unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;

(2) In need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and

(3) Have the skills and qualifications to participate successfully in training services;

(b) Have selected a program of training services that is directly linked to the employment opportunities in the local area or the planning region, or in another area to which the individuals are willing to commute or relocate;

(c) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds, Trade Adjustment Assistance, and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIOA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 680.230 and WIOA sec. 134(c)(3)(B)); and

(d) If training services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIOA sec. 134(c)(3)(E) and § 680.600.

**§ 680.220 Are there particular career services an individual must receive before receiving training services under Workforce Innovation and Opportunity Act?**

(a) Yes, an individual must at a minimum receive either an interview, evaluation, or assessment, and career planning or any other method through which the one-stop operator or partner can obtain enough information to make an eligibility determination to be determined eligible for training services see WIOA sec. 134(c)(3)(A)(i). Where appropriate, a recent interview, evaluation, or assessment, may be used for the assessment purpose; see WIOA sec. 134(c)(3)(A)(ii); and

(b) The case file must contain a determination of need for training services under § 680.210 as determined through the interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information, or through any other career service received. There is no requirement that career services be provided as a condition to receipt of training services; however, if career services are not provided before training, the Local Board must document the circumstances that justified its determination to provide training without first providing the services described in paragraph (a) of this section.

(c) There is no Federally-required minimum time period for participation in career services before receiving training services.

**§ 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?**

(a) WIOA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section. In making the determination under this paragraph, one-stop operators should take into account the full cost of participating in training services, including the cost of support services and other appropriate costs.

(b) One-stop operators must coordinate training funds available and make funding arrangements with one-stop partners and other entities to apply the provisions of paragraph (a) of this section. One-stop operators must consider the availability of other sources of grants to pay for training costs such as Temporary Assistance for Needy Families (TANF), State-funded training funds, and Federal Pell Grants, so that WIOA funds supplement other sources of training grants.

(c) A WIOA participant may enroll in WIOA-funded training while his/her application for a Pell Grant is pending as long as the one-stop operator has made arrangements with the training provider and the WIOA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the one-stop operator the WIOA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIOA participant for education-related expenses. (WIOA sec. 134(c)(3)(B))

## Subpart C—Individual Training Accounts

**§ 680.300 How are training services provided?**

Training service for eligible individuals are typically provided by training providers who receive payment for their services through an Individual Training Account (ITA). The ITA is a payment agreement established on behalf of a participant with a training provider. WIOA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager, which includes discussion of quality and performance information on the available training providers. Payments from ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally, *e.g.,* through payment of a portion of the costs at different points in the training course. (WIOA sec. 134(c)(4)(G)) Under limited conditions, as provided in § 680.320 and WIOA sec. 134(d)(3)(G), a Local Board may contract for these services, rather than using an ITA for this purpose. In some limited circumstances, the Local Board may itself provide the training services, but only if it obtains a waiver from the Governor for this purpose, and the Local Board meets the other requirements of § 679.410 and WIOA sec. 107(g)(1).

**§ 680.310 Can the duration and amount of Individual Training Accounts be limited?**

(a) Yes, the State or Local Board may impose limits on ITAs, such as limitations on the dollar amount and/or duration.

(b) Limits to ITAs may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan, such as the participant's occupational choice or goal and the level of training needed to succeed in that goal; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITAs.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but must not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. ITA limitations may provide for exceptions to the limitations in individual cases.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

**§ 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?**

(a) Contracts for services may be used instead of ITAs only when one or more of the following five exceptions apply:

(1) When the services provided are on-the-job training (OJT), customized training, incumbent worker training or transitional jobs;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITAs. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve individuals with barriers to employment, as described in paragraph (b) of this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to hard to serve participant populations through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(4) When the Local Board determines that it would be most appropriate to contract with an institution of higher education or other eligible provider of training services will facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.

(5) When the Local Board is considering entering into a pay-for-performance contract, the Local Board ensures that the contract is consistent with § 683.510.

(b) Under paragraph (a)(3) of this section, individuals with barriers to employment include those individuals in one or more of the following categories, as prescribed by WIOA sec. 3(24):

(1) Displaced homemakers;

(2) Low-income individuals;

(3) Indians, Alaska Natives, and Native Hawaiians;

(4) Individuals with disabilities;

(5) Older individuals, *i.e.,* those aged 55 or over;

(6) Ex-offenders;

(7) Homeless individuals;

(8) Youth who are in or have aged out of the foster care system;

(9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;

(10) Eligible migrant and seasonal farmworkers, defined in WIOA sec. 167(i);

(11) Individuals within 2 years of exhausting lifetime eligibility under TANF (part A of title IV of the Social Security Act);

(12) Single-parents (including single pregnant women);

(13) Long-term unemployed individuals;

(14) Other groups determined by the Governor to have barriers to employment.

**§ 680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?**

Registered apprenticeships automatically qualify to be a on a State's eligible training provider list (ETPL) as described in § 680.470. ITAs can be used to support participants in:

(a) Pre-apprenticeship training, as defined in § 681.480;

(b) Training tuition for a registered apprenticeship program to the training provider;

(c) Supportive services may be provided as described in §§ 680.900 and 680.910; and

(d) Needs-related payments may be provided as described in §§ 680.930, 680.940, 680.950, 680.960, and 680.970;

(e) Work-based training options may also be used to support participants in registered apprenticeship programs (see §§ 680.740 and 680.750).

**§ 680.340 What are the requirements for consumer choice?**

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the one-stop center, must make available to customers the State list of eligible providers required in WIOA sec. 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIOA sec. 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIOA secs. 122(d) and 122(h).

(c) An individual who has been determined eligible for training services under § 680.210 may select a provider described in paragraph (b) of this section after consultation with a career planner. Unless the program has exhausted training funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIOA.

(e) Each Local Board, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.

(f) Consistent with paragraph (a) of this section, priority consideration must be given to programs that lead to recognized post-secondary credentials that are aligned with in-demand industry sectors or occupations in the local area.

## Subpart D—Eligible Training Providers

**§ 680.400 What is the purpose of this subpart?**

(a) This subpart describes the process for determining eligible training providers for WIOA title I–B adult and dislocated worker training participants and for publicly disseminating the list of these providers with relevant information about their programs. The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles.

(b) The State eligible training provider list and the related eligibility procedures ensure the accountability, quality and labor-market relevance of programs of training services that receive funds through WIOA title I–B.

The State list is also a means for ensuring informed customer choice for individuals eligible for training. In administering the eligible training provider process, States and local areas must work to ensure that qualified providers offering a wide variety of job-driven training programs are available. The State list is made publicly available online through Web sites and searchable databases as well as any other means the State uses to disseminate information to consumers. The list must be accompanied by relevant performance and cost information and must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups, and must also be available in an electronic format. The State eligible training provider performance reports, as required under WIOA sec. 116(d)(4), are addressed separately in § 677.230.

**§ 680.410 What entities are eligible providers of training services?**

(a) Eligible providers of training services are entities that are eligible to receive WIOA title I–B funds, according to criteria and procedures established by the Governor in accordance with WIOA sec. 122(b) for adult and dislocated worker participants who enroll in training services. Potential providers may include:

(1) Institutions of higher education that provide a program which leads to a recognized post-secondary credential;

(2) Entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*);

(3) Other public or private providers of a program of training services, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under title II if such activities are provided in combination with occupational skills training; and

(4) Local Boards, if they meet the conditions of WIOA sec. 107(g)(1).

(b) In order to provide training services, a provider must meet the requirements of this part and WIOA sec. 122.

(1) The requirements of this part apply to the use of WIOA title I–B adult and dislocated worker funds to provide training:

(i) To individuals using individual training accounts to access training through the eligible training provider list; and

(ii) To individuals for training provided through the exceptions to individual training accounts described at §§ 680.320 and 680.530. Training services under WIOA title I–B may be provided through a contract for services rather than Individual Training Accounts under conditions identified in WIOA sec. 134(c)(3)(G). These exceptions include: on-the-job training, customized training, incumbent worker training or transitional employment; instances where the Local Board determines there are insufficient number of eligible providers of training services in the local area; where the Local Board determines an exception is necessary to meet the needs of individuals with barriers to employment (including assisting individuals with disabilities or adults in need of adult education and literacy services); where the Local Board determines that it would be most appropriate to award a contract to an institution of higher education or other eligible provider to facilitate the training of multiple individuals in in-demand industry sectors or occupations (where the contract does not limit customer choice); and, for pay-for-performance contracts.

(2) The requirements of this part apply to all entities providing training to adult and dislocated workers, with specific exceptions for entities that carry out registered apprenticeship programs, as described in § 680.470.

**§ 680.420 What is a ''program of training services''?**

A program of training services, as referred to in § 680.410(a), is one or more courses or classes, or a structured regimen that leads to:

(a) A recognized post-secondary credential, secondary school diploma or its equivalent,

(b) Employment, or

(c) Measurable skill gains toward such a credential or employment.

**§ 680.430 Who is responsible for managing the eligible provider process?**

(a) The Governor, in consultation with the State Board, establishes the criteria, information requirements and procedures, including procedures identifying the respective roles of the State and local areas, governing the eligibility of providers of training services to receive funds for adult and dislocated worker training activities as described under WIOA sec. 133(b).

(b) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the process and procedures for determining the eligibility of training providers. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Ensuring the development and maintenance of the State list of eligible providers and programs, as described is §§ 680.450, 680.460, and 680.490;

(2) Ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information;

(3) Removing programs that do not meet State-established program criteria or performance levels, as described in § 680.480(c);

(4) Taking appropriate enforcement actions against providers that intentionally provide inaccurate information, or that substantially violate the requirements of WIOA, as described in § 680.480(a) and (b) (WIOA secs. 122(f)(1)(A) and (B)); and

(5) Disseminating the State list, accompanied by performance and cost information relating to each provider, to the public and the Local Boards throughout the State, as further described in § 680.500.

(c) The Local Board must:

(1) Carry out the procedures assigned to the Local Board by the State, such as determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA requirements;

(2) Work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area; and

(3) Ensure the dissemination and appropriate use of the State list through the local one-stop system.

(d) The Local Board may:

(1) Make recommendations to the Governor on the procedure used in determining eligibility of providers;

(2) Require additional criteria and information from local providers as criteria to become or remain eligible; and

(3) Set higher levels of performance than those required by the State as criteria for local providers to become or remain eligible to provide services in that particular local area.

**§ 680.440 What are the transition procedures for Workforce Investment Act-eligible providers to become eligible under the Workforce Innovation and Opportunity Act?**

(a) The Governor may establish a transition procedure under which

providers eligible to provide training services under WIA may continue to be eligible to provide such services until December 31, 2015 or such earlier date as the Governor determines to be appropriate.

(b) After this transition period, which may extend no later than December 31, 2015, the eligibility of these providers will be determined under the application procedure for continued eligibility established by the Governor as described in § 680.460.

(c) Providers that were previously eligible under WIA are not subject to the initial eligibility procedures described under § 680.450.

**§ 680.450 What is the initial eligibility procedure for new providers?**

(a) All providers that have not previously been an eligible provider of training services under WIOA sec. 122 or WIA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures.

(b) Apprenticeship programs registered under the National Apprenticeship Act (NAA) are exempt from initial eligibility procedures. Registered apprenticeship programs must be included and maintained on the list of eligible providers of training services as long as the corresponding program remains registered, as described at WIOA sec. 122(a)(3). Procedures for registered apprenticeship programs to be added and maintained on the list are described in § 680.470.

(c) In establishing the State requirements described in paragraph (d) of this section, the Governor must, in consultation with the State Board, develop a procedure for determining the eligibility of training providers. This procedure, which must be described in the State Plan, must be developed after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(d) For institutions of higher education that provide a program that leads to a recognized post-secondary credential and for other public or private providers of programs of training services, including joint labor-management organizations, and providers of adult education and literacy activities, the Governor must establish criteria and State requirements for providers seeking initial eligibility.

(e) The Governor must require providers seeking initial eligibility to provide verifiable program specific performance information. At a minimum, these criteria must require applicant providers to:

(1) Describe each program of training services to be offered;

(2) Provide information addressing a factor related to the indicators of performance, as described in WIOA secs. 116(b)(2)(A)(i)(I)–(IV) and § 680.460(g)(1) through (4) which include unsubsidized employment during the second quarter after exit, unsubsidized employment during the fourth quarter after exit, median earnings and credentials attainment;

(3) Describe whether the provider is in a partnership with a business;

(4) Provide other information the Governor may require in order to demonstrate high quality training services, including a program of training services that leads to a recognized post-secondary credential; and

(5) Provide information that addresses alignment of the training services with in-demand industry sectors and occupations, to the extent possible.

(f) In establishing the initial eligibility procedures and criteria, the Governor may establish minimum standards, based on the performance information described in paragraph (e) of this section.

(g) Under WIOA sec. 122(b)(4)(B), providers receive initial eligibility for only 1 fiscal year for a particular program.

(h) After the initial eligibility expires, these initially-eligible providers are subject to the Governor's application procedures for continued eligibility, described at § 680.460, in order to remain eligible.

**§ 680.460 What is the application procedure for continued eligibility?**

(a) The Governor must establish an application procedure for training providers to maintain their continued eligibility. The application procedure must take into account the provider's prior eligibility status.

(1) Training providers that were previously eligible under WIA, as of July 21, 2014, will be subject to the application procedure for continued eligibility after the close of the Governor's transition period for implementation, described in § 680.440.

(2) Training providers that were not previously eligible under WIA and have been determined to be initially-eligible under WIOA, under the procedures described at § 680.450, will be subject to the application procedure for continued eligibility after their initial eligibility expires.

(b) The Governor must develop this procedure after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(c) Apprenticeship programs registered under the National Apprenticeship Act (NAA) must be included and maintained on the list of eligible providers of training services for as long as the corresponding program remains registered. The Governor's procedure must include a mechanism for registered apprenticeship programs to indicate interest in being included on the list, as described in § 680.470.

(d) The application procedure must describe the roles of the State and local areas in receiving and reviewing provider applications and in making eligibility determinations.

(e) The application procedure must be described in the State Plan.

(f) In establishing eligibility criteria, the Governor must take into account:

(1) The performance of providers of training services on the performance accountability measures described in WIOA secs. 116(b)(2)(A)(i)(I)–(IV) and required by WIOA sec. 122(b)(2), which may include minimum performance standards, and other appropriate measures of performance outcomes for program participants receiving training under WIOA title I–B, as determined by the Governor. Until data from the conclusion of each performance indicator's first data cycle is available, the Governor may take into account alternate factors related to such performance measure.

(2) Ensuring access to training services throughout the State including rural areas and through the use of technology;

(3) Information reported to State agencies on Federal and State training programs other than programs within WIOA title I–B;

(4) The degree to which training programs relate to in-demand industry sectors and occupations in the State;

(5) State licensure requirements of training providers;

(6) Encouraging the use of industry-recognized certificates and credentials;

(7) The ability of providers to offer programs that lead to post-secondary credentials;

(8) The quality of the program of training services including a program that leads to a recognized post-secondary credential;

(9) The ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment;

(10) Whether the providers timely and accurately submitted eligible training provider performance reports as required under WIOA sec. 116(d)(4); and

(11) Other factors that the Governor determines are appropriate in order to ensure: the accountability of providers; that one-stop centers in the State will meet the needs of local employers and participants; and, that participants will be given an informed choice among providers.

(g) The information requirements that the Governor establishes under paragraph (f)(1) of this section must require training providers to submit appropriate, accurate and timely information for participants receiving training under WIOA title I–B. That information must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program;

(5) Information on recognized post-secondary credentials received by program participants;

(6) Information on cost of attendance, including costs of tuition and fees, for program participants;

(7) Information on the program completion rate for such participants.

(h) The eligibility criteria must require that:

(1) Providers submit performance and cost information as described in paragraph (g) of this section and in the Governor's procedures for each program of training services for which the provider has been determined to be eligible, in a timeframe and manner determined by the State, but at least every 2 years; and

(2) That the collection of information required to demonstrate compliance with the criteria is not unduly burdensome or costly to providers (WIOA sec. 122(b)(1)(J)(iv)).

(i) The procedure for continued eligibility must also provide for the State to review biennially-required provider eligibility information to assess the renewal of training provider eligibility. Such procedures may establish minimum levels of training provider performance as criteria for continued eligibility.

(j) The procedure for biennial review of the provider eligibility must include verification of the registration status of registered apprenticeship programs as described in § 680.470.

(k) Local Boards may require higher levels of performance for local programs than the levels specified in the procedures established by the Governor.

(l) The Governor may establish procedures and timeframes for providing technical assistance to eligible providers of training who are not intentionally supplying inaccurate information or who have not substantially violated any of the requirements under this section but are failing to meet the criteria and information requirements due to undue cost or burden.

**§ 680.470 What is the procedure for registered apprenticeship programs that seek to be included in a State's eligible training provider list?**

(a) All registered apprenticeship programs that are registered with the U.S. Department of Labor, Office of Apprenticeship, or a recognized State apprenticeship agency are automatically eligible to be included in the State list of eligible training providers. Some program sponsors may not wish to be included on the State eligible training provider list. Therefore, the Governor must establish a mechanism for registered apprenticeship program sponsors in the State to indicate that the program sponsor wishes to be included on the State eligible training provider list. This mechanism should be developed with the assistance of the U.S. Department of Labor Office of Apprenticeship representative in the State or, if the State oversees the administration of the apprenticeship system, with the assistance of the recognized State apprenticeship agency.

(b) Once on the State eligible training provider list, registered apprenticeship programs will remain on the list until they are deregistered or until the registered apprenticeship program notifies the State that it no longer wants to be included on the list.

(c) Inclusion of a registered apprenticeship in the State eligible training provider list allows an individual who is eligible to use WIOA title I–B funds to use those funds toward apprentice training, consistent with their availability and limitations as prescribed by § 680.300. The use of individual training accounts and other WIOA title I–B funds toward apprenticeship training is further described in § 680.330.

(d) The Governor is encouraged to consult with the State and Local Boards, ETA's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State) or other State agencies, to establish voluntary reporting of performance information.

**§ 680.480 May an eligible training provider lose its eligibility?**

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) Providers determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29 CFR part 37, must be removed from the list in accordance with the enforcement provisions of WIOA sec. 122(f). A provider whose eligibility is terminated under these conditions must be terminated for not less than 2 years and is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the requirements of 20 CFR 683.630(b).

(c) As a part of the biennial review of eligibility established by the Governor, the State must remove provider programs that fail to meet criteria established by the Governor to remain eligible, which may include failure to meet established minimum performance levels.

(d) The Governor must establish an appeals procedure for providers of training to appeal a denial of eligibility under this subpart that meets the requirements of 20 CFR 683.630(b), which explains the appeals process for

denial or termination of eligibility of a provider of training services.

(e) Where a Local Board has established higher minimum standards, according to § 680.460(k), the Local Board may remove a provider program from the eligible programs in that local area for failure to meet established criteria. The Local Board must establish an appeals procedure for providers of training to appeal a denial of eligibility under this subpart that meets the requirements of 20 CFR 683.630(b), which explains the appeals process for denial or termination of eligibility of a provider of training services.

**§ 680.490 What kind of performance and cost information must eligible training providers provide for each program of training?**

(a) In accordance with the State procedure and § 680.460(h), eligible providers of training services must submit, at least every 2 years, appropriate, timely and accurate performance and cost information.

(b) Program-specific performance information must include:

(1) The information described in WIOA sec. 122(b)(2)(A) for individuals participating in the programs of training services who are receiving assistance under WIOA sec. 134. This information includes indicators of performance as described in WIOA secs. 116(b)(2)(I)–(IV) and § 680.460(g)(1) through (4).

(2) Information identifying the recognized post-secondary credentials received by such participants.

(3) Program cost information, including tuition and fees, for WIOA participants in the program, and

(4) Information on the program completion rate for WIOA participants.

(c) Governors may require any additional performance information (such as the information described at WIOA sec. 122(b)(1)) that the Governor determines to be appropriate to determine or maintain eligibility.

(d) Governors must establish a procedure by which a provider can demonstrate that providing additional information required under this section would be unduly burdensome or costly. If the Governor determines that providers have demonstrated such extraordinary costs or undue burden:

(1) The Governor must provide access to cost-effective methods for the collection of the information;

(2) The Governor may provide additional resources to assist providers in the collection of the information from funds for statewide workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1); or

(3) The Governor may take other steps to assist training providers in collecting and supplying required information such as offering technical assistance.

**§ 680.500 How is the State list of eligible training providers disseminated?**

(a) In order to assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State list of eligible training providers and accompanying performance and cost information to Local Boards in the State and to members of the public online including through Web sites and searchable databases and through whatever other means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State.

(b) The State list and information must be updated regularly and provider eligibility must be reviewed biennially according to the procedures established by the Governor in § 680.460(i).

(c) In order to ensure informed consumer choice, the State eligible training provider list and accompanying information must be widely available to the public through electronic means, including Web sites and searchable databases, as well as through any other means the State uses to disseminate information to consumers. The list and accompanying information must be available through the one-stop delivery system and its partners including the State's secondary and post-secondary education systems. The eligible training provider list should be accessible to individuals seeking information on training outcomes, as well as participants in employment and training activities funded under WIOA, including those under § 680.210, and other programs. In accordance with WIOA sec. 188, the State list must also be accessible to individuals with disabilities.

(d) The State eligible training provider list must be accompanied by appropriate information to assist participants in choosing employment and training activities. Such information must include:

(1) Recognized post-secondary credential(s) offered;

(2) Provider information supplied to meet the Governor's eligibility procedure as described in §§ 680.450 and 680.460;

(3) Performance and cost information as described in § 680.490; and

(4) Additional information as the Governor determines appropriate.

(e) The State list and accompanying information must be made available in a manner that does not reveal personally identifiable information about an individual participant. In addition, in developing the information to accompany the State list described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent.

**§ 680.510 In what ways can a Local Board supplement the information available from the State list?**

(a) Local Boards may supplement the criteria and information requirements established by the Governor in order to support informed consumer choice and the achievement of local performance measures.

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers;

(3) Information that shows how programs are responsive to local requirements; and

(4) Other appropriate information related to the objectives of WIOA.

**§ 680.520 May individuals choose training providers located outside of the local area?**

Yes, individuals may choose any of the eligible providers and programs on the State list. A State may also establish a reciprocal agreement with other States to permit providers of eligible training programs in each State to accept individual training accounts provided by the other State. See WIOA sec. 122(g). Providers of training services that are located outside the local area may not be subject to State eligibility procedures if the provider has been determined eligible by another State with such an agreement.

**§ 680.530 What requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?**

Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional employment are not subject to the same requirements as entities listed on the eligible training provider list. For these training programs, one-stop operators in a local area must collect such performance information as the Governor may require and determine whether the providers meet the Governor's performance criteria. The Governor may require one-stop

operators to disseminate a list of providers that have met the performance criteria, along with the relevant performance information about them, through the one-stop delivery system. Providers that meet the criteria are considered eligible providers of training services. These providers are not subject to the other requirements of WIOA sec. 122 or this part.

## Subpart E—Priority and Special Populations

### § 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

(a) WIOA states, in sec. 134(c)(3)(E), that priority for individualized career services (see § 678.430(b)) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, who are basic skills deficient (as defined in WIOA sec. 3(5)(B)) in the local area.

(b) States and local areas must establish criteria by which the one-stop operator will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) The priority established under paragraph (b) of this section does not necessarily mean that these services may only be provided to recipients of public assistance, other low-income individuals, and individuals without basic work skills. The Local Board and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (see § 680.650).

### § 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No, the statutory priority applies only to adult funds for individualized career services, as described in § 680.150(b), and training services. Funds allocated for dislocated workers are not subject to this requirement.

### § 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

The local TANF program is a required partner in the one-stop delivery system. Part 678 describes the roles of such partners in the one-stop delivery system and it applies to the TANF program. TANF serves individuals who may also be served by the WIOA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the TANF program in the one-stop system. TANF participants, who are determined to be WIOA eligible, and who need occupational skills training may be referred through the one-stop system to receive WIOA training, when TANF grant and other grant funds are not available to the individual in accordance with § 680.230(a). WIOA participants who are also determined TANF eligible may be referred to the TANF operator for assistance.

### § 680.630 How does a displaced homemaker qualify for services under title I?

(a) Individuals who meet the definitions of a ''displaced homemaker'' (WIOA sec. 3(16)) qualify for career and training services with dislocated worker title I funds.

(b) Displaced homemakers may also qualify for career and training services with adult funds under title I if the requirements of this part are met (see §§ 680.120 and 680.600).

(c) Displaced homemakers may also be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 682.210(c).

(d) The definition of displaced homemaker includes the dependent spouse of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty under a provision of law referred to in sec. 101(a)(13)(B) of title 10, United State Code, a permanent change of station, or the service-connected death or disability of the member.

### § 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIOA sec. 3(36)(A)(vi); or

(b) Meets the income eligibility criteria for payments under any Federal, State or local public assistance program (see WIOA sec. 3(36)(A)(i)).

### § 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Yes, veterans under WIOA sec. 3(63)(A) and 38 U.S.C. 101 receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR 1010. A veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income in accordance with 38 U.S.C. 4213 and 20 CFR 683.230.

### § 680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

If the separating service member is separating from the Armed Forces with a discharge that is anything other than dishonorable, the separating service member qualifies for dislocated worker activities based on the following criteria:

(a) The separating service member has received a notice of separation, a DD–214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA sec. 3(15)(A)(i);

(b) The separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA sec. 3(15)(A)(ii)(I) or (II); and,

(c) As a separating service member, the individual meets the dislocated worker eligibility criteria that the individual is unlikely to return to a previous industry or occupation in WIOA sec. 3(15)(A)(iii).

## Subpart F—Work-Based Training

### § 680.700 What are the requirements for on-the-job training?

(a) On-the-job training (OJT) is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the

training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and § 680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.

(b) On-the-job training contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. (WIOA sec. 194(4))

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIOA sec. 3(44)(C))

**§ 680.710 What are the requirements for on-the-job training contracts for employed workers?**

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 680.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

**§ 680.720 What conditions govern on-the-job training payments to employers?**

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIOA secs. 3(44) and 134(c)(3)(H)(i))

(c) Employers are not required to document such extraordinary costs.

**§ 680.730 Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?**

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in § 682.210 up to 75 percent, and the Local Board may also increase the reimbursement rate for OJT contracts described in § 680.320(a)(1) up to 75 percent, when taking into account the following factors: (WIOA sec. 134(c)(H)(ii))

(1) The characteristics of the participants taking into consideration whether they are ''individuals with barriers to employment,'' as defined in WIOA sec. 3(24);

(2) The size of the employer, with an emphasis on small businesses;

(3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and

(4) Other factors the Governor or Local Board may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or Local Boards must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

**§ 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?**

(a) OJT contracts may be written with registered apprenticeship programs or participating employers in registered apprenticeship programs for the on-the-job training portion of the registered apprenticeship program consistent with § 680.700. Depending on the length of the registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in § 680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in § 680.700

**§ 680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?**

There is no Federal prohibition on using both ITA and OJT funds when placing participants into a registered apprenticeship program. See § 680.330 on using ITAs to support participants in registered apprenticeship.

**§ 680.760 What is customized training?**

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(c) For which the employer pays for a significant cost of the training, as determined by the Local Board in accordance with the factors identified in WIOA sec. 3(14).

**§ 680.770 What are the requirements for customized training for employed workers?**

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 680.760 are met; and

(c) The customized training relates to the purposes described in § 680.710(c) or other appropriate purposes identified by the Local Board.

**§ 680.780 Who is an ''incumbent worker'' for purposes of statewide and local employment and training activities?**

States and local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services (WIOA sec. 134(d)(4)). To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more. The training must satisfy the requirements in WIOA sec. 134(d)(4) and § 680.790 and increase the competitiveness of the employee or employer. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under this Act.

**§ 680.790 What is incumbent worker training?**

Incumbent Worker training, for purposes of WIOA sec. 134(d)(4)(B), is training:

(a) Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.

(b) Conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

**§ 680.800 What funds may be used for incumbent worker training?**

(a) The local area may reserve up to 20 percent of their combined total of adult and dislocated worker allotments for incumbent worker training as described in § 680.790 (see WIOA sec. 134(d)(4)(A)(i));

(b) The State may use their statewide activities funds (per WIOA sec. 134(a)(3)(A)(i)) and Rapid Response funds for statewide incumbent worker training activities (see §§ 682.210(b) and 682.320(b)(3)).

**§ 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?**

The Local Board must consider under WIOA sec. 134(d)(4)(A)(ii):

(a) The characteristics of the participants in the program;

(b) The relationship of the training to the competitiveness of a participant and the employer; and

(c) Other factors the Local Board determines appropriate, including number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

**§ 680.820 Are there cost sharing requirements for local area incumbent worker training?**

Yes. Under WIOA secs. 134(d)(4)(C) and 134(d)(4)(D)(i)–(iii), employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers. The amount of the non-Federal share will depend upon the limits established under WIOA secs. 134(d)(4)(ii)(C) and (D).

**§ 680.830 What is a transitional job?**

A transitional job is one that provides a limited work experience, that is subsidized in the public, private, or non-profit sectors for those individuals with barriers to employment because of chronic unemployment or inconsistent work history; these jobs are designed to enable an individual to establish a work history, demonstrate work success, and develop the skills that lead to unsubsidized employment. (WIOA sec. 134 (d)(5))

**§ 680.840 What funds may be used for transitional jobs?**

The local area may use up to 10 percent of their combined total of adult and dislocated worker allotments for transitional jobs as described in § 680.810 (see WIOA sec. 134(d)(5)). Transitional jobs must be combined with comprehensive career services (see § 680.150) and supportive services (see § 680.900).

**§ 680.850 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?**

No, funds provided to employers for work-based training, as described in this subpart, must not be used to directly or indirectly assist, promote or deter union organizing. (WIOA sec. 181(b)(7))

## Subpart G—Supportive Services

**§ 680.900 What are supportive services for adults and dislocated workers?**

Supportive services for adults and dislocated workers are defined at WIOA sec. 3(59) and secs. 134(d)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIOA secs. 134(c)(2) and (3). Local Boards, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the career services that must be available to adults and dislocated workers through the one-stop delivery system. (WIOA sec. 134(c)(2)(A)(ix) and § 678.430) Local Boards must ensure that needs-related payments are made in a manner consistent with §§ 680.930, 680.940, 680.950, 680.960, and 680.970.

**§ 680.910 When may supportive services be provided to participants?**

(a) Supportive services may only be provided to individuals who are:

(1) Participating in career or training services as defined in WIOA secs. 134(c)(2) and (3); and

(2) Unable to obtain supportive services through other programs providing such services. (WIOA sec. 134(d)(2)(B))

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in career service or training activities. (see WIOA sec. 134(d)(2)(A) and WIOA sec. 3(59))

**§ 680.920 Are there limits on the amounts or duration of funds for supportive services?**

(a) Local Boards may establish limits on the provision of supportive services or provide the one-stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow one-stop operators to grant exceptions to the limits established under paragraph (a) of this section.

**§ 680.930 What are needs-related payments?**

Needs-related payments provide financial assistance to participants for the purpose of enabling them to participate in training and are a supportive service authorized by WIOA sec. 134(d)(3). Unlike other supportive services, in order to qualify for needs-related payments a participant must be enrolled in training.

**§ 680.940 What are the eligibility requirements for adults to receive needs-related payments?**

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIOA sec. 134(c)(3).

**§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?**

To receive needs-related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA; and

(2) Be enrolled in a program of training services under WIOA sec. 134(c)(3) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's

eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA and be enrolled in a program of training services under WIOA sec. 134(c)(3).

**§ 680.960 May needs-related payments be paid while a participant is waiting to start training classes?**

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. The Governor may authorize local areas to extend the 30-day period to address appropriate circumstances.

**§ 680.970 How is the level of needs-related payments determined?**

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) The applicable weekly level of the unemployment compensation benefit, for participants who were eligible for unemployment compensation as a result of the qualifying dislocation; or

(2) The poverty level for an equivalent period, for participants who did not qualify for unemployment compensation as a result of the qualifying layoff. The weekly payment level must be adjusted to reflect changes in total family income, as determined by Local Board policies. (WIOA sec. 134(d)(3)(C))

■ 8. Add part 681 to read as follows:

## PART 681—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—Standing Youth Committees

Sec.
681.100 What is a standing youth committee?
681.110 Who is included on a standing youth committee?
681.120 What does a standing youth committee do?

### Subpart B—Eligibility for Youth Services

Sec.
681.200 Who is eligible for youth services?
681.210 Who is an ''out-of-school youth''?
681.220 Who is an ''in-school youth''?
681.230 What does ''school'' refer to in the ''not attending or attending any school'' in the out-of-school and in-school definitions?
681.240 When do local youth programs verify dropout status, particular for youth attending alternative schools?
681.250 Who does the low-income eligibility requirement apply to?
681.260 How does the Department define ''high poverty area'' for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?
681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?
681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?
681.290 How does the Department define the ''basic skills deficient'' criterion this part?
681.300 How does the Department define the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in this part?
681.310 Must youth participants enroll to participate in the youth program?

### Subpart C—Youth Program Design, Elements, and Parameters

Sec.
681.400 What is the process used to select eligible youth providers?
681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?
681.420 How must Local Boards design Workforce Innovation and Opportunity Act youth programs?
681.430 May youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?
681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or the Workforce Innovation and Opportunity Act adult program?
681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?
681.460 What services must local programs offer to youth participants?
681.470 Does the Department require local programs to use WIOA funds for each of the 14 program elements?
681.480 What is a pre-apprenticeship program?
681.490 What is adult mentoring?
681.500 What is financial literacy education?
681.510 What is comprehensive guidance and counseling?
681.520 What are leadership development opportunities?
681.530 What are positive social and civic behaviors?
681.540 What is occupational skills training?
681.550 Are Individual Training Accounts permitted for youth participants?
681.560 What is entrepreneurial skills training and how is it taught?
681.570 What are supportive services for youth?
681.580 What are follow-up services for youth?
681.590 What is the work experience priority?
681.600 What are work experiences?
681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?
681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to offer summer employment opportunities in the local youth program?
681.630 How are summer employment opportunities administered?
681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?
681.650 Does the Department allow incentive payments for youth participants?
681.660 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

### Subpart D—One-Stop Services to Youth

Sec.
681.700 What is the connection between the youth program and the one-stop service delivery system?
681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

**Authority:** Secs. 107, 121, 123, 129, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Standing Youth Committees

**§ 681.100 What is a standing youth committee?**

WIOA eliminates the requirement for Local Boards to establish a youth council. However, the Local Board may choose to establish a standing committee to provide information and to assist with planning, operational, oversight, and other issues relating to the provision of services to youth. If the Local Board does not designate a standing youth committee, it retains responsibility for all aspects of youth formula programs.

**§ 681.110 Who is included on a standing youth committee?**

(a) If a Local Board decides to form a standing youth committee, the committee must include a member of the Local Board, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth and other individuals with appropriate expertise

and experience who are not members of the Local Board (WIOA secs. 107(b)(4)(A) and (ii)).

(b) The committee should reflect the needs of the local area. The committee members appointed for their experience and expertise may bring their expertise to help the committee address the employment, training education, human and supportive service needs of eligible youth including out-of-school youth. Members may represent agencies such as education, training, health, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The committee may also include parents, participants, and youth. (WIOA sec. 129(c)(3)(C))

(c) A Local Board may designate an existing entity such as an effective youth council as the standing youth committee if it fulfills the requirements above in paragraph (a) of this section.

**§ 681.120 What does a standing youth committee do?**

Under the direction of the Local Board, a standing youth committee may:

(a) Recommend policy direction to the Local Board for the design, development, and implementation of programs that benefit all youth;

(b) Recommend the design of a comprehensive community workforce development system to ensure a full range of services and opportunities for all youth, including disconnected youth;

(c) Recommend ways to leverage resources and coordinate services among schools, public programs, and community-based organizations serving youth;

(d) Recommends ways to coordinate youth services and recommend eligible youth service providers; and

(e) Provide on-going leadership and support for continuous quality improvement for local youth programs;

(f) Assist with planning, operational, and other issues relating to the provision of services to youth; and

(g) If so delegated by the Local Board after consultation with the CEO, oversee eligible youth providers, as well as other youth program oversight responsibilities.

## Subpart B—Eligibility for Youth Services

**§ 681.200 Who is eligible for youth services?**

Both in-school youth (ISY) and out-of-school youth (OSY) are eligible for youth services. (WIOA sec. 3(18))

**§ 681.210 Who is an ''out-of-school youth''?**

An out-of-school youth (OSY) is an individual who is:

(a) Not attending any school (as defined under State law);

(b) Not younger than 16 or older than age 24 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and

(c) One or more of the following:

(1) A school dropout;

(2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter. School year calendar quarter is based on how a local school district defines its school year quarters;

(3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;

(4) An individual who is subject to the juvenile or adult justice system;

(5) A homeless individual (as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), a homeless child or youth (as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(6) An individual who is pregnant or parenting;

(7) An individual with a disability;

(8) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(46) and 129(a)(1)(B))

**§ 681.220 Who is an ''in-school youth''?**

An in-school youth (ISY) is an individual who is:

(a) Attending school (as defined by State law), including secondary and post-secondary school;

(b) Not younger than age 14 or (unless an individual with a disability who is attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;

(c) A low-income individual; and

(d) One or more of the following:

(1) Basic skills deficient;

(2) An English language learner;

(3) An offender;

(4) A homeless individual (as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6))), a homeless child or youth (as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway, in foster care or has aged out of the foster care system, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(5) An individual who is pregnant or parenting;

(6) An individual with a disability;

(7) An individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(27) and 129(a)(1)(C))

**§ 681.230 What does ''school'' refer to in the ''not attending or attending any school'' in the out-of-school and in-school definitions?**

In general, the applicable State law for secondary and post-secondary institutions defines ''school.'' However, for purposes of WIOA, the Department does not consider providers of Adult Education under title II of WIOA, YouthBuild programs, and Job Corps programs to be schools. Therefore, WIOA youth programs may consider a youth to be out-of-school youth for purposes of WIOA youth program eligibility if they are attending Adult Education provided under title II of WIOA, YouthBuild, or Job Corps.

**§ 681.240 When do local youth programs verify dropout status, particular for youth attending alternative schools?**

Local WIOA youth programs must verify a youth's dropout status at the time of WIOA youth program enrollment. A youth attending an alternative school at the time of enrollment is not a dropout. States must define ''alternative school'' in their State Plan. The definition should be consistent with their State Education Agency definition, if available. An individual who is out-of-school at the time of enrollment and subsequently placed in an alternative school or any school, is an out-of-school youth for the purposes of the 75 percent expenditure requirement for out-of-school youth.

**§ 681.250 Who does the low-income eligibility requirement apply to?**

(a) For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to

secure or hold employment must be low-income. All other OSY meeting OSY eligibility under § 681.210(c)(1), (2) and (4) through (7) are not required to be low-income. (WIOA secs. 129(a)(1)(iii)(I)–(II) and 129(a)(1)(iii)(IV)–(VII))

(b) All ISY must be low-income to meet the ISY eligibility criteria, except those that fall under the low-income exception.

(c) WIOA allows a low-income exception where five percent of all WIOA youth participants may be participants who ordinarily would be required to be low-income for eligibility purposes and who meet all other eligibility criteria for WIOA youth except the low-income criteria. A program must calculate the five percent based on the percent of all youth served by the program in the local area's WIOA youth program in a given program year.

(d) In addition to the criteria in the definition of ''low-income individual'' in WIOA sec. 3(36), a youth is low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.* or if she or her lives in a high-poverty area.

**§ 681.260 How does the Department define ''high poverty area'' for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?**

A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high-poverty area is a Census tract, a set of contiguous Census tracts, Indian Reservation, tribal land, or Native Alaskan Village or county that has a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data.

**§ 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?**

Yes, WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

**§ 681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?**

Yes, for an individual with a disability, income level for eligibility purposes is based on the individual's own income rather than his or her family's income. WIOA sec. 3(36)(A)(vi) states that an individual with a disability whose own income meets the low-income definition in clause (ii) (income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level), but who is a member of a family whose income exceeds this income requirement is eligible for youth services.

**§ 681.290 How does the Department define the ''basic skills deficient'' criterion in this part?**

(a) As defined in § 681.210(c)(3), a youth is ''basic skills deficient'' if they:

(1) Have English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society. (WIOA sec. 3(5))

(b) The State or Local Board must establish its policy on paragraph (a)(2) of this section in its respective State or local plan.

(c) In assessing basic skills, local programs must use assessment instruments that are valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for people with disabilities.

**§ 681.300 How does the Department define the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in this part?**

As defined in § 681.200(c)(8), either the State or the local level may establish definitions and eligibility documentation requirements for the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion of § 681.200(c)(8). In cases where the State Board establishes State policy on this criterion, the State Board must include the definition in the State Plan. In cases where the State Board does not establish a policy, the Local Board must establish a policy in their local plan if using this criterion.

**§ 681.310 Must youth participants enroll to participate in the youth program?**

(a) Yes, to participate in youth programs, participants must enroll in the WIOA youth program.

(b) Enrollment in this case requires:

(1) The collection of information to support an eligibility determination; and

(2) Participation in any of the fourteen WIOA youth program elements.

## Subpart C—Youth Program Design, Elements, and Parameters

**§ 681.400 What is the process used to select eligible youth providers?**

(a) As provided in WIOA sec. 123, the Local Board must identify eligible providers of youth workforce investment activities in the local area by awarding grants or contracts on a competitive basis, except as provided below in paragraph (a)(3) of this section, based on the recommendation of the youth standing committee, if they choose to establish a standing youth committee and assign it that function. If such a committee is not established for the local area, this responsibility falls to the Local Board.

(1) Local areas must include the criteria used to identify youth providers in the State Plan (including such quality criteria established by the Governor for a training program that leads to a recognized post-secondary credential) taking into consideration the ability of the provider to meet the performance accountability measures based on primary indicators of performance for youth programs.

(2) Local areas must conduct a full and open competition to secure youth service providers according to the Federal procurement guidelines at 2 CFR parts 200 and 2900, in addition to applicable State and local procurement laws.

(3) Where the Local Board determines there is an insufficient number of eligible providers of youth workforce investment activities in the local area, such as a rural area, the Local Board may award grants or contracts on a sole source basis (WIOA sec. 123(b)).

(b) The requirement in WIOA sec. 123 that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis does not apply to the design framework services when these services are more appropriately provided by the grant recipient/fiscal agent. Design framework services include intake, objective assessments and the development of individual service strategy, case management, and follow-up services.

**§ 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?**

Yes. The 75 percent requirement applies to both statewide youth activities funds and local youth funds with two exceptions.

(a) Only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement.

Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. For example, administrative costs, monitoring, and technical assistance are not subject to OSY expenditure requirement; while funds spent on direct services to youth such as statewide demonstration projects, are subject to the OSY expenditure requirement.

(b) For a State that receives a small State minimum allotment under WIOA sec. 127(b)(1)(C)(iv)(II) or WIOA sec. 132(b)(1)(B)(iv)(II), the State may submit a request to the Secretary to decrease the percentage to a percentage not less than 50 percent for a local area in the State, and the Secretary may approve such a request for that program year, if the State meets the following requirements:

(1) After an analysis of the in-school youth and out-of-school youth populations in the local area, the State determines that the local area will be unable to use at least 75 percent of the local area WIOA youth funds to serve out-of-school youth due to a low number of out-of-school youth; and

(2) The State submits to the Secretary, for the local area, a request including a proposed percentage decreased to not less than 50 percent to provide workforce investment activities for out-of-school youth.

(c) In the exercise of the discretion afforded by WIOA sec. 129(a)(4) the Secretary has determined that requests to decrease the percentage of funds used to provide activities to OSY will not be granted to States based on their having received 90 percent of the allotment percentage for the preceding year. Therefore, when the Secretary receives such a request from a State based on having received 90 percent of the allotment percentage for the preceding year, the request will be denied without the Secretary exercising further discretion.

(d) For local area funds, the administrative costs of carrying out local workforce investment activities described in WIOA sec. 128(b)(4) are not subject to the OSY expenditure requirement. All other local area youth funds beyond the administrative costs are subject to the OSY expenditure requirement.

**§ 681.420 How must Local Boards design Workforce Innovation and Opportunity Act youth programs?**

(a) The design framework services of local youth programs must:

(1) Provide for an objective assessment of each youth participant that meets the requirements of WIOA sec. 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth for the purpose of identifying appropriate services and career pathways for participants and informing the individual service strategy;

(2) Develop, and update as needed, an individual service strategy for each youth participant that is directly linked to one or more indicators of performance described in WIOA sec. 116(b)(2)(A)(ii), that identifies appropriate career pathways that include education and employment goals, that considers career planning and the results of the objective assessment and that prescribes achievement objectives and services for the participant; and

(3) Provides case management of youth participants, including follow-up services.

(b) The local plan must describe the design framework for youth programs in the local area, and how the fourteen program elements required in § 681.460 are to be made available within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Local human service agencies;

(5) WIOA title II adult education providers;

(6) Local disability-serving agencies and providers and health and mental health providers;

(7) Job Corps representatives; and

(8) Representatives of other area youth initiatives, such as YouthBuild, and including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that WIOA youth service providers meet the referral requirements in WIOA sec. 129(c)(3)(A) for all youth participants, including:

(1) Providing these participants with information about the full array of applicable or appropriate services available through the Local Board or other eligible providers, or one-stop partners; and

(2) Referring these participants to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) If a youth applies for enrollment in a program of workforce investment activities and either does not meet the enrollment requirements for that program or cannot be served by that program, the eligible provider of that program must ensure that the youth is referred for further assessment, if necessary, or referred to appropriate programs to meet the skills and training needs of the youth.

(f) In order to meet the basic skills and training needs of applicants who do not meet the eligibility requirements of a particular program or who cannot be served by the program, each youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section. (WIOA sec. 129(c)(3)(B))

(g) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are actively involved in both the design and implementation of its youth programs. (WIOA sec. 129(c)(3)(C))

(h) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIOA sec. 129(c)(1)(A))

(i) The Local Board may implement a pay-for-performance contract strategy for program elements described at § 681.460, for which the Local Board may reserve and use not more than 10 percent of the total funds allocated to the local area under WIOA sec. 128(b). For additional rules on pay-for-performance contracts see § 683.500.

**§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the Workforce Innovation and Opportunity Act youth and adult programs?**

(a) Yes, individuals who meet the respective program eligibility requirements may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for these individuals, the appropriate

level and balance of services under the youth and adult programs.

(b) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure no duplication of services.

(c) Individuals who meet the respective program eligibility requirements for WIOA youth title I and title II may participate in title I youth and title II concurrently.

**§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act youth program or the Workforce Innovation and Opportunity Act adult program?**

A local program should determine the appropriate program for the participant based on the service needs of the participant and if the participant is career-ready based on an objective assessment of their occupational skills, prior work experience, employability, and participants needs as required in WIOA sec. 129(c)(1)(A).

**§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?**

Local youth programs must provide service to a participant for the amount of time necessary to ensure successful preparation to enter post-secondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

**§ 681.460 What services must local programs offer to youth participants?**

(a) Local programs must make each of the following 14 services available to youth participants (WIOA sec. 129(c)(2)):

(1) Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the Local Board determines that the programs meet the quality criteria described in WIOA sec. 123;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors;

(7) Supportive services, including the services listed in § 681.570;

(8) Adult mentoring for a duration of at least 12 months, that may occur both during and after program participation;

(9) Follow-up services for not less than 12 months after the completion of participation, as provided in § 681.580;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to post-secondary education and training.

(b) Local programs have the discretion to determine what specific program services a youth participant receives, based on each participant's objective assessment and individual service strategy. Local programs are not required to provide every program service to each participant.

**§ 681.470 Does the Department require local programs to use WIOA funds for each of the 14 program elements?**

No. The Department does not require local programs to use WIOA youth funds for each of the program elements. Local programs may leverage partner resources to provide some of the readily available program elements. However, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element will be offered. The Local Board must ensure that the program element is closely connected and coordinated with the WIOA youth program.

**§ 681.480 What is a pre-apprenticeship program?**

A pre-apprenticeship is a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship program(s).

**§ 681.490 What is adult mentoring?**

(a) Adult mentoring for youth must:

(1) Last at least 12 months and may take place both during the program and following exit from the program;

(2) Be a formal relationship between a youth participant and an adult mentor that includes structured activities where the mentor offers guidance, support, and encouragement to develop the competence and character of the mentee;

(3) Include a mentor who is an adult other than the assigned youth case manager; and

(4) While group mentoring activities and mentoring through electronic means are allowable as part of the mentoring activities, at a minimum, the local youth program must match the youth with an individual mentor with whom the youth interacts on a face-to-face basis.

(b) Mentoring may include workplace mentoring where the local program matches a youth participant with an employer or employee of a company.

**§ 681.500 What is financial literacy education?**

The financial literacy education program element includes activities which:

(a) Support the ability of participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;

(b) Support participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;

(c) Teach participants about the significance of credit reports and credit scores; what their rights are regarding their credit and financial information; how to determine the accuracy of a credit report and how to correct inaccuracies; and how to improve or maintain good credit;

(d) Support a participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;

(e) Educate participants about identity theft, ways to protect themselves from identify theft, and how to resolve cases of identity theft and in other ways understand their rights and protections related to personal identity and financial data;

(f) Support activities that address the particular financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials;

(g) Provide financial education that is age appropriate, timely, and provides opportunities to put lessons into practice, such as by access to safe and affordable financial products that enable money management and savings; and

(h) Implement other approaches to help participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability by using high quality, age-appropriate, and relevant strategies and channels, including, where possible, timely and customized information, guidance, tools, and instruction.

**§ 681.510 What is comprehensive guidance and counseling?**

Comprehensive guidance and counseling provides individualized counseling to participants. This includes career and academic counseling, drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. (WIOA sec. 129(c)(1)(C)(J)) When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

**§ 681.520 What are leadership development opportunities?**

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination and other positive social behaviors such as:

(a) Exposure to post-secondary educational possibilities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities and problem solving;

(f) Citizenship training, including life skills training such as parenting and work behavior training;

(g) Civic engagement activities which promote the quality of life in a community; and

(h) Other leadership activities that place youth in a leadership role such as serving on youth leadership committees, such as a Standing Youth Committee. (WIOA sec. 129(c)(2)(F))

**§ 681.530 What are positive social and civic behaviors?**

Positive social and civic behaviors are outcomes of leadership opportunities, which are incorporated by local programs as part of their menu of services. Positive social and civic behaviors focus on areas that may include the following:

(a) Positive attitudinal development;

(b) Self-esteem building;

(c) Openness to work with individuals from diverse backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol- and drug-free;

(e) Maintaining positive social relationships with responsible adults and peers, and contributing to the well-being of one's community, including voting;

(f) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency;

(h) Postponing parenting and responsible parenting, including child support education;

(i) Positive job attitudes and work skills; and

(j) Keeping informed in community affairs and current events.

**§ 681.540 What is occupational skills training?**

(a) The Department defines occupational skills training as an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Local areas must give priority consideration to training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) result in attainment of a recognized post-secondary credential.

(b) The chosen occupational skills training must meet the quality standards in WIOA sec. 123.

**§ 681.550 Are Individual Training Accounts permitted for youth participants?**

Yes. In order to enhance individual participant choice in their education and training plans and provide flexibility to service providers, the Department allows WIOA ITAs for out-of-school youth, ages 18 to 24 using WIOA youth funds when appropriate.

**§ 681.560 What is entrepreneurial skills training and how is it taught?**

Entrepreneurial skills training provides the basics of starting and operating a small business.

(a) Such training must develop the skills associated with entrepreneurship. Such skills include, but are not limited to, the ability to:

(1) Take initiative;

(2) Creatively seek out and identify business opportunities;

(3) Develop budgets and forecast resource needs;

(4) Understand various options for acquiring capital and the trade-offs associated with each option; and

(5) Communicate effectively and market oneself and one's ideas.

(b) Approaches to teaching youth entrepreneurial skills include, but are not limited to, the following:

(1) Entrepreneurship education that provides an introduction to the values and basics of starting and running a business. Entrepreneurship education programs often guide youth through the development of a business plan and may also include simulations of business start-up and operation.

(2) Enterprise development which provides supports and services that incubate and help youth develop their own businesses. Enterprise development programs go beyond entrepreneurship education by helping youth access small loans or grants that are needed to begin business operation and by providing more individualized attention to the development of viable business ideas.

(3) Experiential programs that provide youth with experience in the day-to-day operation of a business. These programs may involve the development of a youth-run business that young people participating in the program work in and manage. Or, they may facilitate placement in apprentice or internship positions with adult entrepreneurs in the community.

**§ 681.570 What are supportive services for youth?**

Supportive services for youth, as defined in WIOA sec. 3(59), are services

that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Needs-related payments;

(f) Assistance with educational testing;

(g) Reasonable accommodations for youth with disabilities;

(h) Referrals to health care; and

(i) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear.

**§ 681.580 What are follow-up services for youth?**

(a) Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment and/or post-secondary education and training.

(b) Follow-up services for youth may include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career pathway development, and further education or training;

(4) Work-related peer support groups;

(5) Adult mentoring; and/or

(6) Services necessary to ensure the success of youth participants in employment and/or post-secondary education.

(c) All youth participants must receive some form of follow-up services for a minimum duration of 12 months. Follow-up services may be provided beyond 12 months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant. However, follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome. (WIOA sec. 129(c)(2)(I))

**§ 681.590 What is the work experience priority?**

Local youth programs must expend not less than 20 percent of the funds allocated to them to provide in-school youth and out-of-school youth with paid and unpaid work experiences that fall under the categories listed in § 681.460(a)(3) and further defined in § 681.600. (WIOA sec. 129(c)(4))

**§ 681.600 What are work experiences?**

(a) Work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Work experiences provide the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education.

(c) The types of work experiences include the following categories:

(1) Summer employment opportunities and other employment opportunities available throughout the school year;

(2) Pre-apprenticeship programs;

(3) Internships and job shadowing; and

(4) On-the-job training opportunities as defined in WIOA sec. 3(44) and in § 680.700.

**§ 681.610 How will local Workforce Innovation and Opportunity Act youth programs track the work experience priority?**

Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area youth funds expended for work experience rather than calculated separately for in-school and out-of-school youth. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

**§ 681.620 Does the Workforce Innovation and Opportunity Act require Local Boards to offer summer employment opportunities in the local youth program?**

No, WIOA does not require Local Boards to offer summer youth employment opportunities as summer employment is no longer its own program element under WIOA. However, WIOA does require Local Boards to offer work experience opportunities using at least 20 percent of their funding, which may include summer employment.

**§ 681.630 How are summer employment opportunities administered?**

Summer employment opportunities are a component of the work experience program element. Providers administering the work experience program element must be selected by the Local Board by awarding a grant or contract on a competitive basis as described in WIOA sec. 123, based on criteria contained in the State Plan. However, the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

**§ 681.640 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?**

This program element reflects the integrated education and training model and requires integrated education and training to occur concurrently and contextually with workforce preparation activities and workforce training. This program element describes how workforce preparations activities, basic academic skills, and hands-on occupational skills training are to be taught within the same time frame and connected to training in a specific occupation, occupational cluster, or career pathway. (WIOA sec. 129(c)(2)(E))

**§ 681.650 Does the Department allow incentive payments for youth participants?**

Yes, the Department allows incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. The local program must have written policies and procedures in place governing the awarding of incentives and must ensure that such incentive payments are:

(a) Tied to the goals of the specific program;

(b) Outlined in writing before the commencement of the program that may provide incentive payments;

(c) Align with the local program's organizational policies; and

(d) Accord with the requirements contained in 2 CFR 200.

**§ 681.660 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?**

Local Boards and programs must provide opportunities for parents, participants, and other members of the

community with experience working with youth to be involved in the design and implementation of youth programs. Parents, youth participants, and other members of the community can get involved in a number of ways including serving on youth standing committees, if they exist and they are appointed by the Local Board. They can also get involved by serving as mentors, serving as tutors, and providing input into the design and implementation of other program design elements. Local Boards must also make opportunities available to successful participants to volunteer to help participants as mentors, tutors or in other activities.

## Subpart D—One-Stop Services to Youth

### § 681.700 What is the connection between the youth program and the one-stop service delivery system?

(a) WIOA sec. 121(b)(1)(B)(i) requires that the youth program function as a required one-stop partner and fulfill the roles and responsibilities of a one-stop partner described in WIOA sec. 121(b)(1)(A).

(b) In addition to the provisions of 20 CFR part 678, connections between the youth program and the one-stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in § 681.460;

(4) Services for non-eligible youth such as basic labor exchange services, other self-service activities such as job searches, career exploration, use of career center resources, and referral as appropriate; and

(5) Other activities described in WIOA secs. 129(b)–(c).

(c) Local Boards must either collocate WIOA youth program staff at one-stop centers and/or ensure one-stop centers and staff are equipped to advise youth in order to increase youth access to services and connect youth to the program that best aligns with their needs.

### § 681.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Yes. However, Local Boards must ensure one-stop centers fund services for non-eligible youth through programs authorized to provide services to such youth. For example, one-stop centers may provide basic labor exchange services under the Wagner-Peyser Act to any youth.

■ 9. Add part 682 to read as follows:

# PART 682—STATEWIDE ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—General Description

Sec.
682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?
682.110 How are statewide employment and training activities funded?

### Subpart B—Required and Allowable Statewide Employment and Training Activities

682.200 What are required statewide employment and training activities?
682.210 What are allowable statewide employment and training activities?
682.220 What are States' responsibilities in regard to evaluations and research?

### Subpart C—Rapid Response Activities

682.300 What is rapid response, and what is its purpose?
682.310 Who is responsible for carrying out rapid response activities?
682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?
682.330 What rapid response activities are required?
682.340 May other activities be undertaken as part of rapid response?
682.350 What is meant by ''provision of additional assistance'' in the Workforce Innovation and Opportunity Act?
682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?
682.370 What are ''allowable statewide activities'' for which rapid response funds remaining unspent at the end of the year of obligation may be recaptured by the State?

**Authority:** Secs. 129, 134, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—General Description

### § 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Statewide employment and training activities include those activities for adults and dislocated workers, as described in WIOA sec. 134(a), and statewide youth activities, as described in WIOA sec. 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of statewide employment and training funds. Descriptions of these policies and strategies must be included in the State Plan.

### § 682.110 How are statewide employment and training activities funded?

(a) Except for the statewide rapid response activities described in paragraph (c) of this section, statewide employment and training activities are supported by funds reserved by the Governor under WIOA sec. 128(a).

(b) Funds reserved by the Governor for statewide workforce investment activities may be combined and used for any of the activities authorized in WIOA sec. 129(b), 134(a)(2)(B), or 134(a)(3)(A) (which are described in §§ 682.200 and 682.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for statewide rapid response activities are reserved under WIOA sec. 133(a)(2) and may be used to provide the activities authorized at WIOA sec. 134(a)(2)(A) (which are described in §§ 682.310 through 682.330). (WIOA secs. 129(b), 133(a)(2), 134(a)(2)(A), and 134(a)(3)(A))

## Subpart B—Required and Allowable Statewide Employment and Training Activities

### § 682.200 What are required statewide employment and training activities?

Required statewide employment and training activities are:

(a) Required rapid response activities, as described in § 682.310;

(b) Disseminating by various means, as provided by WIOA sec. 134(a)(2)(B):

(1) The State list of eligible providers of training services (including those providing non-traditional training services), for adults and dislocated workers and eligible providers of apprenticeship programs;

(2) Information identifying eligible providers of on-the-job training (OJT), customized training, incumbent worker training (see § 680.780 of this chapter), internships, paid or unpaid work experience opportunities (see § 680.170 of this chapter) and transitional jobs (see § 680.830 of this chapter);

(3) Information on effective outreach and partnerships with business;

(4) Information on effective service delivery strategies and promising practices to serve workers and job seekers;

(5) Performance information and information on the cost of attendance, including tuition and fees as described in § 680.490 of this chapter;

(6) A list of eligible providers of youth activities as described in WIOA sec. 123; and

(7) Information of physical and programmatic accessibility for individuals with disabilities. (WIOA sec. 134(a)(2)(b)(v)(VI)).

(c) States must assure that the information listed in paragraphs (b)(1) through (b)(7) of this section is widely available;

(d) Conducting evaluations (WIOA sec. 134(a)(2)(B)(vi)) under WIOA sec. 116(e), consistent with the requirements found under § 682.220.

(e) Providing technical assistance to local areas in carrying out activities described in the State Plan, including coordination and alignment of data systems used to carry out the requirements of this Act;

(f) Assisting local areas, one-stop operators, one-stop partners, and eligible providers, including development of staff, including staff training to provide opportunities for individuals with barriers to employment to enter in-demand industry sectors or occupations and nontraditional occupations, and the development of exemplary program activities. (WIOA sec. 134(a)(2)(B)(IV));

(g) Assisting local areas for carrying out the regional planning and service delivery efforts required under WIOA sec. 106(c);

(h) Assisting local areas by providing information on and support for the effective development, convening, and implementation of industry and sector partnerships;

(i) Providing technical assistance to local areas that fail to meet local performance accountability measure described in 20 CFR 677.205 (WIOA secs. 129(b)(2)(E) and 134(a)(2)(B)(IV));

(j) Carrying out monitoring and oversight of activities for services to youth, adults, and dislocated workers under WIOA title I, and which may include a review comparing the services provided to male and female youth (WIOA sec. 129(b)(1)(E));

(k) Providing additional assistance to local areas that have a high concentration of eligible youth (WIOA sec. 129(b)(1)(F)); and

(l) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary (WIOA secs. 129(b)(1)((D)), 134(a)(2)(B)(iii)).

**§ 682.210 What are allowable statewide employment and training activities?**

Allowable statewide employment and training activities include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at WIOA sec. 134(a)(3)(B) and § 683.205(a)(1) of this chapter;

(b) Developing and implementing innovative programs and strategies designed to meet the needs of all employers (including small employers) in the State, including the programs and strategies referenced in WIOA sec. 134(a)(3)(A)(i);

(c) Developing strategies for serving individuals with barriers to employment, and for coordinating programs and services among one-stop partners (WIOA sec. 134(a)(3)(A)(ii));

(d) Development or identification of education and training programs that have the characteristics referenced in WIOA sec. 134(a)(3)(A)(iii);

(e) Implementing programs to increase the number of individuals training for and placed in non-traditional employment (WIOA sec. 134(a)(3)(A)(iv));

(f) Conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers (WIOA sec. 134(a)(3)(A)(ix));

(g) Supporting the development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in post-secondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency (WIOA sec. 129(b)(2)(B);

(h) Supporting the provision of career services in the one-stop delivery system in the State as described in § 678.430 and WIOA secs. 129(b)(2)(C) and 134(c)(2);

(i) Supporting financial literacy activities as described in § 681.500 and WIOA sec. 129(b)(2)(D);

(j) Providing incentive grants to local areas for performance by the local areas on local performance accountability measures (WIOA sec. 134(a)(3)(A)(xi));

(k) Providing technical assistance to Local Boards, chief elected officials, one-stop operators, one-stop partners, and eligible providers in local areas on the development of exemplary program activities and on the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State (WIOA sec. 129(b)(2)(E));

(l) Providing technical assistance to local areas that are implementing WIOA Pay-for-Performance contract strategies and conducting evaluations of such strategies. Technical assistance may include providing assistance with data collections, meeting data entry requirements, and identifying level of performance (WIOA sec. 134(a)(3)(A)(xiv));

(m) Carrying out activities to facilitate remote access to training services provided through the one-stop delivery system (WIOA sec. 134(a)(3)(A)(v));

(n) Activities that include:

(1) Activities to improve coordination of workforce investment activities, with economic development activities (WIOA sec. 134(a)(3)(A)(viii)(I)); and

(2) Activities to improve coordination of employment and training activities with child support services and activities, cooperative extension programs carried out by the Department of Agriculture, programs carried out by local areas for individuals with disabilities (including the programs identified in WIOA sec. 134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those provided by public libraries, activities in the correction systems to assist ex-offenders in reentering the workforce and financial literacy activities (WIOA sec. 134(a)(3)(A)(viii)(II)); and

(3) Developing and disseminating workforce and labor market information (WIOA sec. 134(a)(3)(A)(viii)(III)).

(o) Implementation of promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A)(x);

(p) Adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations (WIOA sec. 134(a)(3)(A)(xii));

(q) Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs (WIOA sec. 134(A)(3)(A)(xiii)); and

(r) Coordinating activities with the child welfare system to facilitate provision of services for children and youth who are eligible for assistance under sec. 477 of the Social Security Act (WIOA sec. 134(a)(3)(A)(vii)).

**§ 682.220 What are States' responsibilities in regard to evaluations and research?**

(a)(1) As required by § 682.200(d), States must use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs, in order to promote continuous improvement; test innovative services and strategies, and achieve high levels of performance and outcomes;

(2) States may use the funds reserved by the Governor for statewide activities (under § 682.210(f)), to conduct research and demonstration projects relating to the education and employment needs of youth, adults, and dislocated worker programs;

(3) States may use funds from any WIOA title II–IV core program to conduct evaluations and other research, as determined through the processes associated with paragraph (b)(1) of this section;

(b) Evaluations and research projects funded in whole or in part with WIOA title I funds must:

(1) Be coordinated with and designed in conjunction with State and Local Boards and with State agencies responsible for the administration of all core programs;

(2) When appropriate, include analysis of customer feedback and outcome and process measures in the statewide workforce development system;

(3) Use designs that employ the most rigorous analytical and statistical methods that are reasonably feasible, such as the use of control groups; and

(4) To the extent feasible, be coordinated with the evaluations provided for by the Secretary of Labor and the Secretary of Education under WIOA sec. 169 (regarding title I programs and other employment-related programs), WIOA sec. 242(c)(2)(D) (regarding Adult Education), secs. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) [applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)] and the investigations provided by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act [29 U.S.C. 49i(b)].

(c) States must annually prepare, submit to the State Board and Local Boards in the State, and make available to the public (including by electronic means), reports containing the results of the evaluations and other research described in paragraph (a) of this section.

(d) States must cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education or their agents under sec. 116(e)(4) of WIOA. Such cooperation must, at a minimum, meet the following requirements:

(1) The timely provision of:

(i) Data, in accordance with appropriate privacy protections established by the Secretary of Labor;

(ii) Responses to surveys;

(iii) Site visits; and

(iv) Data and survey responses from local subgrantees and State and Local Boards, and assuring that subgrantees and boards allow timely site visits.

(2) Encouraging other one-stop partners at the local level to cooperate in timely provision of data, survey responses and site visits as listed in paragraphs (f)(1)(a)–(c) of this section.

(3) If a State determines that timely cooperation in data provision as described in paragraph (d)(1) of this section is not practicable, the Governor must inform the Secretary in writing and explain the reasons why it is not practicable. In such circumstances, the State must cooperate with the Department in developing a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses, and site visits.

(e) States may use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations, research, and demonstration projects relating to activities under the WIOA title I–IV core programs.

## Subpart C—Rapid Response Activities

### § 682.300 What is rapid response, and what is its purpose?

(a) Rapid response is described in §§ 682.310 through 682.370, and encompasses the strategies and activities necessary to:

(1) Plan for and respond to as quickly as possible following either:

(i) An announcement of a closure or layoff; or,

(ii) Mass job dislocation resulting from a natural or other disaster; and

(2) Deliver services to enable dislocated workers to transition to new employment as quickly as possible.

(b) The purpose of rapid response is to promote economic recovery and vitality by developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful rapid response system includes:

(1) Informational and direct reemployment services for workers, including but not limited to information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;

(2) Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;

(3) Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families such as home heating assistance, legal aid, and financial advice; and

(4) Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

### § 682.310 Who is responsible for carrying out rapid response activities?

(a) Rapid response activities must be carried out by the State or an entity designated by the State, in conjunction with the Local Boards, chief elected officials, and other stakeholders, as provided by WIOA secs. 133(a)(2) and 134(a)(2)(A);

(b) States must establish and maintain a rapid response unit to carry out statewide rapid response activities and to oversee rapid response activities undertaken by a designated State entity, Local Board, or the chief elected officials for affected local areas, as provided under WIOA sec. 134(a)(2)(A)(i)(I).

### § 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

(a) Layoff aversion consists of strategies and activities, including those provided in paragraph (b)(2) of this section and §§ 682.330 and 682.340, to prevent or minimize the duration of unemployment resulting from layoffs;

(b) Layoff aversion activities may include:

(1) Providing assistance to employers in managing reductions in force, which may include early identification of firms at risk of layoffs, assessment of the needs of and options for at-risk firms, and the delivery of services to address these needs, as provided by WIOA sec. 134(d)(1)(A)(ix)(II)(cc);

(2) Ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;

(3) Funding feasibility studies to determine if a company's operations may be sustained through a buyout or other means to avoid or minimize layoffs;

(4) Developing and managing incumbent worker training programs or other worker up skilling approaches;

(5) Connecting companies to:

(i) Short-time compensation or other programs designed to prevent layoffs or

to quickly reemploy dislocated workers, available under Unemployment Insurance programs;

(ii) Employer loan programs for employee skill upgrading; and

(iii) Other Federal, State and local resources as necessary to address other business needs that cannot be funded with resources provided under this title.

(6) Establishing linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion activities;

(7) Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;

(8) Conducting analyses of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;

(9) Engaging in proactive measures to identify opportunities for potential economic transition and training needs in growing industry sectors or expanding businesses; and

(10) Connecting businesses and workers to short-term, on-the-job, or customized training programs and apprenticeships before or after layoff to help facilitate rapid reemployment.

**§ 682.330 What rapid response activities are required?**

Rapid response activities must include:

(a) Layoff aversion activities as described in § 682.320, as applicable.

(b) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:

(1) Layoff plans and schedule of the employer;

(2) Background and probable assistance needs of the affected workers;

(3) Reemployment prospects for workers; and

(4) Available resources to meet the short and long-term assistance needs of the affected workers.

(c) The provision of information and access to unemployment compensation benefits and programs, such as Short-Time Compensation, comprehensive one-stop system services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) program (19 U.S.C. 2271 *et seq.*), Pell Grants, the GI Bill, and other resources;

(d) The delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers;

(e) Partnership with the Local Board(s) and chief elected official(s) to ensure a coordinated response to the dislocation event and, as needed, obtain access to State or local economic development assistance. Such coordinated response may include the development of an application for a national dislocated worker grant as provided under WIOA secs. 101(38) and 134(a)(2)(A) and 20 CFR part 687;

(f) The provision of emergency assistance adapted to the particular layoff or disaster;

(g) As appropriate, developing systems and processes for:

(1) Identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion;

(2) Analyzing, and acting upon, data and information on dislocations and other economic activity in the State, region, or local area; and

(3) Tracking outcome and performance data and information related to the activities of the rapid response program.

(h) Developing and maintaining partnerships with other appropriate Federal, State and local agencies and officials, employer associations, technical councils, other industry business councils, labor organizations, and other public and private organizations, as applicable, in order to:

(1) Conduct strategic planning activities to develop strategies for addressing dislocation events and ensuring timely access to a broad range of necessary assistance;

(2) Develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as early as possible;

(i) Delivery of services to worker groups for which a petition for Trade Adjustment Assistance has been filed;

(j) The provision of additional assistance, as described in § 682.350, to local areas that experience disasters, layoffs, or other dislocation events when such events exceed the capacity of the local area to respond with existing resources as provided under WIOA sec. 134(a)(2)(A)(i)(II).

(k) Provision of guidance and financial assistance as appropriate, in establishing a labor-management committee if voluntarily agreed to by the employee's bargaining representative and management. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee; and;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIOA-authorized services to affected workers.

**§ 682.340 May other activities be undertaken as part of rapid response?**

(a) Yes, in order to conduct layoff aversion activities, or to prepare for and respond to dislocation events, in addition to the activities required under § 682.330, a State or designated entity may devise rapid response strategies or conduct activities that are intended to minimize the negative impacts of dislocation on workers, businesses, and communities and ensure rapid reemployment for workers affected by layoffs.

(b) When circumstances allow, rapid response may provide guidance and/or financial assistance to establish community transition teams to assist the impacted community in organizing support for dislocated workers and in meeting the basic needs of their families, including heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the one-stop delivery system to provide.

**§ 682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?**

As stated in WIOA sec. 134(a)(2)(A)(ii), up to 25 percent of dislocated worker funds may be reserved for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in §§ 682.310, 682.320, and 682.330, any of the remaining funds reserved may be provided to local areas that experience increases of unemployment due to natural disasters, layoffs or other events, for provision of direct career services to participants if there are not adequate local funds available to assist the dislocated workers. States may wish to establish the policies or procedures governing the provision of additional assistance as described in § 682.330.

**§ 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?**

States must report information regarding the receipt of rapid response services by individuals enrolled as dislocated workers on the WIOA individual record.

**§ 682.370 What are ''allowable statewide activities'' for which rapid response funds remaining unspent at the end of the year of obligation may be recaptured by the State?**

WIOA permits a State to recapture rapid response funds, which remain unspent at the end of the program year in which they were obligated, to be used for allowable statewide activities, including prioritizing the planning for and delivery of activities designed to prevent job loss, increasing the rate of reemployment, building relationships with businesses and other stakeholders, building and maintaining early warning networks and systems, and otherwise supporting efforts to allow long-term unemployed workers to return to work.

■ 10. Add part 683 to read as follows:

## PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—Funding and Closeout

Sec.

683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?
683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.115 What planning information must a State submit in order to receive a formula grant?
683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?
683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?
683.130 Does a Local Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?
683.135 What reallotment procedures does the Secretary use?
683.140 What reallocation procedures must the Governors use?
683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under the Workforce Innovation and Opportunity Act title I, subtitle D?
683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?

### Subpart B—Administrative Rules, Costs, and Limitations

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?
683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?
683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?
683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?
683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?
683.225 What requirements relate to the enforcement of the Military Selective Service Act?
683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?
683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?
683.240 What are the instructions for using real property with Federal equity?
683.245 Are employment generating activities, or similar activities, allowable under the Workforce Innovation and Opportunity Act title I?
683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?
683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?
683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?
683.265 What procedures and sanctions apply to violations of this part?
683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?
683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?
683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser funds?
683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

### Subpart C—Reporting Requirements

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

### Subpart D—Oversight and Resolution of Findings

683.400 What are the Federal and State monitoring and oversight responsibilities?
683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?
683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?
683.430 How does the Secretary resolve investigative and monitoring findings?
683.440 What is the Grant Officer resolution process?

### Subpart E—Pay-for-Performance Contract Strategies

683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?
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**Authority:** Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Funding and Closeout

### § 683.100 When do Workforce Innovation and Opportunity Act grand funds become available for obligation?

(a) *Title I.* Except as provided in paragraph (b) of this section or in the applicable fiscal year appropriation, fiscal year appropriations for programs and activities carried out under title I are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth funds.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 2, subtitle B, title I of WIOA may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

(c) *Wagner-Peyser Employment Service.* Fiscal year appropriations for activities authorized under sec. 6 of the Wagner Peyser Act, 29 U.S.C. 49e, are available for obligation on the basis of a program year. A program year begins July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(d) *Discretionary Grants.* Discretionary grant funds are available for obligation in accordance with the fiscal year appropriation.

### § 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) *Agreement.* All WIOA title I and Wagner-Peyser funds are awarded by grant or cooperative agreement, as defined under 2 CFR 200.51 and 2 CFR 200.24 respectively, or contract, as defined in 2 CFR 200.22. All grant or cooperative agreements are awarded by the Grant Officer through negotiation with the recipient (the non-Federal entity). The agreement describes the terms and conditions applicable to the award of WIOA title I and Wagner-Peyser funds and will conform to the requirements of 2 CFR 200.210. Contracts are issued by the Contracting Officer in compliance with the Federal Acquisition Regulations.

(b) *Grant funds awarded to States and outlying areas.* The Federal funds allotted to the States and outlying areas each program year in accordance with secs. 127(b) and 132(b) of WIOA will be obligated by grant agreement.

(c) *Native American programs.* Awards of grants, contracts or cooperative agreements for the WIOA Native American program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 166 of WIOA.

(d) *Migrant and seasonal farmworker programs.* Awards of grants or contracts for the Migrant and Seasonal Farmworker Program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 167 of WIOA.

(e) *Awards for evaluation and research under sec. 169 of WIOA.* (1) Awards of grants, contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIOA sec. 169. These funds are for:

(i) Evaluations;
(ii) Research;
(iii) Studies;
(iv) Multi-State projects; and
(v) Dislocated worker projects.

(2) Contracts and grants under paragraphs (e)(1)(ii) through (iv) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(3) Grants or contracts for carrying out projects in paragraphs (e)(1)(ii) through (iv) of this section may not be awarded on a noncompetitive basis to the same organization for more than 3 consecutive years.

(4) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (e)(1)(ii) through (iv) of this section. The duration of such projects will be specified in the grant or contract agreement.

(5) A peer review process will be used to review and evaluate projects under this paragraph (e) for grants that exceed $500,000, and to designate exemplary and promising programs.

(f) *Termination.* Each grant, cooperative agreement, or contract terminates as indicated in the terms of the agreement or when the period of fund availability has expired. The grant must be closed in accordance with the closeout provisions at 2 CFR 200.343 and 2 CFR 2900 as applicable.

### § 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) The statutory period of availability for expenditure for WIOA title I grants will be established as the period of performance for such grants unless otherwise provided in the grant agreement or cooperative agreement. All funds should be fully expended by the expiration of the period of performance or they risk losing their availability. Unless otherwise authorized in a grant or cooperative agreement or subsequent modification, recipients should expend funds with the shortest period of availability first.

(b) *Grant funds expended by States.* Funds allotted to States under WIOA secs. 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years as identified in § 683.100.

(c) *Grant funds expended by local areas as defined in WIOA sec. 106.* (1)(i)

Funds allocated by a State to a local area under WIOA secs. 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year;

(ii) Pay for performance exception. Funds used to carry out pay-for-performance contract strategies will remain available until expended in accordance with WIOA sec. 189(g)(2)(B).

(2) Funds which are not expended by a local area(s) in the 2-year period described in paragraph (c)(1)(i) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability in accordance with WIOA secs. 128(c) and 132(c). These funds are available for only the following purposes:

(i) For statewide projects, or

(ii) For distribution to local areas which had fully expended their allocation of funds for the same program year within the 2-year period.

(d) *Native American programs.* Funds awarded by the Department under WIOA sec. 166(c) are available for expenditure for the period identified in the grant or contract award document, which will not exceed 4 years.

(e) *Migrant and seasonal farmworker programs.* Funds awarded by the Department under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years.

(f) *Evaluations and research.* Funds awarded by the Department under WIOA sec. 169 are available for expenditure for any program or activity authorized under sec. 169 of WIOA and will remain available until expended or as specified in the terms and conditions of award.

(g) *Other programs under title I of WIOA, including secs. 170 and 171, and all other grants, contracts and cooperative agreements.* Funds are available for expenditure for a period of performance identified in the grant or contract agreement.

(h) *Wagner-Peyser.* Funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years. The program year begins on July 1 of the fiscal year for which the appropriation is made.

**§ 683.115 What planning information must a State submit in order to receive a formula grant?**

Each State seeking financial assistance under subtitle B, chapter 2 (youth) or chapter 3 (adults and dislocated workers), of title I of WIOA, or under the Wagner-Peyser Act must submit a Unified State Plan, under sec. 102 of WIOA or a Combined State Plan under WIOA sec. 103. The requirements for the plan content and the plan review process are described in sec. 102 of WIOA, sec. 8 of Wagner-Peyser Act, and 20 CFR 676.100 through 676.135 and 20 CFR 652.211 through 652.214.

**§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?**

(a) *General.* The Governor must allocate WIOA formula funds allotted for services to youth, adults and dislocated workers in accordance with secs. 128 and 133 of WIOA and this section.

(1) State Boards must assist Governors in the development of any youth or adult discretionary within-State allocation formulas. (WIOA secs. 128(b)(3) and 133(b)(3)).

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in secs. 128(b) and 133(b) of WIOA and in the State Plan, and

(ii) After consultation with chief elected officials and Local Boards in each of the local areas.

(iii) In accordance with sec. 182(e) of WIOA, and must be made available to local areas not later than 30 days after the date funds are made available to the State or 7 days after the date the local plan for the area is approved, whichever is later.

(b) *State reserve.* Of the WIOA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve not more than 15 percent of the funds from each of these sources to carry out statewide activities. Funds reserved under this paragraph may be combined and spent on statewide activities under secs. 129(b) and 134(a) of WIOA and statewide employment and training activities, for adults and dislocated workers, and youth activities, as described in 20 CFR 682.200 and 682.210, without regard to the funding source of the reserved funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each local area, compared to the total number of disadvantaged youth in the State except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the greater of either the number of individuals aged 16 to 21 in families with an income below the low-income level for the area or the number of disadvantaged youth in the area.

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under this discretionary formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State Plan.

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults

in each local area, compared to the total number of disadvantaged adults in the State. Except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the higher of either the number of adults with an income below the low-income level for the area or the number of disadvantaged adults in the area.

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1) of this section, the State may allocate adult funds under a discretionary formula, Under this discretionary formula, the State must allocate a minimum of 70 percent of adult funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (d)(1), and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State Plan.

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's dislocated worker needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(i) Insured unemployment data,

(ii) Unemployment concentrations,

(iii) Plant closings and mass layoff data,

(iv) Declining industries data,

(v) Farmer-rancher economic hardship data, and

(vi) Long-term unemployment data.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(f) *Rapid response.* (1) Of the WIOA formula funds allotted for services to dislocated workers in sec. 132(b)(2)(B) of WIOA, the Governor must reserve not more than 25 percent of the funds for statewide rapid response activities described in WIOA sec. 134(a)(2)(A) and 20 CFR 682.300 through 682.370.

(2) *Unobligated funds.* Funds reserved by a Governor for rapid response activities under sec. 133(a)(2) of WIOA, and sec. 133(a)(2) of the Workforce Investment Act (as in effect on the day before the date of enactment of WIOA), to carry out sec. 134(a)(2)(A) of WIOA that remain unobligated after the first program year for which the funds were allotted, may be used by the Governor to carry out statewide activities authorized under paragraph (b) of this section and §§ 682.200 and 682.210.

(g) *Special Rule.* For the purpose of the formula in paragraphs (c)(1) and (d)(1) of this section, the State must, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth and disadvantaged adults.

**§ 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?**

(a) For funding authorized by secs. 128(b)(2)(ii), 133(b)(ii), and 133(b)(2)(B)(iii) of WIOA, a local area must not receive an allocation percentage for fiscal year 2016 or subsequent fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years.

(b) Amounts necessary to increase allocations to local areas to comply with paragraph (a) of this section must be obtained by ratably reducing the allocations to be made to other local areas.

(c) If the amounts of WIOA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (a) of this section to all local areas, the amounts allocated to each local area must be ratably reduced.

**§ 683.130 Does a Local Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?**

(a) A Local Board may transfer up to 100 percent of a program year allocation for adult employment and training activities, and up to 100 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's written approval.

(c) Local Boards may not transfer funds to or from the youth program.

**§ 683.135 What reallotment procedures does the Secretary use?**

(a) The Secretary determines, during the second quarter of each program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under secs. 127 and 132 of WIOA for programs serving youth, adults, and dislocated workers for the prior program year, as separately determined for each of the three funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under secs. 127 and 132 of WIOA for programs serving youth, adults or dislocated workers, less any amount reserved (up to five percent at the State level) for the costs of administration. The recapture amount, if any, is separately determined for each funding stream.

(b) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of secs. 127(c) and 132(c) of WIOA, respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration at the State level of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(c) The term ''obligation'' is defined at 2 CFR 200.71. Obligations must be reported on the required Department of Labor (DOL or the Department) financial form, such as the ETA–9130 form. For purposes of this section, the Secretary will also treat as State obligations:

(1) Amounts allocated by the State, under secs. 128(b) and 133(b) of WIOA, to the local area, including a single-State local area if the State has been designated as a single local area as described in sec. 106(d) of WIOA or to a balance of State local area administered by a unit of the State government, and;

(2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under secs. 128(a) and 133(a) of WIOA for statewide workforce investment activities.

**§ 683.140 What reallocation procedures must the Governors use?**

(a) The Governor, after consultation with the State Board, may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of secs. 128(c) and 133(c) of WIOA. If the

Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. The amount to be recaptured, if any, must be separately determined for each funding stream. The term ''obligation'' is defined at 2 CFR 200.71.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

**§ 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?**

(a) For competitive awards, the Department will design and execute a merit review process for applications as prescribed under 2 CFR 200.204 when issuing Federal financial assistance awards made under WIOA title I, subtitle D. This process will be described or incorporated by reference in the applicable funding opportunity announcement.

(b) Prior to issuing a Federal financial assistance award under WIOA title I, subtitle D, the Department will conduct a risk assessment to assess the organization's overall ability to administer Federal funds as required under 2 CFR 200.205. As part of this assessment, the Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including DOL grants.

(c) In evaluating risks posed by applicants, the Department will consider the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this part;

(3) *History of performance.* The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits; and

(5) The applicant's ability to implement effectively statutory, regulatory, or other requirements imposed on non-Federal entities.

**§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?**

(a) After the expiration of the period of performance, the Department will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the grant recipient. This section specifies the actions the grant recipient and the Department must take to complete this process.

(1) The grant recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

(2) The Department may approve extensions when requested by the grant recipient.

(b) Unless the Department authorizes an extension, the grant recipient must liquidate all obligations and/or accrued expenditures incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Department must make prompt payments to the grant recipient for allowable reimbursable costs under the Federal award being closed out.

(d) The grant recipient must promptly refund any balances of unobligated cash that the Department paid in advance or paid and that is not authorized to be retained by the grant recipient. See Office of Management and Budget Circular A–129, 2 CFR 200.345, and 2 CFR part 2900 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Department must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310 to 200.316, and 200.329.

(g) The Department should complete all closeout actions for Federal awards no later than 1 year after receipt and acceptance of all required final reports.

(h) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the grant recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements as described in 2 CFR part 200, subpart F.

(4) Property management requirements in 2 CFR 200.310 to 200.316.

(5) Records retention as required in 2 CFR 200.333 to 200.337.

(i) After closeout of an award, a relationship created under the award may be modified or ended in whole or in part with the consent of the Department and the grant recipient, provided the responsibilities of the grant recipient referred to in 2 CFR 200.344(a) and 2 CFR 200.310 to 200.316 are considered, and provisions are made for continuing responsibilities of the grant recipient, as appropriate.

(j) Grant recipients that award WIOA funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with 2 CFR 200.343 to 200.344.

## Subpart B—Administrative Rules, Costs, and Limitations

**§ 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?**

(a) *Uniform guidance.* Recipients and subrecipients of a Federal award under title I of WIOA and Wagner-Peyser must follow the uniform guidance at 2 CFR parts 200, 215, 225, 230 and Appendices I through XI, including any exceptions identified by the Department at 2 CFR part 2900.

(1) Commercial organizations, for-profit entities, and foreign entities that are recipients and subrecipients of a Federal award must adhere to 2 CFR part 200, including any exceptions identified by the Department under 2 CFR part 2900 and to the Federal Acquisition Regulations (FAR), including 48 CFR part 31.

(b) *Allowable costs and cost principles.* (1) Recipients and subrecipients of a Federal award under title I of WIOA and Wagner-Peyser must

follow the cost principles at subpart E and Appendices III through IX of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Prior approval: Unless specified in the grant agreement, for those items requiring prior approval in the Uniform Guidance (*e.g.,* selected items of cost, budget realignment), the authority to grant or deny approval is delegated to the Governor for programs funded under sec. 127 or 132 of WIOA or under Wagner-Peyser.

(3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local Board committees established under title I of WIOA are allowable.

(c) *Uniform administrative requirements.* (1) Except as provided in paragraphs (c)(3) through (6) of this section, all recipients and subrecipients of a Federal award under title I of WIOA and under Wagner-Peyser must follow subparts A through D and Appendices I through II of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Unless otherwise specified in the grant agreement, expenditures must be reported on accrual basis.

(3) In accordance with the requirements at 2 CFR 200.400(g), subgrantees may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award.

(4) In addition to the requirements at 2 CFR 200.317 through 200.326 (as appropriate), all procurement contracts between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis.

(5) In addition to the requirements at 2 CFR 200.318, which address codes of conduct and conflict of interest the following applies:

(i) A State Board member, Local Board member, or Board standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board, or a Board standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(iii) In accordance with the requirements at 2 CFR 200.112, recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

(6) The addition method, described at 2 CFR 200.307, must be used for all program income earned under title I of WIOA and Wagner-Peyser grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIOA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIOA program.

(7) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIOA secs. 194(7)(A)–(B))

(8) Interest income earned on funds received under title I of WIOA and Wagner-Peyser must be included in program income. (WIOA sec. 194(7)(B)(iii))

(9) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIOA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIOA title I and Wagner-Peyser grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace, codified at 29 CFR part 98.

(e) *Restrictions on lobbying.* All WIOA title I and Wagner-Peyer grant recipients and subrecipients must comply with the restrictions on lobbying specified in WIOA sec. 195 and codified in the Department regulations at 29 CFR part 93.

(f) *Buy-American.* As stated in sec. 502 of WIOA, all funds authorized in title I of WIOA and Wagner- Peyser must be expended on only American-made equipment and products, as required by the Buy American Act (41 U.S.C. 8301–8305).

(g) *Nepotism.* (1) No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

(h) *Mandatory disclosures.* All WIOA title I and Wagner-Peyser recipients of Federal awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

**§ 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?**

(a) *State formula grants.* (1) As part of the 15 percent that a State may reserve for statewide activities, the State may spend up to 5 percent of the amount allotted under secs. 127(b)(1), 132(b)(1), and 132(b)(2) of WIOA for the administrative costs of statewide activities.

(2) Local area expenditures for administrative purposes under WIOA formula grants are limited to no more than 10 percent of the amount allocated to the local area under secs. 128(b) and 133(b) of WIOA.

(3) The 5 percent reserved for statewide administrative costs and the 10 percent reserved for local administrative costs may be used for administrative costs for any of the statewide youth workforce investment activities or statewide employment and training activities under secs. 127(b)(1), 128(b), and 132(b) of WIOA.

(4) In a one-stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities are chargeable to its own grant and subject to its own administrative cost limitations.

(5) Costs of negotiating a MOU or infrastructure agreement under title I of WIOA are excluded from the administrative cost limitations.

(b) *Discretionary grants.* (1) Limits on administrative costs, if any, for programs operated under subtitle D of

title I of WIOA will be identified in the grant or cooperative agreement.

**§ 683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?**

(a)(1) All recipients of WIOA title I and Wagner-Peyser funds that expend more than the minimum amounts specified in 2 CFR part 200, subpart F in Federal awards during their fiscal year must have a program specific or single audit conducted in accordance with 2 CFR part 200, subpart F.

(2) *Commercial or for-profit.* Grant recipients and subrecipients of title I and Wagner-Peyser funds that are commercial or for-profit entities must adhere to the requirements contained in 2 CFR part 200, subpart F.

(3) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Federal awards expended as a recipient or subrecipient are subject to audit requirements under 2 CFR part 200, subpart F.

(4) *Contractors.* The payments received for goods or services provided as a contractor are not Federal awards. Subrecipient and contractor determinations made under 2 CFR 200.330 should be considered in determining whether payments constitute a Federal award or a payment for goods and services provided as a contractor.

**§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?**

(a) The costs of administration are expenditures incurred by State and Local Workforce Development Boards, Regions, direct grant recipients, including State grant recipients under subtitle B of title I of WIOA, and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

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

(1) Performing the following overall general administrative functions and coordination of those functions under title I of WIOA:

(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;

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

(x) Fiscal agent responsibilities;

(2) Performing oversight and monitoring responsibilities related to WIOA administrative functions;

(3) Costs of goods and services required 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 WIOA system;

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.

(c)(1) Awards to subrecipients or contractors that are solely for the performance of administrative functions are classified as administrative costs.

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

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

(4) Except as provided at paragraph (c)(1) of this section, all costs incurred for functions and activities of subrecipients and contractors are program costs.

(5) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

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

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

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

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants.

(d) Where possible, entities identified in item (a) must make efforts to streamline the services in paragraphs (b)(1) through (5) of this section to reduce administrative costs by minimizing duplication and effectively using information technology to improve services.

**§ 683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser funds?**

(a) Recipients and subrecipients of WIOA title I and Wagner-Peyser Act funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the Department or the recipient or subrecipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws. Internal controls also must include reasonable assurance that the entity is:

(1) Managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;

(3) Evaluating and monitoring the recipient's and subrecipient's compliance with the statute, regulations and the terms and conditions of Federal awards; and

(4) Taking prompt action when instances of noncompliance are identified.

(b) Internal controls should be in compliance with the guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States and the ''Internal Control Integrated Framework'', issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). See 2 CFR 200.303.

**§ 683.225 What requirements relate to the enforcement of the Military Selective Service Act?**

The requirements relating to the enforcement of the Military Selective Service Act are found at WIOA sec. 189(h).

**§ 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?**

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. This applies when determining if a person is a ''low-income individual'' for eligibility purposes (for example, in the WIOA youth, or NFJP programs). Also, it applies when income is used as a factor when a local area provides priority of service for ''low-income individuals'' with title I WIOA funds (see 20 CFR 680.600 and 20 CFR 680.650). Questions regarding the application of 38 U.S.C. 4213 should be directed to the Veterans' Employment and Training Service.

**§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?**

WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings, except with the prior written approval of the Secretary.

**§ 683.240 What are the instructions for using real property with Federal equity?**

(a) *SESA properties.* Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act or the Wagner-Peyser Act, including State Employment Security Agency (SESA) real property, is transferred to the States that used the grant to acquire such equity.

(1) The portion of any real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act (Unemployment Compensation program) or the Wagner-Peyser Act.

(2) When such real property is no longer needed for the activities described in paragraph (a)(1) of this section, the States must request disposition instructions from the Grant Officer prior to disposition or sale of the property. The portion of the proceeds from the disposition of the real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act.

(3) Limitation on use of funds. States must not use funds awarded under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after February 15, 2007, the date of enactment of the Revised Continuing Appropriations Resolution, 2007.

(4) Properties occupied by Wagner-Peyser must be collocated with one-stop centers.

(b) *Reed Act-funded properties.* Properties with Reed Act equity may be used for the one-stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Unemployment Compensation and Wagner-Peyser Act programs in such properties. When such real property is no longer needed as described in the previous sentence, the State must request disposition instructions from the Grant Officer prior to disposition or sale.

(c) *Job Training Partnership Act-funded properties.* Real property that was purchased with JTPA funds and transferred to WIA, is now transferred to the WIOA title I programs and must be used for WIOA purposes. When such real property is no longer needed for the activities of WIOA, the recipient or subrecipient must seek instructions from the Grant Officer or State (in the case of a subrecipient) prior to disposition or sale.

**§ 683.245 Are employment generating activities, or similar activities, allowable under the Workforce Innovation and Opportunity Act title I?**

(a) Under sec. 181(e) of WIOA, title I funds must not be spent on employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, unless they are directly related to training for eligible individuals. For purposes of this prohibition, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities may include:

(1) Contacts with potential employers for the purpose of placement of WIOA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIOA staff participation on economic development boards and commissions, and work with economic development agencies to:

(i) Provide information about WIOA programs,

(ii) Coordinate activities in a region or local area to promote entrepreneurial training and microenterprise services,

(iii) Assist in making informed decisions about community job training needs, and

(iv) Promote the use of first source hiring agreements and enterprise zone vouchering services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small businesses and new businesses to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIOA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIOA activities in the private sector.

**§ 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?**

(a) WIOA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system (WIOA secs. 181(b)(1) and 181(b)(2));

(2) Public service employment, except as specifically authorized under title I of WIOA (WIOA sec. 194(10)).

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(4) Subawards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

(5) Contracts with persons falsely labeling products made in America.

(b) WIOA formula funds available to States and local areas under subtitle B, title I must not be used for foreign travel (WIOA sec. 181(e)).

**§ 683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?**

(a) Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

(b) 29 CFR part 2, subpart D governs the circumstances under which Department support, including WIOA title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. That subpart also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries. (29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries).

**§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?**

(a) Section 181(d) of WIOA states that funds must not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessments of job applicants for or employees of any business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) *Pre-award review.* To verify that a business establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area and the business establishment as a prerequisite to WIOA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s).

**§ 683.265 What procedures and sanctions apply to violations of this part?**

(a) The Grant Officer will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250);

(4) The limitation related to religious activities (§ 683.255); and

(5) The use of WIOA title I funds to encourage business relocation (§ 683.260).

(b) Procedures for the investigation and resolution of the violations are provided under the Grant Officer's resolution process at § 683.440.

(c) Sanctions and remedies are provided for under sec. 184(c) of WIOA for violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250); and

(4) The limitation related to religious activities (§ 683.255(b)).

(d) Sanctions and remedies are provided for in sec. 181(d)(3) of WIOA for violations of § 683.260, which addresses business relocation.

(e) Violations of § 683.255(a) will be handled in accordance with the Department's nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37.

**§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?**

(a) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIOA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 683.600. (WIOA sec. 181)

**§ 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?**

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the

applicable State or local minimum wage law. (WIOA sec. 181(a)(1)(A))

(b) The reference in paragraph (a) of this section to sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is not applicable for individuals in territorial jurisdictions in which sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply. (WIOA sec. 181(a)(1)(B))

(c) Individuals in on-the-job training or individuals employed in programs and activities under title I of WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIOA sec. 181(b)(5)).

(d) Allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 *et seq.*). (WIOA sec. 181(a)(2))

(e) Funds under title I of WIOA must not be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce delivery system. (WIOA sec. 181(b)(1))

**§ 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?**

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under title I of WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

**§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?**

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term ''recipients'' includes State and Local Workforce Development Boards, one-stop operators, service providers, Job Corps contractors, and subrecipients, as well as other types of individuals and entities.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(3) As described in sec. 188 of WIOA, financial assistance provided under title I of WIOA may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by sec. 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, sec. 188 of WIOA, and the regulations implementing these statutory provisions.

(4) No person may discriminate against an individual who is a participant in a program or activity that receives funds under title I of WIOA, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) Participation in programs and activities or receiving funds under title I of WIOA must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

(b)(1) 29 CFR part 2, subpart D governs the circumstances under which recipients may use Department support, including WIOA title I and Wagner-Peyser Act financial assistance, to employ or train participants in religious activities. As explained in that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. See also § 683.255 and 29 CFR 37.6(f)(1).

(2) 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIOA title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). See also WIOA sec. 188(a)(3).

**§ 683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser funds?**

(a) No funds available under title I of WIOA or the Wagner-Peyser Act may be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313, which can be found at *www.opm.gov*.

(b) In instances where funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the salary or bonus, the WIOA title I or Wagner-Peyser Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. The restriction applies to the sum of salaries and bonuses charged as either direct costs or indirect costs under title I of WIOA and the Wagner-Peyser Act.

(c) The limitation described in paragraph (a) of this section will not apply to contractors (as defined in 2 CFR 200.23) providing goods and services. In accordance with 2 CFR part 200.330, characteristics indicative of contractor are the following:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(d) If a State is a recipient of such funds, the State may establish a lower limit than is provided in paragraph (a) of this section for salaries and bonuses of those receiving salaries and bonuses from a subrecipient of such funds, taking into account factors including the relative cost of living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer the Federal programs involved.

(e) When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus does not exceed the prescribed limit in paragraph (a) of this section.

#### § 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

(a)(1) Under secs. 121(d) and 134(b) of WIOA, for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers.

(2) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are recipients of Federal financial assistance, the recipient or subrecipient and the for-profit entity must follow 2 CFR 200.323.

(3) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are providing services under a contract, profit is allowable, and the requirements of 2 CFR 200.323 apply.

(b) For programs authorized by other sections of WIOA, 2 CFR 200.400(g) prohibits earning and keeping of profit in Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.

(c) Income earned by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program. (WIOA sec. 194(7)).

### Subpart C—Reporting Requirements

#### § 683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

(a) *General.* All States and other direct grant recipients must report financial, participant, and other performance data in accordance with instructions issued by the Secretary. Reports, records, plans, or any other data required to be submitted or made available must, to the extent practicable, be submitted or made available through electronic means. Reports will not be required to be submitted more frequently than quarterly (unless otherwise specified by Congress) within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) For the annual eligible training provider performance reports described in § 677.230 of this chapter and local area performance reports described in § 677.205 of this chapter, the State must require the template developed under WIOA sec. 116(d)(1) to be used.

(2) For financial reports and performance reports other than those described in paragraph (b)(1) of this section, a State or other grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients.

(3) If a State intends to impose different reporting requirements on subrecipients, it must describe those reporting requirements in its State WIOA Plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports on a quarterly basis.

(2) Local Boards will submit quarterly financial reports to the Governor.

(3) Each State will submit to the Secretary a summary of the reports submitted to the Governor pursuant to paragraph (c)(2) of this section.

(4) Reports must include cash on hand, obligations, expenditures, any income or profits earned, including such income or profits earned by subrecipients, indirect costs, recipient share of expenditures and any expenditures incurred (such as stand-in costs) by the recipient that are otherwise allowable except for funding limitations.

(5) Reported expenditures, matching funds, and program income, including any profits earned, must be reported on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) *Performance reports.* (1) States must submit an annual performance report for each of the core workforce programs administered under WIOA as required by sec. 116(d) of WIOA and in accordance with 20 CFR part 667, subpart A.

(2) For all programs authorized under subtitle D of WIOA, each grant recipient must complete reports on performance measures or goals specified in its grant agreement.

(e) *Due date.* (1) For the core programs, performance reports are due on the date set forth in guidance.

(2) Financial reports and all performance and data reports not described in paragraph (e)(1) of this section are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant.

(f) *Format.* All reports whenever practicable should be collected, transmitted, and stored in open and machine readable formats.

(g) *Systems compatibility.* States and grant recipients will develop strategies for aligning data systems based upon guidelines issued by the Secretary of Labor and the Secretary of Education.

### Subpart D—Oversight and Resolution of Findings

#### § 683.400 What are the Federal and State monitoring and oversight responsibilities?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all Federal financial assistance awarded and funds expended under title I of WIOA and Wagner-Peyser to determine compliance with the Acts and Department regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) As funds allow, in each fiscal year, the Secretary will also conduct in-depth reviews in several States, including financial and performance monitoring, to assure that funds are spent in accordance with the Acts.

(c)(1) Each recipient and subrecipient must monitor grant-supported activities in accordance with 2 CFR part 200.

(2) In the case of grants under secs. 128 and 133 of WIOA, the Governor must develop a State monitoring system that meets the requirements of § 683.410(b). The Governor must

monitor Local Boards and regions annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with 2 CFR part 200.

(d) Documentation of monitoring, including monitoring reports and audit work papers, conducted under paragraph (c) of this section, along with corrective action plans, must be made available for review upon request of the Secretary, Governor, or a representative of the Federal government authorized to request the information.

**§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and Wagner-Peyser?**

(a) Each recipient and subrecipient of funds under title I of WIOA and under Wagner-Peyser must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser program(s) and those of its subrecipients and contractors as required under title I of WIOA and Wagner-Peyser, as well as under 2 CFR part 200, including 2 CFR 200.327, 200.328, 200.330, 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(1) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in the Act and the regulations in this part;

(2) Determine whether there is compliance with other provisions of the Act and the WIOA regulations and other applicable laws and regulations;

(3) Assure compliance with 2 CFR part 200; and

(4) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(b) State roles and responsibilities for grants under secs. 128 and 133 of WIOA:

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with 2 CFR part 200, as required by sec. 184(a)(3) of WIOA;

(ii) Ensure that established policies to achieve program performance and outcomes meet the objectives of the Act and the WIOA regulations;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance WIOA and Wagner-Peyser requirements;

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in sec. 108(e) of WIOA; and

(v) Enable the Governor to ensure compliance with the Nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with 2 CFR part 200, as required by sec. 184(a)(4) of WIOA.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b)(2) or (3) of this section is found (WIA sec. 184(a)(5)).

(5) The Governor must impose the sanctions provided in secs. 184(b)-(c) of WIOA in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every 2 years that:

(i) The State has implemented 2 CFR part 200;

(ii) The State has monitored local areas to ensure compliance with 2 CFR part 200, including annual certifications and disclosures as outlined in 2 CFR 200.113, Mandatory Disclosures. Failure to do so may result in remedies described under 2 CFR 200.338, including suspension and debarment; and

(iii) The State has taken appropriate corrective action to secure such compliance (WIOA secs. 184 and 188).

**§ 683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?**

(a) *Resolution of subrecipient-level findings.* (1) The Governor or direct grant recipient is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through title I of WIOA or Wagner-Peyser.

(i) A State or direct grant recipient must utilize the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(ii) If a State or direct grant recipient does not have such written procedures, it must prescribe standards and procedures to be used for this grant program.

(2) For subrecipients awarded funds through a recipient of grant funds under subtitle D of title I of WIOA, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(b) *Resolution of State and other direct recipient-level findings.* (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under title I of WIOA and Wagner Peyser.

(2) The Secretary will use the Department audit resolution process, consistent with 2 CFR part 200 (and Department modifications at 2 CFR part 2900), and Grant Officer Resolution provisions of § 683.440, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 683.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIOA sec. 188 of WIOA and the Department of Labor nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 37.

**§ 683.430 How does the Secretary resolve investigative and monitoring findings?**

(a) As a result of an investigation, on-site visit, other monitoring, or an audit (*i.e.,* Single Audit, OIG Audit, GAO Audit, or other audit), the Secretary will notify the direct recipient of the Federal award of the findings of the investigation and give the direct recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(1) *Adequate resolution.* The Grant Officer in conjunction with the Federal project officer, reviews the complete file of the monitoring review, monitoring report, or final audit report and the recipient's response and actions under this paragraph (a). The Grant Officer's review takes into account the sanction provisions of secs. 184(b)–(c) of WIOA. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient.

This notification constitutes final agency action.

(2) *Inadequate resolution.* If the direct recipient's response and actions to resolve the findings are found to be inadequate, the Grant Officer will begin the Grant Officer resolution process under § 683.440.

(b) Audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process, as discussed in § 683.440.

**§ 683.440 What is the Grant Officer resolution process?**

(a) *General.* When the Grant Officer is dissatisfied with the a recipient's disposition of an audit or other resolution of findings (including those arising out of site visits, incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring reports, the initial and final determination process as set forth in this section is used to resolve the matter.

(b) *Initial determination.* The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of WIOA, Wagner-Peyser, and applicable regulations, and the terms and conditions of the grants, contracts, or other agreements under the award.

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in sec. 184(e) of WIOA, the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in dispute contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Final determination.* (1) Upon completion of the informal resolution process, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIOA funds directly from the Department, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

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

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

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

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

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

(vii) Offer an opportunity for a hearing in accordance with § 683.800.

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

## Subpart E—Pay-for-Performance Contract Strategies

**§ 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?**

(a) A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy that has four distinct characteristics:

(1) It is a strategy to use WIOA Pay-for-Performance contracts as they are described in § 683.510;

(2) It must include the identification of the problem space and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; the acceptable cost to government associated with implementing such a strategy; and a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for-Performance contracting strategy;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring;

(4) It must include a description of how the State or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

(b) The WIOA Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary.

**§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?**

(a) *Pay-for-Performance contract.* A WIOA Pay-for-Performance contract is a type of Performance-Based contract.

(b) *Applicability.* WIOA Pay-for-Performance contracts may only be entered into when they are a part of a WIOA Pay-for-Performance contract strategy described in § 683.500.

(c) *Cost-plus percentage contracts.* Use of cost-plus percentage contracts is prohibited. (2 CFR 200.323.)

(d) *Services provided.* WIOA Pay-for-Performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

(e) *Structure of payment.* WIOA Pay-for-Performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations within a defined timetable. Outcomes must be independently validated, as described in §§ 683.500 and 683.510(j), prior to disbursement of funds.

(f) *Eligible service providers.* WIOA Pay-for-Performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate). (WIOA sec. 3(47)(A))

(g) *Target populations.* WIOA Pay-for-Performance contracts must identify target populations as specified by the Local Board, which may include individuals with barriers to employment. (WIOA sec. 3(47)(A))

(h) *Bonus and incentive payments.* WIOA Pay-for-Performance contracts may include bonus and/or incentive payments for the contractor, based on achievement of specified levels of performance.

(1) Bonus payments for achieving outcomes above and beyond those specified in the contract must be used

by the service provider to expand capacity to provide effective training.

(2) Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulations.

(i) *Performance reporting.* Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160.

(j) *Validation.* WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. (WIOA sec. 3(47)(B)) This validation must be based on high-quality, reliable, and verified data.

(k) *Guidance.* The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

**§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?**

(a) For WIOA Pay-for-Performance contract strategies providing adults and dislocated worker training services, funds allocated under secs. 133(b)(2)–(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1)–(2) of WIOA.

**§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?**

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional guidance related to the funds availability and reallocation.

**§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?**

(a) Using funds from the Governor's reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(b) Using non-Federal funds, Governors may establish incentives for Local Boards to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to DOL data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to DOL State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with the five required elements listed in § 683.500, the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotment and no more than 10 percent of a local area's youth allotments is expended on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

## Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

**§ 683.600 What local area, State, and direct recipient grievance procedures must be established?**

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 686.1050.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 37. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW., Washington, DC 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

**§ 683.610 What processes does the Secretary use to review grievances and complaints of title I recipients?**

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

(1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 37 will be referred to the Director of the Civil Rights Center.

(e) Complaints and grievances from participants receiving services under the Wagner-Peyser Act will follow the procedures outlined at 20 CFR 658.

**§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?**

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. The Web site is *http://www.oig.dol.gov/contact.htm.*

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

**§ 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?**

(a) Non-designation of local areas:

(1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted, initial or subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local Board or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and

(ii) Participants in programs under title I subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for

the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

**§ 683.640 What procedures apply to the appeals of non-designation of local areas?**

(a) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local workforce investment area to the State Board has not resulted in such designation, may appeal the State Board's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and 20 CFR 679.250, the Secretary may require that the area be designated as a local workforce investment area. In making this determination the Secretary may consider any comments submitted by the State Board in response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

**§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?**

(a) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c) A local area which has failed to meet local performance accountability measures for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with 20 CFR 677.225.

(d) Appeals to the Secretary made under paragraph (a) of this section must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

## Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

**§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?**

(a)(1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, 37 and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or require corrective action by, recipients of funds under title I of WIOA.

(2) To impose a sanction or corrective action for a violation of WIOA sec. 188(a) the Department will use the procedures set forth in 29 CFR part 37.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in 20 CFR part 677.

(b) *States.* When a Grant Officer determines that the Governor has not fulfilled its requirements under 2 CFR part 200, an audit, or a monitoring compliance review set forth at sec. 184(a)(4) of WIOA and § 683.200(a), or has not taken corrective action to remedy a violation as required by WIOA secs. 184(a)(5) and 184(b)(1), the Grant Officer must require the Governor to impose the necessary corrective actions set forth at WIOA secs. 184(a)(5) and 184(b)(1), or may require repayment of funds under WIOA sec. 184(c). If the Secretary determines it is necessary to protect the funds or ensure the proper operation of a program or activity, the Secretary may immediately suspend or terminate financial assistance in accordance with WIOA sec. 184(e).

(c) *Local areas.* If the Governor fails to promptly take the actions specified in WIOA sec. 184(b)(1) when it determines that a local area has failed to comply with the requirements described in § 683.720(a), and that the local area has not taken the necessary corrective action, the Grant Officer may impose such actions directly against the local area.

(d) *Direct grant recipients.* When the Grant Officer determines that a direct grant recipient of subtitle D of title I of WIOA has not taken corrective action to remedy a substantial violation as the result of noncompliance with 2 CFR part 200, the Grant Officer may impose sanctions against the grant recipient.

(e) *Subrecipients.* The Grant Officer may impose a sanction directly against a subrecipient, as authorized in WIOA sec. 184(d)(3) and 2 CFR 200.338. In such a case, the Grant Officer will inform the direct grant recipient of the action.

**§ 683.710 Who is responsible for funds provided under title I and Wagner-Peyser?**

(a) The recipient of the funds is responsible for all funds under its grant(s) awarded under WIOA title I and the Wagner-Peyser Act.

(b)(1) The local government's chief elected official(s) in a local workforce investment area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA secs. 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(2) When a local workforce area or region is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

(3) When there is a change in the chief elected official(s), the Local Board is required to inform the new chief elected official(s), in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the chief elected official(s).

(4) The use of a fiscal agent does not relieve the chief elected official, or

Governor if designated under paragraph (b)(1) of this section, of responsibility for any misuse of grant funds allocated to the local area under WIOA secs. 128 and 133.

**§ 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?**

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with 2 CFR part 200, including the failure to make the required disclosures in accordance with 2 CFR 200.113 or the failure to address all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180), the Governor must:

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

(2) Impose the sanctions provided for at WIOA sec. 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the Governor to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 683.650.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements under WIOA sec. 184(a), or that the Governor has failed to take the actions promptly required upon a determination under paragraph (a) of this section, the Secretary must take the action described in § 683.700(b).

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIOA sec. 184(e).

**§ 683.730 When can the Secretary waive the imposition of sanctions?**

(a)(1) A recipient of title I funds may request that the Secretary waive the imposition of sanctions authorized under WIOA sec. 184.

(2) A Grant officer may approve the waiver described in paragraph (a)(1) of this section if the grant officer finds that the recipient has demonstrated substantial compliance with the requirements of WIOA sec. 184(d)(2).

(b)(1) When the debt for which a waiver is request was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 683.440(c).

(c) A waiver of the recipient's liability must be considered by the Grant Officer only when:

(1) The misexpenditure of WIOA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, and did not constitute fraud or failure to make the required disclosures in accordance with 2 CFR part 200.113 addressing all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180 and 31 U.S.C 3321)

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

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

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

(5) The recipient provides documentation to demonstrate that it has substantially complied with the requirements of WIOA sec. 184(d)(2) and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by WIOA sec. 184(d) unless the Grant Officer determines that further collection action, either by the recipient or subrecipient(s), would be inappropriate or would prove futile.

**§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?**

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

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

(1) The subrecipient meets the criteria set forth in WIOA sec. 184(d)(2);

(2) The misexpenditure of funds:

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

(ii) Was not a violation of WIOA sec. 184(d)(1), did not constitute fraud, or failure to disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient;

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

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

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

**§ 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?**

(a)(1) For misexpenditures by direct recipients of title I and Wagner-Peyser formula funds the Grant Officer may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Grant Officer will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Grant Officer has required the State to repay or offset such amount, the State may deduct an amount equal to the misexpenditure from the subrecipient's allocation of the program year after the determination was made. Deductions are to be made

from funds reserved for the administrative costs of the local programs involved, as appropriate.

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

(d) For recipients of funds under title I and Wagner-Peyser funds, a direct recipient may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIOA funds.

## Subpart H—Administrative Adjudication and Judicial Review

### § 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a contractor against which the Grant Officer has directly imposed a sanction or corrective action under sec. 184 of WIOA, including a sanction against a State under 20 CFR part 677, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination 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. Only alleged violations of the Act, its regulations, the grant or other agreement under the Act raised in the final determination and the request for hearing are subject to 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 procedures in this subpart apply in the case of a complainant who has engaged in the alternative dispute resolution process set forth in § 683.840, if neither a settlement was reached nor a decision issued within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 683.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

### § 683.810 What rules of procedure apply to hearings conducted under this subpart?

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

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

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in WIOA sec. 183(c), incorporating 15 U.S.C. 49.

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

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. This burden is satisfied once the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

### § 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

(a) In ordering relief the ALJ has the full authority of the Secretary under the Act, except as described in paragraph (b) of this section.

(b) In grant selection appeals of awards funded under WIOA title I, subtitle D:

(1) If the Administrative Law Judge rules, under § 683.800, that the appealing organization should have been selected for an award, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization continues to meet the requirements of the applicable solicitation, whether the funds which are the subject of the ALJ's decision will be awarded 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 program.

(2) If the Administrative Law Judge rules that additional application review is required, the Grant Officer must implement that review and, if a new organization is selected, follow the steps laid out in paragraph (b)(1) of this section to determine whether the grant funds will be awarded to that organization.

(3) In the event that the Grant Officer determines that the funds will not be awarded to the appealing organization for the reasons discussed in paragraph (b)(1) of this section, an organization which does not have an approved Negotiated Indirect Cost Rate Agreement will be awarded its reasonable application preparation costs.

(4) If funds are awarded to the appealing organization, the Grant Officer will notify the current grantee within 10 days. In addition, the appealing organization is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been obligated by the current grantee through its operation of the grant and its subsequent closeout.

(5) In the event that an organization, other than the appealing organization, is adversely effected by the Grant Officer's determination upon completion of the additional application review under paragraph (b)(2) of this section, that organization may appeal that decision to the Office of Administrative Law Judges by following the procedures set forth in § 683.800.

(6) Any organization selected and/or funded under WIOA title I, subtitle D, is subject to having its award removed

if an ALJ decision so orders. As part of this process, the Grant Officer will provide instructions on transition and closeout to both the newly selected grantee and to the grantee whose position is affected or which is being removed. All awardees must agree to the provisions of this paragraph as a condition of accepting a grant award.

**§ 683.830 When will the Administrative Law Judge issue a decision?**

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

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 02–2012), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review must also be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. 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, the decision of the ALJ constitutes final agency action. 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.

**§ 683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?**

(a) The parties to a complaint which has been filed according to the requirements of § 683.800 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) The waiver of the right to request a hearing before the OALJ described in paragraph (a) of this section will automatically be revoked if a settlement has not been reached or a written 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 a final decision of an Administrative Law Judge under WIOA sec. 186(b).

**§ 683.850 Is there judicial review of a final order of the Secretary issued under WIOA?**

(a) Any party to a proceeding which resulted in a Secretary's final order under WIOA sec. 186 in which the Secretary awards, declines to award, or only conditionally awards financial assistance or with respect to a corrective action or sanction imposed under WIOA sec. 184 may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order in accordance with WIOA sec. 187.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

■ 11. Add part 684 to read as follows:

## PART 684—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—Purposes and Policies

Sec.

684.100 What is the purpose of the programs established to serve Indians and Native Americans under of the Workforce Innovation and Opportunity Act?
684.110 How must Indian and Native American programs be administered?
684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?
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684.300 Who is eligible to receive services under the Indian and Native American program?
684.310 What are Indian and Native American program grantee allowable activities?
684.320 Are there any restrictions on allowable activities?
684.330 What is the role of Indian and Native American program grantees in the one-stop system?
684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?
684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

### Subpart D—Supplemental Youth Services

684.400 What is the purpose of the supplemental youth services program?
684.410 What entities are eligible to receive supplemental youth services funding?
684.420 What are the planning requirements for receiving supplemental youth services funding?
684.430 What individuals are eligible to receive supplemental youth services?
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684.450 How will supplemental youth services be provided?
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### Subpart E—Services to Communities

684.500 What services may Indian and Native American program grantees provide to or for employers under the WIOA?
684.510 What services may Indian and Native American program grantees provide to the community at large under the WIOA?
684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?
684.530 What rules govern the issuance of contracts and/or subgrants?

### Subpart F—Accountability for Services and Expenditures

684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?

684.610 How is this accountability documented and fulfilled?
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684.630 What are the requirements for preventing fraud and abuse under the WIOA?
684.640 What grievance systems must an Indian and Native American program grantee provide?
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**Subpart G—Section 166 Planning/Funding Process**

684.700 What is the process for submitting a 4-year plan?
684.710 What information must be included in the 4-year plans as part of the competitive application?
684.720 When must the 4-year plan be submitted?
684.730 How will the Department review and approve such plans?
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**Subpart H—Administrative Requirements**

684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?
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**Subpart I—Miscellaneous Program Provisions**

684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?
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684.920 What provisions of law or regulations may not be waived?
684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?
684.940 What is the role of the Native American Employment and Training Council?
684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

**Authority:** Secs. 134, 166, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Purposes and Policies

### § 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

(a) The purpose of WIOA INA programs in sec. 166 is to support employment and training activities for INAs in order to:

(1) Develop more fully the academic, occupational, and literacy skills of such individuals;

(2) Make such individuals more competitive in the workforce and to equip them with entrepreneurial skills necessary for successful self-employment; and

(3) Promote the economic and social development of INA communities in accordance with the goals and values of such communities.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to INAs and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*). (WIOA sec. 166(a)(2)).

### § 684.110 How must Indian and Native American programs be administered?

(a) INA programs will be administered to maximize the Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities.

(b) In administering these programs, the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's ''American Indian and Alaska Native Policies.

(c) The regulations in this part are not intended to abrogate the trust responsibilities of the Federal government to federally-recognized tribes in any way.

(d) The Department will administer INA programs through a single organizational unit and consistent with the requirements in sec. 166(i) of WIOA. The Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) is designated as this single organizational unit as required by sec. 166(i)(1) of WIOA.

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of INA employment and training programs authorized under this Act.

### § 684.120 What obligation does the Department have to consult with the Indian and Native American grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

The Department's primary consultation vehicle for INA programs is the Native American Employment and Training Council. The Department will consult with the INA grantee community in developing policies for the INA programs, actively seeking and considering the views of INA grantees prior to establishing INA program policies and regulations. (WIOA sec. 166(i)(4)). The Department will follow DOL's tribal consultation policy and Executive Order 13175 of November 6, 2000.

### § 684.130 What definitions apply to terms used in this part?

In addition to the definitions found in secs. 3 and 166 of WIOA, and 20 CFR 675.300, the following definitions apply:

*Alaska Native-Controlled Organization* means an organization whose governing board is comprised of 51 percent or more of individuals who are Alaska Native as defined in secs. 3(b) and 3(r) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b), (r)).

*Carry-in* means the total amount of funds unobligated by a grantee at the end of a program year. If the amount of funds unobligated by a grantee at the end of a program year is more than 20 percent of the grantee's ''total funds available'' for that program year, such excess amount is considered ''excess carry-in.''

*DINAP* means the Division of Indian and Native American Programs within the Employment and Training Administration of the U.S. Department of Labor.

*Governing body* means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

*Grant Officer* means a U.S. Department of Labor official authorized to obligate Federal funds.

*High-poverty area* means a Census tract, a set of contiguous Census tracts, or a county or Indian reservation that has a poverty rate of at least 30 percent

as set every 5 years using American Community Survey 5-Year data.

*INA Grantee* means an entity which is formally selected under subpart B of this part to operate an INA program and which has a grant agreement.

*Incumbent Grantee* means an entity that is currently receiving a grant under this subpart.

*Indian and Native American or INA* means, for the purpose of this part, an individual that is an American Indian, Native American, Native Hawaiian, or Alaska Native.

*Indian-Controlled Organization* means an organization whose governing board is comprised of 51 percent or more individuals who are members of one or more Federally-recognized tribes. Incumbent grantees who received funding under WIA can include members of ''State recognized tribes'' in meeting the 51 percent threshold to continue to be eligible for WIOA sec. 166 funds as an Indian-Controlled Organization. Tribal Colleges and Universities meet the definition of Indian-Controlled Organization for the purposes of this regulation.

*Native Hawaiian-Controlled Organization* means an organization whose governing board is comprised of 51 percent or more individuals who are Native Hawaiian as defined in sec. 7207 of the Native Hawaiian Education Act (20 U.S.C. 7517).

*Total funds available* means all funds that a grantee had ''available'' at the beginning of a program year.

*Underemployed* means an individual who is working part-time but desires full-time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

## Subpart B—Service Delivery Systems Applicable to Section 166 Programs

### § 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

(a) To be eligible to apply for a WIOA, sec. 166 grant, an entity must have:

(1) Legal status as a government or as an agency of a government, private non-profit corporation, or a consortium whose members all qualify as one of these entities; and

(2) A new entity (which is not an incumbent grantee) must have a population within the designated geographic service area which would receive at least $100,000 under the funding formula found at § 684.270(b), including any amounts received for supplemental youth services under the funding formula at § 684.440(a). Incumbent grantees which do not meet this dollar threshold will be grandfathered in. Additionally, the Department will make an exception to the $100,000 minimum for grantees wishing to participate in the demonstration program under Public Law 102–477 if all resources to be consolidated under the Public Law 102–477 plan total at least $100,000, with at least $20,000 derived from sec. 166 funds. However, incumbent Public Law 102–477 grantees that are receiving WIA funding of less than $20,000 as of the date of implementation of WIOA will be grandfathered into the program and can continue to be awarded the same amount.

(b) To be eligible to apply as a consortium, each member of the consortium must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(c) Entities eligible under paragraph (a)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations;

(4) Native Hawaiian-controlled organizations;

(5) Indian-controlled organizations serving INAs; and

(6) A consortium of eligible entities which meets the legal requirements for a consortium described in paragraph (b) of this section.

(d) State-recognized tribal organizations that meet the definition of an Indian-controlled organization are eligible to apply for WIOA sec. 166 grant funds. State-recognized tribes that do not meet this definition but are grantees under WIA will be grandfathered into WIOA as Indian-controlled organizations.

### § 684.210 What priority for awarding grants is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have priority to receive grants under this part for those geographic service areas in which they have legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), or Alaska Native Village Service Area (ANVSA).

(b) If the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area, it will consult with such tribe or Alaska Native entity that has jurisdiction before selecting another entity to provide services for such areas.

(c) The priority described in paragraphs (a) and (b) of this section does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity.

### § 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

(a) Entities seeking a WIOA sec. 166 grant, including incumbent grantees, will be provided an opportunity to apply for a WIOA sec. 166 grant every 4 years through a competitive grant process.

(b) As part of the competitive application process, applicants will be required to submit a 4-year plan as described at § 684.710. The requirement to submit a 4-year plan does not apply to entities that have been granted approval to transfer their WIOA funds to the Department of Interior pursuant to Public Law 102–477.

### § 684.230 What appeal rights are available to entities that are denied a grant award?

Any entity that is denied a grant award for which it applied in whole or in part may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 683.800 or the alternative dispute resolution procedures at 20 CFR 683.840. The Grant Officer will provide an entity whose request for a grant award was denied, in whole or in part, with a copy of the appeal procedures.

### § 684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

Yes. For areas that would otherwise go unserved, the Grant Officer may designate an entity, which has not submitted a competitive application, but which meets the qualifications for a grant award, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of INA leaders in the community that would otherwise go unserved before making the decision to designate the entity that would serve the community. DINAP will inform the Grant Officer of the INA leaders' views. The Grant Officer will accommodate views of INA leaders in such areas to the extent possible.

**§ 684.250 Can an Indian and Native American grantee's grant award be terminated?**

(a) Yes, the Grant Officer can terminate a grantee's award for cause, or the Secretary or another Department of Labor official confirmed by the Senate can terminate a grantee's award in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program under sec. 184(e) of WIOA.

(b) The Grant Officer may terminate a grantee's award for cause only if there is a substantial or persistent violation of the requirements in WIOA or the WIOA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 683.800 apply.

**§ 684.260 Does the Department have to award a grant for every part of the country?**

No, if there are no entities meeting the requirements for a grant award in a particular area, or willing to serve that area, the Department will not award funds for that service area. The funds that otherwise would have been allocated to that area under § 684.270 will be distributed to other INA program grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e). Areas which are unserved by the INA program may be restored during a subsequent grant award cycle, when and if a current grantee or other eligible entity applies for a grant award to serve that area.

**§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?**

(a) Except for reserved funds described in paragraph (e) of this section and funds used for other program purposes under § 684.260, all funds available for WIOA sec. 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a program year will be allocated to INA program grantees for the geographic service area(s) awarded to them through the grant competition.

(b) Each INA program grantee will receive the sum of the funds calculated using the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed American Indian, Alaska Native and Native Hawaiian individuals in the grantee's geographic service area(s) compared to all such unemployed persons in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of American Indian, Alaska Native and Native Hawaiian individuals in poverty in the grantee's geographic service area(s) as compared to all such persons in poverty in the United States.

(3) The data and definitions used to implement these formulas are provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the Funding Opportunity Announcement (FOA), the Department may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA program grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, failure to adhere to or meet grant terms and conditions, or lack of ability or interest. If a grantee has excess carry-in for a program year, the Department may also readjust the awards granted under the funding formula so that an amount that equals the previous program year's carry-in will be allocated to another INA program grantee(s).

(e) The Department may reserve up to one percent of the funds appropriated under WIOA sec. 166(d)(2)(A)(i) for any program year for technical assistance and training (TAT) purposes. It will consult with the Native American Employment and Training Council in planning how the TAT funds will be used, designating activities to meet the unique needs of the INA communities served by the INA program. Section 166 grantees also will have access to resources available to other Department programs to the extent permitted under other law.

## Subpart C—Services to Customers

**§ 684.300 Who is eligible to receive services under the Indian and Native American program?**

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the INA program grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in WIOA sec. 166(b)(1); or

(3) A Native Hawaiian, as defined in WIOA sec. 166(b)(3).

(b) The person also must be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 684.130; or

(3) A low-income individual, as defined in sec. 3(36) of WIOA; or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last 6 months or will take effect in the following 6-month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

**§ 684.310 What are Indian and Native American program grantee allowable activities?**

(a) Generally, INA program grantees must make efforts to provide employment and training opportunities to eligible individuals (as described in § 684.300) who can benefit from, and who are most in need of, such opportunities. In addition, INA program grantees must make efforts to develop programs that contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment (WIOA sec. 194(1)).

(b) Allowable activities for INA program grantees are any services consistent with the purposes of this part that are necessary to meet the needs of INAs preparing to enter, reenter, or retain unsubsidized employment leading to self-sufficiency (WIOA sec. 166(d)(1)(B)).

(c) Examples of career services, which may be delivered in partnership with the one-stop delivery system, are described in sec. 134(c)(2) of WIOA and § 678.430.

(d) Follow-up services, including counseling and supportive services for up to 12 months after the date of exit to assist participants in obtaining and retaining employment.

(e) Training services include the activities described in WIOA sec. 134(c)(3)(D).

(f) Allowable activities specifically designed for youth, as listed in sec. 129 of WIOA, include:

(1) Tutoring, study skills training, instruction, and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have as a component academic and occupational education, which may include:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which must include priority consideration for training programs that lead to recognized post-secondary credentials that are aligned with in-demand industry sectors or occupations in the local area involved;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors, as appropriate;

(7) Supportive services as defined in WIOA sec. 3(59);

(8) Adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months;

(9) Follow-up services for not less than 12 months after the completion of participation, as appropriate;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to post-secondary education and training.

(g) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.

(h) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(i) Services may be provided to a participant in any sequence based on the particular needs of the participant.

**§ 684.320 Are there any restrictions on allowable activities?**

(a) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which a participant receiving such services is willing to relocate (WIOA sec. 134(c)(3)(A)(i)(II)).

(b) INA grantees must provide On-the-Job Training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills (WIOA sec. 181(a)(1)); and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIOA sec. 181(b)(5))

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts under WIOA or the Workforce Investment Act of 1998 and have exhibited a pattern of failing to provide on-the-job training participants with continued, long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work (WIOA sec. 194(4)); or

(2) Have exhibited a pattern of violating paragraphs (b)(1) and/or (2) of this section. (WIOA sec. 194(4)).

(d) INA program grantees are prohibited from using funds to encourage the relocation of a business, as described in WIOA sec. 181(d) and 20 CFR 683.260.

(e) INA program grantees must only use WIOA funds for activities that are in addition to those that would otherwise be available to the INA population in the area in the absence of such funds (WIOA sec. 194(2)).

(f) INA program grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under 20 CFR 683.255, sectarian activities involving WIOA financial assistance or participants are limited in accordance with the provisions of sec. 188(a)(3) of WIOA.

**§ 684.330 What is the role of Indian and Native American program grantees in the one-stop system?**

(a) In those local workforce investment areas where an INA program grantee conducts field operations or provides substantial services, the INA program grantee is a required partner in the local one-stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA program grantee and the Local Board over the operation of the one-stop center(s) in the Local Board's workforce investment area also must be executed. Where the Local Board is an alternative entity under 20 CFR 679.150, the INA program grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 679.410(b)(2). In local areas with a large concentration of potentially eligible INA participants, which are in an INA program grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA program grantee should encourage such individuals to participate in the one-stop system in that area in order to receive WIOA services.

(b) At a minimum, the MOU must contain to the provisions listed in WIOA sec. 121(c) and:

(1) The exchange of information on the services available and accessible through the one-stop system and the INA program;

(2) As necessary to provide referrals and case management services, the

exchange of information on INA participants in the one-stop system and the INA program;

(3) Arrangements for the funding of services provided by the one-stop(s), consistent with the requirements at 20 CFR 678.425 that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c) Where the INA program grantee has failed to enter into a MOU with the Local Board, the INA program grantee must describe in its 4-year plan the good-faith efforts made in order to negotiate an MOU with the Local Board.

(d) Pursuant to WIOA sec. 121(h)(2)(D)(iv), INA program grantees will not be subject to the funding of the one-stop infrastructure unless otherwise agreed upon in the MOU under subpart C of 20 CFR part 678.

**§ 684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?**

(a) INA program grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA program grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIOA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage.

(d) In accordance with the policy described in the 4-year plan submitted as part of the competitive process, INA program grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA program grantees must comply with other restrictions listed in WIOA secs. 181 through 195, which apply to all programs funded under title I of WIOA, including the provisions on labor standards in WIOA sec. 181(b).

**§ 684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?**

The Department will provide appropriate technical assistance and training (TAT), as necessary, to INA program grantees. This TAT will assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit. (WIOA sec. 166(i)(5))

## Subpart D—Supplemental Youth Services

**§ 684.400 What is the purpose of the supplemental youth services program?**

The purpose of this program is to provide supplemental employment and training and related services to low-income INA youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii. (WIOA sec. 166(d)(2)(A)(ii))

**§ 684.410 What entities are eligible to receive supplemental youth services funding?**

Entities eligible to receive supplemental youth services funding are limited to Federally-recognized tribes that have a land base in which they have legal jurisdiction such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), Alaska Native Village Service Area (ANVSA) etc., and Native Hawaiian organizations in the State of Hawaii. American Indian, Alaskan Native -controlled non-profit organizations may receive youth funding if they are providing services to an area where the Indian tribe or Alaska Native entity has legal jurisdiction on behalf of the tribe or entity with legal jurisdiction.

**§ 684.420 What are the planning requirements for receiving supplemental youth services funding?**

Applicants eligible to apply for supplemental youth funding must describe the supplemental youth services they intend to provide in the 4-year plan that they will submit as part of the competitive application process. The information on youth services will be incorporated into the overall 4-year plan, which is more fully described in §§ 684.700 and 684.710, and is required for both adult and youth funds. As indicated in § 684.710(c), additional planning information required for applicants requesting supplemental youth funding will be provided in the FOA. The Department envisions that the strategy for youth funds will not be extensive; however, grantees will be required to provide the number of youth it plans to serve and projected performance outcomes. The Department also supports youth activities that preserve INA culture and will support strategies that promote INA values.

**§ 684.430 What individuals are eligible to receive supplemental youth services?**

(a) Participants in supplemental youth services activities must be;

(1) American Indian, Alaska Native or Native Hawaiian as determined by the INA program grantee according to § 684.300(a);

(2) Between the age of 14 and 24; and

(3) A low-income individual as defined at WIOA sec. 3(36) except up to five percent of the participants during a program year in an INA youth program may not be low-income individuals provided they meet the eligibility requirements of paragraphs (a)(1) and (2) of this section.

(b) For the purpose of this section, the term ''low-income'', used with respect to an individual, also includes a youth living in a high-poverty area. (WIOA sec.129(a)(2))

**§ 684.440 How is funding for supplemental youth services determined?**

(a) Supplemental youth funding will be allocated to eligible INA program grantees on the basis of the relative number of INA youth between the ages of 14 and 24 living in poverty in the grantee's geographic service area compared to the number of INA youth between the ages of 14 and 24 living in poverty in in all eligible geographic service areas. The Department reserves the right to redefine the supplemental youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula are provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 684.270(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 684.270(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 684.270(e), as described in § 684.260. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e).

**§ 684.450 How will supplemental youth services be provided?**

(a) INA program grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) The Department encourages INA program grantees to work with local educational agencies to provide academic credit for youth activities whenever possible;

(c) INA program grantees may provide participating youth with the activities referenced in § 684.310(e).

**§ 684.460 What performance measures are applicable to the supplemental youth services program?**

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance measures at WIOA sec. 116(b)(2)(A)(ii) apply to the INA youth program which must include:

(1) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance measures indicated in paragraphs (a)(1) through (6) of this section, the Secretary, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that is in addition to the primary indicators of performance that are applicable to the INA program under this section.

## Subpart E—Services to Communities

**§ 684.500 What services may Indian and Native American grantees provide to or for employers under the WIOA?**

(a) INA program grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's 4-year plan), which are intended to assist eligible participants to obtain or retain employment may also be provided to or for employers.

**§ 684.510 What services may Indian and Native American grantees provide to the community at large under the WIOA?**

(a) INA program grantees may provide services to the INA communities in their service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Indian-controlled institutions to provide education and work-based learning services to INA youth and adults, whether directly or through other INA institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of INA communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's 4-year plan.

(b) INA grantees program should develop their 4-year plan in conjunction with, and in support of, strategic tribal planning and community development goals.

**§ 684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?**

Yes, INA program grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in sec. 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

**§ 684.530 What rules govern the issuance of contracts and/or subgrants?**

In general, INA program grantees must follow the rules of Uniform administrative requirements, Cost Principles, & Audit Requirements for Federal Awards when awarding contracts and/or subgrants under WIA sec. 166. These requirements are codified at 2 CFR part 200 subpart E. Common rules implementing those circulars are codified for Department-funded programs at 29 CFR part 97 (A–102) or 29 CFR part 95 (A–110), and covered in WIA regulations at 20 CFR 683.200. These rules do not apply to OJT contract awards.

## Subpart F—Accountability for Services and Expenditures

**§ 684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?**

(a) The INA program grantee is responsible to the INA community to be served by INA funds.

(b) The INA program grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIOA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified INA client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

**§ 684.610 How is this accountability documented and fulfilled?**

(a) Each INA program grantee must establish its own internal policies and procedures to ensure accountability to the INA program grantee's governing body, as the representative of the INA community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA program grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 684.860 and program reviews, accountability to the Department is documented and fulfilled by the submission of quarterly financial and program reports, and compliance with the terms and conditions of the grant award.

**§ 684.620 What performance measures are in place for the Indian and Native American program?**

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance measures at WIOA sec. 116(b)(2)(A)(i) apply to the INA program which must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance measures at WIOA sec. 116(b)(2)(A)(i), the Department, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that are applicable to the INA program.

**§ 684.630 What are the requirements for preventing fraud and abuse under the WIOA?**

(a) INA program grantees must establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds. Such procedures must ensure that all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles.

(b) Each INA program grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA program grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 683.200(a)(4) and 2 CFR 200 and 2900.

(c) Officers or agents of the INA program grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the INA community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's spouse, parent, sibling, or child unless:

(1)(i) The participant involved is a low-income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 INAs combined; and

(2) The INA program grantee has adopted and implemented the policy described in the 4-year plan to prevent favoritism on behalf of such relatives.

(e) INA program grantees are subject to the provisions of 41 U.S.C. 8702 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities (WIOA sec. 194(6)).

(g) INA program grantees must comply with the restrictions on lobbying activities pursuant to sec. 195 of WIOA and the restrictions on lobbying codified in the Department regulations at 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIOA.

(i) Recipients of financial assistance under WIOA sec. 166 are prohibited from discriminatory practices as outlined at WIOA sec. 188, and the regulations implementing WIA sec. 188, at 29 CFR part 37. However, this does not affect the legal requirement that all INA participants be INAs. Also, INA program grantees are not obligated to serve populations outside the geographic boundaries for which they receive funds. However, INA program grantees are not precluded from serving eligible individuals outside their geographic boundaries if the INA program grantee chooses to do so.

**§ 684.640 What grievance systems must an Indian and Native American program granteeprovide?**

INA program grantees must establish grievance procedures consistent with the requirements of WIOA sec. 181(c) and 20 CFR 683.600.

**§ 684.650 Can Indian and Native American grantees exclude segments of the eligible population?**

(a) No, INA program grantees cannot exclude segments of the eligible population except as otherwise provided in this part. INA program grantees must document in their 4-year plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIOA services and activities.

(b) Nothing in this section restricts the ability of INA program grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved 4-year plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIOA sec. 188 and 29 CFR part 37, including tribal affiliation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

## Subpart G—Section 166 Planning/ Funding Process

**§ 684.700 What is the process for submitting a 4-year plan?**

Every 4 years, INA program grantees must submit a 4-year strategy for meeting the needs of INAs in accordance with WIOA sec. 166(e). This plan will be part of, and incorporated with, the 4-year competitive process described in WIOA sec. 166(c) and § 684.220. Accordingly, specific requirements for the submission of a 4-year plan will be provided in a Funding Opportunity Announcement (FOA) and will include the information described at § 684.710.

**§ 684.710 What information must be included in the 4-year plans as part of the competitive application?**

(a) The 4-year plan, which will be submitted as part of the competitive process, must include the information required at WIOA secs. 166(e)(2)-(5) which are:

(1) The population to be served;

(2) The education and employment needs of the population to be served and the manner in which the activities to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment leading to self-sufficiency;

(3) A description of the activities to be provided and the manner in which such activities are to be integrated with other appropriate activities; and

(4) A description of the performance measures and expected levels of performance.

(b) The 4-year plan must also include any additional information requested in the FOA.

(c) INA program grantees receiving supplemental youth funds will be required to provide additional information (at a minimum the number of youth it plans to serve and the projected performance outcomes) in the 4-year plan that describes a strategy for serving low-income, INA youth. Additional information required for supplemental youth funding will be identified in the FOA.

**§ 684.720 When must the 4-year plan be submitted?**

The 4-year plans will be submitted as part of the competitive FOA process described at § 684.220. Accordingly, the due date for the submission of the 4-year plan will be specified in the FOA.

**§ 684.730 How will the Department review and approve such plans?**

(a) It is the Department's intent to approve a grantee's 4-year strategic plan before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and/or the FOA; or

(2) The services which the INA program grantee proposes are not permitted under WIOA or applicable regulations.

(b) After competitive grant selections have been made, the DINAP office will assist INA grantees in resolving any outstanding issues with the 4-year plan. However, the Department may delay funding to grantees until all issues have been resolved. If the issues with the application of an incumbent grantee cannot be solved, the Department will reallocate funds from the grantee to other grantees that have an approved 4-year plan. The Grant Officer may delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the required documents—including the 4-year plan—are in place and satisfactory.

(c) The Department may approve a portion of the plan and disapprove other portions.

(d) The grantee also has the right to appeal a nonselection decision or a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's application or 4-year plan. Such an appeal would go to the Office of the Administrative Law Judges under procedures at 20 CFR 683.800 or 683.840 in the case of a nonelection.

**§ 684.740 Under what circumstances can the Department or the Indian and Native American grantee modify the terms of the grantee's plan(s)?**

(a) The Department may unilaterally modify the INA program grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request approval to modify its plan to add, expand, delete, or diminish any service allowable under the regulations in this part. The INA grantee may modify its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

## Subpart H—Administrative Requirements

**§ 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?**

(a) Each INA program grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in sec. 181(c) of WIOA and 20 CFR 683.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

**§ 684.810 What types of costs are allowable expenditures under the Indian and Native American program?**

Rules relating to allowable costs under WIOA are covered in 20 CFR 683.200 through 683.215.

**§ 684.820 What rules apply to administrative costs under the Indian and Native American program?**

The definition and treatment of administrative costs are covered in 20 CFR 683.205(b) and 683.215.

**§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?**

No, under 20 CFR 683.205(b), limits on administrative costs for sec. 166 grants will be negotiated with the grantee and identified in the grant award document.

**§ 684.840 How should Indian and Native American program grantees classify costs?**

Cost classification is covered in the WIOA regulations at 20 CFR 683.200 through 683.215. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services, as defined in WIOA sec. 3(59).

**§ 684.850 What cost principles apply to Indian and Native American funds?**

The cost principles at 2 CFR 200 subpart E of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013 apply to INA program grantees.

**§ 684.860 What audit requirements apply to Indian and Native American grants?**

(a) WIOA sec. 166 grantees must follow the audit requirements at 2 CFR 200 subpart F of the Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards published December 26, 2013.

(b) Grants made and contracts and cooperative agreements entered into under sec. 166 of WIOA are subject to the requirements of chapter 75 of subtitle V of title 31, United States Code, and charging of costs under this

section are subject to appropriate circulars issued by the Office of Management and Budget (WIOA, sec. 166(j)).

**§ 684.870 What is ''program income'' and how is it regulated in the Indian and Native American program?**

(a) Program income is regulated by WIOA sec. 194(7)(A), 20 CFR 683.200(a)(5), and the applicable rules in 2 CFR parts 200 and 2900,

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an INA entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

## Subpart I—Miscellaneous Program Provisions

**§ 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?**

Yes, WIOA sec. 166(i)(3) permits waivers of any statutory or regulatory requirement of title I of WIOA that are inconsistent with the specific needs of the INA grantee (except for the areas cited in § 684.920). Such waivers may include those necessary to facilitate WIOA support of long-term community development goals.

**§ 684.910 What information is required in a waiver request?**

(a) To request a waiver, an INA program grantee must submit a waiver request indicating how the waiver will improve the grantee's WIOA program activities which must include the items specified at WIOA secs. 189(i)(3)(B)(i)–(v).

(b) A waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. INA program grantees seeking to continue an existing waiver in a new 4-year grant cycle must submit a new waiver request in accordance with § 684.910(a). This requirement also applies to grants transferred under Public Law 102–477.

**§ 684.920 What provisions of law or regulations may not be waived?**

Requirements relating to:

(a) Wage and labor standards;

(b) Worker rights;

(c) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review;

(f) Non-discrimination may not be waived.

**§ 684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?**

Yes. INA program grantees may consolidate their employment and training funds under WIOA with assistance received from related programs in accordance with the provisions of the Public Law 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Public Law 106–568, the Omnibus Indian Advancement Act of 2000 (25 U.S.C. 3401 *et seq.*). WIOA funds consolidated under Public Law 102–477 are administered by Department of Interior (DOI). Accordingly, the administrative oversight for funds transferred to DOI, including the reporting of financial expenditures and program outcomes are the responsibility of the DOI. However, the Department of Labor must review the initial 477 plan and ensure that all Departmental programmatic and financial obligations have been met before WIOA funds are approved to be transferred to DOI and consolidated with other related programs. The initial plan must meet the statutory requirements of WIOA. After approval of the initial plan, all subsequent plans that are renewed or updated from the initial plan may be approved by the Department of Interior without further review by the Department.

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

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on the operation and administration of the INA employment and training program. WIOA sec. 166(i)(4) continues the Council essentially as it is currently constituted. The Department continues to support the Council.

**§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?**

Yes. Notwithstanding any other provision of law, the Secretary is authorized to award grants, on a competitive basis, to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska or Hawaii, including public and private nonprofit organizations, tribal organizations, American Indian tribal colleges or universities, institutions of higher education, or consortia of such organizations or institutions, to improve job training and workforce investment activities for such unique populations. (WIOA, sec. 166(k))

■ 12. Add part 685 to read as follows:

# PART 685—NATIONAL FARMWORKER JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

**Subpart A—Purpose and Definitions**

Sec.
685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?
685.110 What definitions apply to this program?
685.120 How does the Department administer the National Farmworker Jobs Program?
685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?
685.140 What Workforce Innovation and Opportunity Act regulations apply to the programs authorized under the Workforce Innovation and Opportunity Act?

**Subpart B—The Service Delivery System for the National Farmworker Jobs Program**

685.200 Who is eligible to receive a National Farmworker Jobs Program grant?
685.210 How does an eligible entity become a grantee?
685.220 What is the role of the grantee in the one-stop delivery system?
685.230 Can a grantee's designation be terminated?
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**Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers**

685.300 What are the general responsibilities of grantees?
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685.330 How are services delivered to eligible migrant and seasonal farmworkers?
685.340 What career services must grantees provide to eligible migrant and seasonal farmworkers?
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farmworkers youth participants aged 14–24?
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**Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act**

685.500 What is supplemental youth workforce investment activity funding?
685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?
685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?
685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?
685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?
685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

**Authority:** Secs. 167, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Purpose and Definitions

### § 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

The purpose of the NFJP and the other services and activities established under WIOA sec. 167 is to strengthen the ability of eligible migrant and seasonal farmworkers (MSFWs) and their dependents to obtain or retain unsubsidized employment, stabilize their unsubsidized employment and achieve economic self-sufficiency, including upgraded employment in agriculture. This part provides the regulatory requirements applicable to the expenditure of WIOA secs. 167 and 127(a)(1) funds for such programs, services and activities.

### § 685.110 What definitions apply to this program?

In addition to the definitions found in 20 CFR 675.300, the following definitions apply to programs under this part:

*Allowances* means direct payments made to participants during their enrollment to enable them to participate in the career services described in WIOA sec. 134(c)(2)(A)(xii) or training services as appropriate.

*Dependent* means an individual who:

(1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or

(2) Is the spouse of the eligible MSFW; or

(3) If not claimed as a dependent for Federal income tax purposes, is able to establish:

(i) A relationship as the eligible MSFW's;

(A) Child, grandchild, great grandchild, including legally adopted children;

(B) Stepchild;

(C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;

(D) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

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

*Eligible migrant farmworker* means an eligible seasonal farmworker as defined in WIOA sec. 167(i)(3) whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day; and dependents of the migrant farmworker, as described in WIOA 167(i)(2).

*Eligible migrant and seasonal farmworker* means an eligible migrant farmworker or an eligible seasonal farmworker, also referred to in this regulation as an ''*eligible MSFW,*'' as defined in WIOA sec. 167(i).

*Eligible MSFW youth* means an eligible MSFW aged 14–24 who is individually eligible or is a dependent of an eligible MSFW. The term *eligible MSFW youth* is a subset of the term *eligible MSFW* defined in this section.

*Eligible seasonal farmworker* means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA 167(i)(3).

*Emergency assistance* is a form of ''related assistance'' and means assistance that addresses immediate needs of eligible MSFWs and their dependents, provided by grantees. An applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

*Family,* for the purpose of reporting housing assistance grantee indicators of performance as described in in § 685.400, means the eligible MSFW(s) and all the individuals identified under the definition of *dependent* in this section who are living together in one physical residence.

*Farmwork* means work while employed in the occupations described in 20 CFR 651.10.

*Grantee* means an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

*Housing assistance* means housing-related services provided to eligible MSFWs.

*Lower living standard income level* means the income level as defined in WIOA sec. 3(36)(B).

*Low-income individual* means an individual as defined in WIOA sec. 3(36)(A).

*MOU* means Memorandum of Understanding.

*National Farmworker Jobs Program (NFJP)* is the Department of Labor-administered workforce investment program for eligible MSFWs established by WIOA sec. 167 as a required partner of the one-stop system and includes both career services and training grants, and housing grants.

*Recognized post-secondary credential* means a credential as defined in WIOA sec. 3(52).

*Related assistance* means short-term forms of direct assistance designed to

assist eligible MSFWs retain or stabilize their agricultural employment. Examples of related assistance may include, but are not limited to, services such as transportation assistance or providing work clothing.

*Self-certification* means an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

*Service area* means the geographical jurisdiction, which may be comprised of one or more designated State or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

*Technical assistance* means the guidance provided to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to eligible MSFWs.

#### § 685.120 How does the Department administer the National Farmworker Jobs Program?

The Department's Employment and Training Administration (ETA) administers NFJP activities required under WIOA sec. 167 for eligible MSFWs. As described in § 685.210, the Department designates grantees using procedures consistent with standard Federal government competitive procedures.

#### § 685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

The Department provides guidance, administrative support, technical assistance, and training to grantees for the purposes of program implementation, and program performance management to enhance services and promote continuous improvement in the employment outcomes of eligible MSFWs.

#### § 685.140 What regulations apply to the programs authorized under the Workforce Innovation and Opportunity Act?

The regulations that apply to programs authorized under WIOA sec. 167 are:

(a) The regulations found in this part;

(b) The general administrative requirements found in 20 CFR part 683, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 683, subpart D through subpart H, which cover programs under WIOA sec. 167;

(c) Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR part 200 and 2 CFR part 2900;

(d) The regulations on partnership responsibilities contained in 20 CFR parts 679 (Statewide and Local Governance) and 678 (the One-Stop System); and

(e) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIOA sec. 188.

### Subpart B—The Service Delivery System for the National Farmworker Jobs Program

#### § 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

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

(a) An understanding of the problems of eligible MSFWs;

(b) A familiarity with the agricultural industries and the labor market needs of the proposed service area;

(c) The ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

#### § 685.210 How does an eligible entity become a grantee?

To become a grantee and receive a grant under this subpart, an applicant must respond to a Funding Opportunity Announcement (FOA). Under the FOA, grantees will be selected using standard Federal government competitive procedures. The entity's proposal must include a program plan, which is a 4-year strategy for meeting the needs of eligible MSFWs in the proposed service area, and a description of the entities experience working with the broader workforce delivery system. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under this section is denied in whole or in part may request an administrative review under 20 CFR 683.800.

#### § 685.220 What is the role of the grantee in the one-stop delivery system?

In those local workforce investment areas where the grantee operates its NFJP as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678. Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500, and which sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop system to eligible MSFWs.

#### § 685.230 Can a grantee's designation be terminated?

Yes, a grantee's designation may be terminated by the Department for cause: (a) in emergency circumstances when such action is necessary to protect the integrity of Federal funds or to ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination (WIOA sec. 184(e)); or (b) by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. In such a case, the Grant Officer will follow the administrative regulations at 20 CFR 683.440.

#### § 685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

At least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. The Department will use a percentage of the funds allocated for State service areas for housing grants, specified in a FOA issued by the Department. The Department will use up to one percent of the appropriated funds for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

### Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

#### § 685.300 What are the general responsibilities of grantees?

(a) The Department awards career services and training grants and housing grants through the FOA process described in § 685.210. Career services and training grantees are responsible for providing appropriate career services, training, and related assistance to eligible MSFWs. Housing grantees are responsible for providing housing assistance to eligible MSFWs.

(b) Grantees will provide these services in accordance with the service delivery strategy meeting the requirements of § 685.310 and as described in their approved program plan described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs.

(c) Grantees are responsible for coordinating services; particularly outreach to MSFWs, with the State Workforce Agency as defined in 20 CFR part 651 and the State's monitor advocate.

(d) Grantees are responsible for fulfilling the responsibilities of one-stop partners described in § 678.420.

**§ 685.310 What are the basic components of an National Farmworker Jobs Program service delivery strategy?**

The NFJP service delivery strategy must include:

(a) A customer-focused case management approach;

(b) The provision of workforce investment activities to eligible MSFWs which include career services and training, as described in WIOA secs. 167(d) and 134, and 20 CFR part 680.

(c) The provision of youth workforce investment activities described in WIOA sec. 129 and 20 CFR part 681 may be provided to eligible MSFW youth;

(d) The arrangements under the MOUs with the applicable Local Workforce Development Boards for the delivery of the services available through the one-stop system to MSFWs; and

(e) Related assistance services.

**§ 685.320 Who is eligible to receive services under the National Farmworker Jobs Program?**

Eligible migrant farmworkers (including eligible MSFW youth) and eligible seasonal farmworkers (including eligible MSFW youth) as defined in § 685.110 are eligible for services funded by the NFJP.

**§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers?**

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach emphasizing customer choice and may include: appropriate career services and training; related assistance, which includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in §§ 685.340 through 685.390.

**§ 685.340 What career services must grantees provide to eligible migrant and seasonal farmworkers?**

(a) Grantees must provide the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680 to eligible MSFWs.

(b) Grantees must provide other services identified in the approved program plan.

(c) Grantees must provide access to career services through the one-stop delivery system. Grantees can also provide career services through sources outside the one-stop system.

(d) The delivery of career services to eligible MSFWs by the grantee and through the one-stop system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

**§ 685.350 What training services must grantees provide to eligible migrant and seasonal farmworkers?**

(a) Grantees must provide the training activities described in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680 to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and on-the-job training. Eligible MSFWs are not required to receive career services prior to receiving training services.

(b) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

(c) Training activities must encourage the attainment of recognized post-secondary credentials as defined in § 685.110 when appropriate for an eligible MSFW.

**§ 685.360 What housing services must grantees provide to eligible migrant and seasonal farmworkers?**

(a) Housing grantees must provide housing services to eligible MSFWs.

(b) Career services and training grantees may provide housing services to eligible MSFWs as described in their program plan.

(c) Housing services include the following:

(1) Permanent housing that is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the eligible MSFW's primary residence to which he/she returns at the end of the work or training day; and

(2) Temporary housing that is not owner-occupied and is used by MSFWs whose employment requires occasional travel outside their normal commuting area.

(d) Permanent housing services include but are not limited to: Investments in development services, project management, and resource development to secure acquisition, construction/renovation and operating funds, property management services, and program management. New construction, purchase of existing structures, and rehabilitation of existing structures, as well as the infrastructure, utilities, and other improvements necessary to complete or maintain those structures may also be considered part of managing permanent housing.

(e) Temporary housing services include but not limited to: Housing units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures, tents, and yurts that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re-erected when needed for farmworker occupancy, closed during the off-season, or handled through other similar arrangements; and off-farm housing operated independently of employer interest in, or control of, the housing, or on-farm housing operated by a nonprofit, including faith-based or community non-profit organizations, but located on property owned by an agricultural employer. Managing temporary housing may involve property management of temporary housing facilities, case management, and referral services, and emergency housing payments, including vouchers and cash payments for rent/lease and utilities.

(f) Housing services may only be provided when the services are required to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking or retaining employment, or engaging in training.

**§ 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?**

(a) Based on an evaluation and assessment of the needs of eligible MSFW youth, grantees may provide activities and services that include but are not limited to:

(1) Career services and training as described in §§ 685.340 and 685.350;

(2) Youth workforce investment activities specified in WIOA sec. 129;

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

(4) Community service projects;

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 681.

(c) Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

**§ 685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?**

Related assistance may include short-term direct services and activities. Examples include emergency assistance, as defined in § 685.110, and those

activities identified in WIOA sec. 167(d), such as: English language and literacy instruction; pesticide and worker safety training; housing (including permanent housing), as described in § 685.360 and as provided in the approved program plan; and school dropout prevention and recovery activities. Related assistance may be provided to eligible MSFWs not enrolled in career services, youth services, or training services.

**§ 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?**

Eligible MSFWs may receive related assistance services when the grantee identifies and documents the need for the related assistance, which may include a statement by the eligible MSFW.

## Subpart D—Performance Accountability, Planning, and Waiver Provisions

**§ 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?**

(a) For grantees providing career services and training, the Department will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A).

(b) For grantees providing career services and training, the Department will reach agreement with individual grantees on the levels of performance for each of the primary indicators of performance, taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). Once agreement on the levels of performance for each of the primary indicators of performance is reached with individual grantees, the Department will incorporate the adjusted levels of performance in the grant plan.

(c) For grantees providing housing services only, grantees will use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance.

(d) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan.

(e) Grantees may develop additional performance indicators and include them in the program plan or in periodic performance reports.

**§ 685.410 What planning documents must a grantee submit?**

Each grantee receiving WIOA sec. 167 program funds must submit to the Department a comprehensive program plan and a projection of participant services and expenditures in accordance with instructions issued by the Secretary.

**§ 685.420 What information is required in the grantee program plan?**

A grantee's 4-year program plan must describe:

(a) The service area that the applicant proposes to serve;

(b) The population to be served and the education and employment needs of the MSFW population to be served;

(c) The manner in which proposed services to eligible MSFWs will strengthen their ability to obtain or retain unsubsidized employment or stabilize their unsubsidized employment, including upgraded employment in agriculture;

(d) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be integrated and coordinated with other appropriate services;

(e) The performance accountability measures that will be used to assess the performance of the entity in carrying out the NFJP program activities, including the expected levels of performance for the primary indicators of performance described in § 685.400;

(f) The availability and accessibility of local resources, such as supportive services, services provided through one-stop delivery systems, and education and training services, and how the resources can be made available to the population to be served;

(g) The plan for providing services including strategies and systems for outreach, career planning, assessment, and delivery through one-stop delivery systems;

(h) The methods the grantee will use to target its services on specific segments of the eligible population, as appropriate; and

(i) Such other information as required by the Secretary in instructions issued under § 685.410.

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

(a) Plans must be modified to reflect the funding level for each year of the grant. The Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1 prior to the start of the subsequent year of the grant cycle.

(b) The grantee must submit a request to the Department for any proposed modifications to its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. The Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans.

(c) If the grantee is approved for a regulatory waiver under §§ 685.460 and 685.470, the grantee must submit a modification of its grant plan to reflect the effect of the waiver.

**§ 685.440 How are costs classified under the National Farmworker Jobs Program?**

(a) Costs are classified as follows:

(1) Administrative costs, as defined in 20 CFR 683.215; and

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

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

(1) Related assistance (including emergency assistance);

(2) Supportive services; and

(3) All other program services.

**§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?**

Under 20 CFR 683.205(b), limits on administrative costs for programs operated under subtitle D of WIOA title I will be identified in the grant or contract award document. Administrative costs will not exceed 15 percent of total grantee funding.

**§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?**

(a) The statutory waiver provision at WIOA sec. 189(i) and discussed in 20 CFR 679.600 does not apply to any NFJP grant under WIOA sec. 167.

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

(1) Not required by WIOA;

(2) Not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review,

nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the basic purposes of WIOA, described in 20 CFR 675.100.

**§ 685.470 How can grantees request a waiver?**

To request a waiver, a grantee must submit to the Department a waiver plan that:

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

(b) Is consistent with any guidelines the Department establishes;

(c) Describes the data that will be collected to track the impact of the waiver; and

(d) Includes a modified program plan reflecting the effect of the requested waiver.

## Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

**§ 685.500 What is supplemental youth workforce investment activity funding?**

Pursuant to WIOA sec. 127(a)(1), if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

**§ 685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?**

The requirements in subparts A through D of this regulation apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

**§ 685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?**

The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1). The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

**§ 685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?**

The required planning documents will be described in the FOA.

**§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?**

The allocation of funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

**§ 685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?**

Eligible MSFW youth as defined in § 685.110 are *eligible to receive services through grants funded by WIOA sec. 127(a)(1).*

■ 13. Add part 686 to read as follows:

## PART 686—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

### Subpart A—Scope and Purpose

Sec.

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686.110 What is the Job Corps program?
686.120 What definitions apply to this part?
686.130 What is the role of the Job Corps Director?

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**Authority:** Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Scope and Purpose

### § 686.100 What is the scope of this part?

The regulations in this part outline the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, ''instructions (procedures) issued by the Secretary'' and similar references refer to the Policy and Requirements Handbook and other Job Corps directives.

### § 686.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, Local Workforce Development Boards, Youth Standing Committees where established, one-stop centers and partners, and other youth programs to provide academic, career and technical education, service-learning, and social opportunities primarily in a residential setting, for low-income young people. The objective of Job Corps is to support responsible citizenship and provide young people with the skills they need to lead to successful careers that will result in economic self-sufficiency and opportunities for advancement in in-demand industry sectors or occupations or the Armed Forces, or to enrollment in post-secondary education.

### § 686.120 What definitions apply to this part?

The following definitions apply to this part:

*Absent Without Official Leave (AWOL)* means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

*Applicable Local Board* means a Local Workforce Development Board that:

(1) Works with a Job Corps center and provides information on local employment opportunities and the job skills and credentials needed to obtain the opportunities; and

(2) Serves communities in which the graduates of the Job Corps seek employment.

*Applicable one-stop center* means a one-stop center that provides career transition services, such as referral, assessment, recruitment, and placement, to support the purposes of the Job Corps.

*Capital improvement* means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a ''fixed asset;'' and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

*Career technical training* means career and technical education and training.

*Career transition service provider* means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students.

*Civilian Conservation Center (CCC)* means a center operated on public land under an agreement between the Department of Labor (DOL or the Department) and the Department of Agriculture, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

*Contract center* means a Job Corps center operated under a contract with the Department.

*Contracting officer* means an official authorized to enter into contracts or agreements on behalf of the Department.

*Enrollee* means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are also referred to as ''students'' in this part.

*Enrollment* means the process by which an individual formally becomes a student in the Job Corps program.

*Former enrollee* means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program prior to becoming a graduate.

*Graduate* means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program and who, as a result of participation in the program, has received a secondary school diploma or recognized equivalent, or has completed the requirements of a career technical training program that prepares individuals for employment leading to economic self-sufficiency or entrance into post-secondary education or training.

*Individual with a disability* means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

*Interagency agreement* means a formal agreement between the Department and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

*Job Corps* means the Job Corps program established within the Department of Labor and described in sec. 143 of the Workforce Innovation and Opportunity Act (WIOA).

*Job Corps center* means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center, as described in sec. 147 of WIOA.

*Job Corps Director* means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

*Low-income individual* means an individual who meets the definition in WIOA sec. 3(36).

*National Office* means the national office of Job Corps.

*National training contractor* means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide career technical training, career transition services, or other services.

*Operational support services* means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted career technical training and off-center training;

(3) Career transition services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

*Operator* means a Federal, State or local agency, or a contractor selected under this subtitle to operate a Job Corps center under an agreement or contract with the Department.

*Outreach and admissions provider* means an organization that performs recruitment services, including outreach activities, and screens and enrolls youth under a contract or other agreement with Job Corps.

*Participant,* as used in this part, includes both graduates and enrollees and former enrollees that have completed their career preparation period. It also includes all enrollees and former enrollees who have remained in the program for at least 60 days.

*Placement* means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

*Regional appeal board* means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

*Regional Director* means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

*Regional Office* means a regional office of Job Corps.

*Regional Solicitor* means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

*Separation* means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

*Service Provider* means an entity selected under this subtitle to provide operational support services described in this subtitle to a Job Corps center.

*Student* means an individual enrolled in the Job Corps.

*Unauthorized goods* means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the Secretary, Center Director, or center operator in a student handbook.

#### § 686.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under title I, subtitle C of WIOA. Where the term ''Secretary'' is used in this part to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

### Subpart B—Site Selection and Protection and Maintenance of Facilities

#### § 686.200 How are Job Corps center locations and sizes determined?

(a) The Secretary must approve the location and size of all Job Corps centers based on established criteria and procedures.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

#### § 686.210 How are center facility improvements and new construction handled?

The Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

#### § 686.220 Who is responsible for the protection and maintenance of center facilities?

(a) The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with the current Federal Property Management Regulations.

(b) The U.S. Department of Agriculture, when operating Civilian Conservation Centers (CCC) on public land, is responsible for the protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

## Subpart C—Funding and Selection of Center Operators and Service Providers

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

(a) *Center Operators.* Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private organizations, including for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area career and technical education or residential career and technical schools (WIOA sec. 147(a)(1)(A)).

(b) *Service Providers.* Entities eligible to receive funds to provide outreach and admissions, career transition services and other operational support services are local or other entities with the necessary capacity to provide activities described in this part to a Job Corps center, including:

(1) Applicable one-stop centers and partners;

(2) Organizations that have a demonstrated record of effectiveness in serving at-risk youth and placing them into employment, including community action agencies; business organizations, including private for-profit and non-profit corporations; and labor organizations; and

(3) Child welfare agencies that are responsible for children and youth eligible for benefits and services under sec. 477 of the Social Security Act (42 U.S.C. 677).

### § 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and DOL Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce investment area in which the center is located (WIOA sec. 147(b)(1)(A)).

(b) The RFP for each contract center describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

(c) The Contracting Officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The offeror's ability to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the enrollees intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State Boards, Local Boards, applicable one-stop centers, and the State and region in which the center is located; and

(4) The offeror's past performance, if any, relating to operating or providing activities to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career technical training.

(d) In order to be eligible to operate a Job Corps center, the offeror must also submit the following information at such time and in such manner as required by the Secretary:

(1) A description of the program activities that will be offered at the center and how the academics and career technical training reflect State and local employment opportunities, including opportunities in in-demand industry sectors and occupations recommended by the workforce council;

(2) A description of the counseling, career transition, and support activities that will be offered at the center, including a description of the strategies and procedures the offeror will use to place graduates into unsubsidized employment or education leading to a recognized post-secondary credential upon completion of the program;

(3) A description of the offeror's demonstrated record of effectiveness in placing at-risk youth into employment and post-secondary education, including past performance of operating a Job Corps center and as appropriate, the entity's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(4) A description of the relationships that the offeror has developed with State Boards, Local Boards, applicable one-stop centers, employers, labor organizations, State and local educational agencies, and the surrounding communities in which the center is located;

(5) A description of the offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State Plan and local plans;

(6) A description of the strong fiscal controls the offeror has in place to ensure proper accounting of Federal funds and compliance with the Financial Management Information System established by the Secretary under sec. 159(a) of WIOA;

(7) A description of the steps to be taken to control costs in accordance with the Financial Management Information System established by the Secretary (WIOA sec. 159(a)(3));

(8) A detailed budget of the activities that will be supported using Federal funds provided under this part and non-Federal resources;

(9) An assurance the offeror is licensed to operate in the State in which the center is located;

(10) An assurance that the offeror will comply with basic health and safety codes, including required disciplinary measures and Job Corps' Zero Tolerance Policy (WIOA sec. 152(b)); and

(11) Any other information on additional selection factors required by the Secretary.

### § 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

(a) If an offeror meets the requirements as an operator of a high-performing center as applied to a particular Job Corps center, that operator will be allowed to compete in any competitive selection process carried out for an award to operate that center (WIOA sec. 147(b)(1)).

(b) An offeror is considered to be an operator of a high-performing center if the Job Corps center operated by the offeror:

(1) Is ranked among the top 20 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(2) Meets the expected levels of performance established under

§ 686.1050 with respect to each of the primary indicators of performance for Job Corps centers:

(i) For the period of the most recent preceding 3 program years for which information is available at the time the determination is made, achieved an average of 100 percent, or higher, of the expected level of performance for the indicator; and

(ii) For the most recent preceding program year for which information is available at the time the determination is made, achieved 100 percent, or higher, of the expected level of performance established for the indicator.

(c) If any of the program years described in paragraphs (b)(2)(i) and (ii) of this section precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, an entity is considered an operator of a high-performing center during that period if the Job Corps center operated by the entity:

(1) Meets the requirements of paragraph (b)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for—

(i) The 6-month follow-up placement rate of graduates in employment, the military, education or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the top five percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060.

**§ 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?**

(a) Agreements are for not more than a 2-year period. The Secretary may exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years.

(b) The Secretary will establish procedures for evaluating the option to renew an agreement that includes: an assessment of the factors described in paragraph (c) of this section; a review of contract performance and financial reporting compliance; a review of the program management and performance data described in §§ 686.1000 and 686.1010; an assessment of whether the center is on a performance improvement plan as described § 686.1070 and if so, whether the center is making measureable progress in completing the actions described in the plan; and an evaluation of the factors described in paragraph (d) of this section.

(c) The Secretary will only renew the agreement of an entity to operate a Job Corps center if the entity:

(1) Has a satisfactory record of integrity and business ethics;

(2) Has adequate financial resources to perform the agreement;

(3) Has the necessary organization, experience, accounting and operational controls, and technical skills; and

(4) Is otherwise qualified and eligible under applicable laws and regulations, including that the contractor is not under suspension or debarred from eligibility for Federal contractors.

(d) The Secretary will not renew an agreement for an entity to operate a Job Corps center for any additional 1-year period if, for both of the 2 most recent preceding program years for which information is available at the time the determination is made, or if a second program year is not available, the preceding year for which information is available, such center:

(1) Has been ranked in the lowest 10 percent of Job Corps centers according to the rankings calculated under § 686.1060; and

(2) Failed to achieve an average of 50 percent or higher of the expected level of performance established under § 686.1050 with respect to each of the primary indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(e) Information Availability:

(1) Information will be considered to be available for a program year for purposes of paragraph (d) of this section if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator.

(2) If complete information for any of the indicators of performance described in paragraph (d)(2) of this section is not available for either of the 2 program years described in paragraph (d) of this section, the Secretary will review partial program year data from the most recent program year for those indicators, if at least two quarters of data are available, when making the determination required under paragraph (d)(2) of this section.

(f) If any of the program years described in paragraph (d) of this section precede the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers described in § 686.1010, the evaluation described in paragraph (d) of this section will be based on whether in its operation of the center the entity:

(1) Meets the requirement of paragraph (d)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for—

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the ranking calculated under § 686.1060.

(g) Exception—the Secretary can exercise an option to renew the agreement with an entity notwithstanding the requirements in paragraph (d) of this section for no more than 2 additional years if the Secretary determines that a renewal would be in the best interest of the Job Corps program, taking into account factors including:

(1) Significant improvements in program performance in carrying out a performance improvement plan;

(2) That the performance is due to circumstances beyond the control of the entity, such as an emergency or disaster;

(3) A significant disruption in the operations of the center, including in

the ability to continue to provide services to students, or significant increase in the cost of such operations; or

(4) A significant disruption in the procurement process with respect to carrying out a competition for the selection of a center operator.

(h) If the Secretary does make an exception and exercises the option to renew per paragraph (g) of this section, the Secretary will provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

**§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?**

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and DOL Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for operational support services in consultation with the Governor, the center workforce council (if established), and the Local Board for the workforce investment area in which the center is located (WIOA sec. 147(a)(1)(A)).

(b) The RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the specific required operational support services.

(c) The Contracting Officer selects and funds operational support service contracts on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP. The criteria may include the following, as applicable:

(1) The ability of the offeror to coordinate the activities carried out in relation to the Job Corps center with related activities carried out under the appropriate State Plan and local plans;

(2) The ability of the entity to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State Boards, Local Boards, applicable one-stop centers, and the State and region in which the services are provided;

(4) The offeror's past performance, if any, relating to providing services to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce; and

(6) Any other information on additional selection factors required by the Secretary.

**§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?**

(a) The Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers located on public land, which are called Civilian Conservation Centers (CCCs). Located primarily in rural areas, in addition to academics, career technical training, and workforce preparation skills training, CCCs provide programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

(b) When the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

(c) Enrollees in CCCs may provide assistance in addressing national, State, and local disasters, consistent with current child labor laws. The Secretary of Agriculture must ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

(d) The Secretary of Agriculture must designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs.

(e) The Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of Labor determines appropriate.

(f) The Secretary of Labor has the discretion to close CCCs if the Secretary determines appropriate.

**§ 686.360 What are the requirements for award of contracts and payments to Federal agencies?**

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the DOL Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from the Department to the respective operating agency.

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

**§ 686.400 Who is eligible to participate in the Job Corps program?**

(a) To be eligible to participate in the Job Corps, an individual must be:

(1) At least 16 and not more than 24 years of age at the time of enrollment, except that:

(i) The Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) of this section, and the requirement in paragraph (a)(1)(ii) of this section for an individual with a disability if he or she is otherwise eligible according to the requirements listed in §§ 686.400 and 686.410; and

(ii) Not more than 20 percent of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(2) A low-income individual;

(3) An individual who is facing one or more of the following barriers to education and employment:

(i) Is basic skills deficient, as defined in WIOA sec. 3;

(ii) Is a school dropout;

(iii) Is homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)); is a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); or is a runaway, an individual in foster care; or an individual who was in foster care and has aged out of the foster care system.

(iv) Is a parent; or

(v) Requires additional education, career technical training, or workforce preparation skills in order to obtain and

retain employment that leads to economic self-sufficiency; and

(4) Meets the requirements of § 686.420, if applicable.

(b) Notwithstanding paragraph (a)(2) of this section, a veteran is eligible to become an enrollee if the individual:

(1) Meets the requirements of paragraphs (a)(1) and (3) of this section; and

(2) Does not meet the requirement of paragraph (a)(2) of this section because the military income earned by the individual within the 6-month period prior to the individual's application for Job Corps prevents the individual from meeting that requirement.

**§ 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?**

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment only if:

(a) A determination is made, based on information relating to the background, needs, and interests of the applicant, that the applicant's educational and career and technical needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities.

(c) The applicant is made aware of the center's rules, what the consequences are for failure to observe the rules, and agrees to comply with such rules, as described in procedures issued by the Secretary;

(d) The applicant has not been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault (WIOA secs. 145(b)(1)(C), 145(b)(2), and 145(b)(3)). Other than these felony convictions, no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. All applicants must submit to a background check conducted according to procedures established by the Secretary and in accordance with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws and regulations; and

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

**§ 686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?**

(a) Yes, each male applicant 18 years of age or older must present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*).

**§ 686.430 What entities conduct outreach and admissions activities for the Job Corps program?**

The Secretary makes arrangements with outreach and admissions providers to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions services are identified in § 686.300.

**§ 686.440 What are the responsibilities of outreach and admissions providers?**

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions providers are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 686.400 and 686.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the National Director or his or her designee.

**§ 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?**

(a) Each applicant who meets the application and selection requirements of §§ 686.400 and 686.410 is assigned to a center based on an assignment plan developed by the Secretary in consultation with the operators of Job Corps centers. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions;

(3) The size and enrollment level of the center, including the education, training, and supportive services provided through the center; and

(4) The performance of the Job Corps center relating to the expected levels of performance for indicators described in WIOA sec. 159(c)(1), and whether any actions have been taken with respect to the center under secs. 159(f)(2) and 159(f)(3) of WIOA.

(b) Eligible applicants are assigned to the center that offers the type of career technical training selected by the individual, and among the centers that offer such career technical training, is closest to the home of the individual. The Secretary may waive this requirement if:

(1) The enrollee would be unduly delayed in participating in the Job Corps program because the closest center is operating at full capacity; or

(2) The parent or guardian of the enrollee requests assignment of the enrollee to another Job Corps center due to circumstances in the community that would impair prospects for successful completion by the enrollee.

(c) If a parent or guardian objects to the assignment of a student under the age of 18 to a center other than the center closest to home that offers the desired career technical training, the Secretary must not make such an assignment.

**§ 686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?**

No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

**§ 686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?**

(a) A person who is determined to be ineligible to participate in Job Corps under § 686.400 or a person who is not selected for enrollment under § 686.410 may appeal the determination to the outreach and admissions agency within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 686.960 and 686.965. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days of the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by sec. 188 of WIOA, the individual may proceed under the applicable Department nondiscrimination regulations implementing WIOA sec. 188 at 29 CFR part 37.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate one-stop center or other local service provider.

**§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?**

(a) To be considered enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

**§ 686.490 How long may a student be enrolled in Job Corps?**

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than 2 years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary;

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed 1 year;

(3) An extension of a student's enrollment may be authorized in the case of a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for not more than 1 additional year; and

(4) An enrollment extension may be granted to a student who participates in national service, as authorized by a Civilian Conservation Center, for the amount of time equal to the period of national service.

## Subpart E—Program Activities and Center Operations

**§ 686.500 What services must Job Corps centers provide?**

(a) Job Corps centers must provide an intensive, well-organized and fully supervised program including:

(1) Educational activities, including:

(i) Career technical training;

(ii) Academic instruction; and

(iii) Employability and independent learning and living skills development.

(2) Work-based learning and experience;

(3) Residential support services; and

(4) Other services as required by the Secretary.

(b) In addition, centers must provide students with access to the career services described in secs. 134(c)(2)(A)(i)–(xi) of WIOA.

**§ 686.505 What types of training must Job Corps centers provide?**

(a) Job Corps centers must provide students with a career technical training program that is:

(1) Aligned with industry-recognized standards and credentials and with program guidance; and

(2) Linked to employment opportunities in in-demand industry sectors and occupations both in the area in which the center is located and, if practicable, in the area the student plans to reside after graduation.

(b) Each center must provide education programs, including: an English language acquisition program, high school diploma or high school equivalency certification program, and academic skills training necessary for students to master skills in their chosen career technical training programs.

(c) Each center must provide programs for students to learn and practice employability and independent learning and living skills including: job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy and other skills specified in program guidance.

(d) All Job Corps training programs must be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, and resulting in:

(1) Students' employment in unsubsidized, in-demand jobs with the potential for advancement opportunities;

(2) Enrollment in advanced education and training programs or apprenticeships, including registered apprenticeship; or

(3) Enlistment in the Armed Services.

(e) Specific career technical training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(f) Center workforce councils described in § 670.810 must review appropriate labor market information, identify in-demand industry sectors and employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's career technical training program to the Secretary.

(g) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(h) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

**§ 686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?**

(a) The Secretary may arrange for the career technical and academic education of Job Corps students through local public or private educational agencies, career and technical educational institutions or technical institutes, or other providers such as business, union or union-affiliated organizations as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

(b) Entities providing these services will be selected in accordance with the requirements of § 686.310.

**§ 686.515 What are advanced career training programs?**

(a) The Secretary may arrange for programs of advanced career training (ACT) for selected students, which may be provided through the eligible providers of training services identified in WIOA sec. 122 in which the students continue to participate in the Job Corps program for a period not to exceed 1

year in addition to the period of participation to which these students would otherwise be limited.

(b) Students participating in an ACT program are eligible to receive:

(1) All of the benefits provided to a residential Job corps student; or

(2) A monthly stipend equal to the average value of the benefits described in paragraph (b)(1) of this section.

(c) Any operator may enroll more students than otherwise authorized by the Secretary in an ACT program if, in accordance with standards developed by the Secretary, the operator demonstrates:

(1) Participants in such a program have achieved a satisfactory rate of training and placement in training-related jobs; and

(2) For the most recently preceding 2 program years, the operator has, on average, met or exceeded the expected levels of performance under WIOA sec. 159(c)(1) for each of the primary indicators described in WIOA sec. 116(b)(2)(A)(ii), listed in § 686.1010.

**§ 686.520 What responsibilities do the center operators have in managing work-based learning?**

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career technical training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.920.

**§ 686.525 Are students permitted to hold jobs other than work-based learning opportunities?**

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

**§ 686.530 What residential support services must Job Corps center operators provide?**

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A center-wide quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, 7 days a week, 24 hours a day;

(b) An ongoing, structured personal counseling program for students provided by qualified staff;

(c) A quality, safe and clean food service, to provide nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program that meets the needs of all students;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds that come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

**§ 686.535 Are Job Corps centers required to maintain a student accountability system?**

Yes, each Job Corps center must establish and implement an effective system to account for and document the daily whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

**§ 686.540 Are Job Corps centers required to establish behavior management systems?**

(a) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, according to standards of conduct and procedures established by the Secretary. The behavior management plan must be approved by the Job Corps regional office and reviewed annually. The behavior management system must include a zero tolerance policy for violence and drugs as described in § 686.590. All criminal incidents will be promptly reported to local law enforcement.

**§ 686.545 What is Job Corps' zero tolerance policy?**

(a) All center operators must comply with Job Corps' zero tolerance policy as established by the Secretary. Job Corps has a zero tolerance policy for infractions including but not limited to:

(1) Acts of violence, as defined by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of participation. (WIOA secs. 145(a)(2) and 152(b)(2))

(c) The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of a specified offense.

**§ 686.550 How does Job Corps ensure that students receive due process in disciplinary actions?**

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps might be imposed, and procedures for students to submit an appeal to a Job Corps regional appeal board following a center's decision to discharge involuntarily the student from Job Corps.

**§ 686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?**

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. Prior to enrollment, a program applicant with dependent children who provides primary or custodial care must certify that suitable arrangements for child care have been established for the proposed period of enrollment.

(b) Child development programs may be located at Job Corps centers with the approval of the Secretary.

**§ 686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?**

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Students who believe their religious rights have been violated may

file complaints under the procedures set forth in 29 CFR part 37.

(c) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. *See also* 20 CFR 683.255 and 683.285; 29 CFR part 37.

**§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?**

Yes, the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIOA sec. 156(a), provided that such projects are developed, approved, and conducted in accordance with policies and procedures developed by the Secretary.

## Subpart F—Student Support

**§ 686.600 Are students provided with government-paid transportation to and from Job Corps centers?**

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

**§ 686.610 When are students authorized to take leaves of absence from their Job Corps centers?**

(a) Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Additionally, enrollees in Civilian Conservation Centers may take leave to provide assistance in addressing national, State, and local disasters, consistent with current laws and regulations, including child labor laws and regulations.

(b) Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

**§ 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?**

(a) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents. Graduates receive post-separation transition allowances according to § 686.750.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence, and related matters.

**§ 686.630 Are student allowances subject to Federal payroll taxes?**

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes. (WIOA sec. 157(a)(2))

**§ 686.640 Are students provided with clothing?**

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

## Subpart G—Career Transition and Graduate Services

**§ 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?**

Job Corps centers must assess and counsel students to determine their competencies, capabilities, and readiness for career transition services.

**§ 686.710 What career transition services are provided for Job Corps enrollees?**

Job Corps career transition services focus on placing program graduates in:

(a) Full-time jobs that are related to their career technical training and career pathway that lead to economic self-sufficiency;

(b) Post-secondary education;

(c) Advanced training programs, including apprenticeship programs; or

(d) The Armed Forces.

**§ 686.720 Who provides career transition services?**

The one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. (WIOA sec. 149(b)) Multiple other resources may also provide post-program services, including but not limited to Job Corps career transition service providers under a contract or other agreement with the Department of Labor, and State vocational rehabilitation agencies for individuals with disabilities.

**§ 686.730 What are the responsibilities of career transition service providers?**

(a) Career transition service providers are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with Local Workforce Development Boards, one-stop operators and partners, employers, unions and industry organizations;

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or post-secondary education or training, or referring former students for additional services in their local communities as appropriate; and

(5) Providing placement services for former enrollees according to procedures issued by the Secretary.

(b) Career transition service providers must record and submit all Job Corps placement information according to procedures established by the Secretary.

**§ 686.740 What services are provided for program graduates?**

According to procedures issued by the Secretary, career transition and support services must be provided to program graduates for up to 12 months after graduation.

**§ 686.750 Are graduates provided with transition allowances?**

Yes, graduates receive post-separation transition allowances according to policies and procedures established by the Secretary. Transition allowances are incentive-based to reflect a graduate's attainment of academic credentials and those associated with career technical training such as industry-recognized credentials.

**§ 686.760 What services are provided to former enrollees?**

(a) Up to 3 months of employment services, including career services offered through a one-stop center, may be provided to former enrollees.

(b) According to procedures issued by the Secretary, other career transition services as determined appropriate may be provided to former enrollees.

## Subpart H—Community Connections

**§ 686.800 How do Job Corps centers and service providers become involved in their local communities?**

(a) The director of each Job Corps center must ensure the establishment and development of mutually beneficial business and community relationships and networks. Establishing and developing networks includes relationships with:

(1) Local and distant employers;

(2) Applicable one-stop centers and Local Boards:

(3) Entities offering apprenticeship opportunities and youth programs;

(4) Labor-management organizations and local labor organizations;

(5) Employers and contractors that support national training programs and initiatives; and

(6) Community-based organizations, non-profit organizations, and intermediaries providing workforce development-related services.

(b) Each Job Corps center also must establish and develop relationships with members of the community in which it is located. Members of the community should be informed of the projects of the Job Corps center and changes in the rules, procedures, or activities of the center that may affect the community. Events of mutual interest to the community and the Job Corps center should be planned to create and maintain community relations and community support.

**§ 686.810 What is the makeup of a workforce council and what are its responsibilities?**

(a) Each Job Corps center must establish a workforce council, according to procedures established by the Secretary. The workforce council must include:

(1) Non-governmental and private sector employers;

(2) Representatives of labor organizations (where present) and of employees;

(3) Job Corps enrollees and graduates; and

(4) In the case of a single-State local area, the workforce council must include a representative of the State Board constituted under § 679.110.

(b) A majority of the council members must be business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas in which students will seek employment.

(c) The workforce council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

(d) The workforce council must:

(1) Work with all applicable Local Boards and review labor market information to determine and provide recommendations to the Secretary regarding the center's career technical training offerings, including identification of emerging occupations suitable for training (WIOA sec. 154(c)(1));

(2) Review all relevant labor market information, including related information in the State Plan or the local plan, to:

(i) Recommend in-demand industry sectors or occupations in the area in which the center operates;

(ii) Determine employment opportunities in the areas in which enrollees intend to seek employment;

(iii) Determine the skills and education necessary to obtain the identified employment; and

(iv) Recommend to the Secretary the type of career technical training that should be implemented at the center to enable enrollees to obtain the employment opportunities identified.

(3) Meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine and recommend to the Secretary any necessary changes in the career technical training provided at the center.

**§ 686.820 How will Job Corps coordinate with other agencies?**

(a) The Secretary issues guidelines for the national office, regional offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the one-stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under title I of WIOA. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

(c) Job Corps is identified as a required one-stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with one-stop centers and other one-stop partners, Local Boards, and other programs for youth.

## Subpart I—Administrative and Management Provisions

**§ 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?**

Yes, students are considered Federal employees for purposes of the FTCA. (28 U.S.C. 2671 *et seq.*) Claims for such damage should be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

**§ 686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?**

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

**§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?**

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in sec. 157(a)(3) of WIOA. (29 U.S.C. 2897(a)(3))

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, *et seq.* and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the Department's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on the Department's Web site located at *www.dol.gov*

**§ 686.915 When is a Job Corps student considered to be in the performance of duty?**

(a) Performance of duty is a determination that must be made by the

OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the ''performance of duty'' when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be ''in performance of duty'' as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another, or through intoxication or illegal use of drugs.

**§ 686.920 How are students protected from unsafe or unhealthy situations?**

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations and Wage and Hour Division regulations.

**§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center property?**

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

**§ 686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?**

(a) A private for-profit or a non-profit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIOA sec. 158(d))

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

**§ 686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?**

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

**§ 686.940 Are center operators and service providers subject to Federal audits?**

(a) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every 3 years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIOA sec. 159(b)(2))

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIOA sec. 159(b)(1))

**§ 686.945 What are the procedures for management of student records?**

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

**§ 686.950 What procedures apply to disclosure of information about Job Corps students and program activities?**

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) Department disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to Department regulations at 29 CFR part 70.

(c) Job Corps contractors are not ''agencies'' for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by the Department or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or career transition service provider on behalf of the Job Corps.

**§ 686.955 What are the reporting requirements for center operators and operational support service providers?**

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and

integrity of all reports and data they provide.

**§ 686.960 What procedures are available to resolve complaints and disputes?**

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 or complaints alleging fraud or other criminal activity, complaints may be filed within 1 year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of sec. 188 of WIOA, consistent with Department nondiscrimination regulations implementing sec. 188 of WIOA at 29 CFR part 37 and § 670.998 of this chapter.

**§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?**

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 686.960, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or the WIOA regulations. If the Regional Director determines that there has been a violation of the Act or regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating the Act or regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 683.800 or 683.840.

**§ 686.970 How does Job Corps ensure that centers or other service providers comply with the Act and the Workforce Innovation and Opportunity Act regulations?**

(a) If the Department receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 686.960; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 686.965(b), or will report the incident to the DOL Office of the Inspector General, as described in 20 CFR 683.620.

**§ 686.975 How does Job Corps ensure that contract disputes will be resolved?**

A dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

**§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?**

Disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies.

**§ 686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?**

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing sec. 188 of WIOA for programs receiving Federal financial assistance under WIOA found at 29 CFR part 37.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR chapter 60 for entities that have a Federal government contract.

## Subpart J—Performance

**§ 686.1000 How is the performance of the Job Corps program assessed?**

(a) The performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admissions providers, and career transition service providers, is assessed in accordance with the regulations in this part and procedures and standards issued by the Secretary, through a national performance management system, including the Outcome Measurement System (OMS).

(b) The national performance management system will include measures that reflect the primary indicators of performance described in § 686.1010, the information needed to complete the Annual Report described in § 686.1040, and any other information the Secretary determines is necessary to manage and evaluate the effectiveness of the Job Corps program. The Secretary will issue annual guidance describing the performance management system and outcome measurement system.

(c) Annual performance assessments based on the measures described in paragraph (b) of this section are done for each center operator and other service providers, including outreach and admissions providers and career transition providers.

**§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?**

The primary indicators of performance for eligible youth are described in sec. 116(b)(2)(A)(ii) of WIOA. They are:

(a) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program (WIOA sec. 116(b)(2)(A)(ii)(I));

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program (WIOA sec. 116(b)(2)(A)(ii)(II));

(c) The median earnings of program participants who are in unsubsidized

employment during the second quarter after exit from the program (WIOA sec. 116(b)(2)(A)(i)(III));

(d) The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program. (WIOA sec. 116(b)(2)(A)(i)(IV)) Program participants who obtain a secondary school diploma or its recognized equivalent will be included in the percentage only if they have also obtained or retained employment, or are in an education or training program leading to a recognized post-secondary credential, within 1 year after exit from the program (WIOA sec. 116(b)(2)(A)(iii));

(e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment (WIOA sec. 116(b)(2)(A)(i)(V)); and

(f) The indicators of effectiveness in serving employers established by the Secretaries of Education and Labor, pursuant to sec. 116(b)(2)(A)(iv) of WIOA. (WIOA sec. 116(b)(2)(A)(i)(VI))

**§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?**

The Secretary establishes performance indicators for outreach and admission service providers serving the Job Corps program. They include, but are not limited to:

(a) The number of enrollees recruited, compared to the established goals for such recruitment, and the number of enrollees who remain committed to the program for 90 days after enrollment (WIOA sec. 159(c)(2)(A));

(b) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in sec. 152(b) of WIOA and § 686.545 (WIOA sec. 159(d)(1)(I));

(c) The maximum attainable percent of enrollees at the Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures (WIOA sec. 159(d)(1)(L)); and

(d) The cost per enrollee, calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year. (WIOA sec. 159(d)(1)(M)).

**§ 686.1030 What are the indicators of performance for Job Corps career transition service providers?**

The Secretary establishes performance indicators for career transition service providers serving the Job Corps program. These include, but are not limited to, the following:

(a) The primary indicators of performance for eligible youth in WIOA sec. 116(b)(2)(A)(ii), as listed in § 686.1010;

(b) The number of graduates who entered the Armed Forces (WIOA sec. 159(d)(1)(D));

(c) The number of graduates who entered apprenticeship programs (WIOA sec. 159(d)(1)(E));

(d) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program (WIOA sec. 159(d)(1)(H));

(e) The number of graduates who entered unsubsidized employment not related to the education and training received through the Job Corps program (WIOA sec. 159(d)(1)(H));

(f) The percentage and number of graduates who enter post-secondary education (WIOA sec. 159(d)(1)(J)); and

(g) The average wage of graduates who entered unsubsidized employment (WIOA sec. 159(d)(1)(K)):

(1) On the first day of such employment, and

(2) On the day that is 6 months after such first day.

**§ 686.1040 What information will be collected for use in the Annual Report?**

The Secretary will collect and submit in the Annual Report described in sec. 159(c)(4) of WIOA, which will include the following information on each Job Corps center, and the Job Corps program as a whole:

(a) Information on the performance, based on the performance indicators described § 686.1010, as compared to the expected level of performance established under § 686.1050 for each performance indicator;

(b) Information on the performance of outreach service providers and career transition service providers on the performance indicators established under §§ 686.1020 and 686.1030, as compared to the expected levels of performance established under § 686.1050 for each of those indicators;

(c) The number of enrollees served;

(d) Demographic information on the enrollees served, including age, race, gender, and education and income level;

(e) The number of graduates of a Job Corps center;

(f) The number of graduates who entered the Armed Forces;

(g) The number of graduates who entered apprenticeship programs;

(h) The number of graduates who received a regular secondary school diploma;

(i) The number of graduates who received a State recognized equivalent of a secondary school diploma;

(j) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program and the number who entered unsubsidized employment not related to the education and training received;

(k) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in § 686.545;

(l) The percentage and number of graduates who enter post-secondary education;

(m) The average wage of graduates who enter unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day;

(n) The maximum attainable percent of enrollees at a Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at a Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(o) The cost per enrollee, which is calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year;

(p) The cost per graduate, which is calculated by comparing the number of graduates of the center in a program year compared to the total budget for such center in the same program year;

(q) Information regarding the state of Job Corps buildings and facilities, including a review of requested construction, rehabilitation, and acquisition projects, by each Job Corps center, and a review of new facilities under construction;

(r) Available information regarding the national and community service activities of enrollees, particularly those enrollees at Civilian Conservation Centers; and

(s) Any additional information required by the Secretary.

**§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?**

(a) The Secretary establishes expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers and the Job Corps program relating to each of the primary indicators of performance described in §§ 686.1010, 686.1020, and 686.1030.

(b) As described in § 686.1000, the Secretary will issue annual guidance describing the national performance management system and outcomes measurement system, which will communicate the expected levels of performance for each primary indicator of performance for each center, and each indicator of performance for each outreach and admission provider, and for each career transition service provider. Such guidance will also describe how the expected levels of performance were calculated.

**§ 686.1060 How are center rankings established?**

(a) The Secretary calculates annual rankings of center performance based on the performance management system described in § 686.1000 as part of the annual performance assessment described in § 686.1000(c).

(b) The Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year.

**§ 686.1070 How and when will the Secretary use Performance Improvement Plans?**

(a) The Secretary establishes standards and procedures for developing and implementing performance improvement plans.

(1) The Secretary will develop and implement a performance improvement plan for a center when that center fails to meet the expected levels of performance described in § 686.1050,

(i) The Secretary will consider a center to have failed to meet the expected level of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators.

(ii) For any program year that precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, the Secretary will consider a center to have failed to meet the expected levels of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center's composite OMS score for the program year is 88 percent or less of the year's OMS national average.

(2) The Secretary may also develop and implement additional performance improvement plans, which will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance.

(b) A performance improvement plan will require action be taken to correct identified performance issues within 1 year of the implementation of the plan (WIOA sec. 159(f)(2)), and it will identify criteria that must be met for the center to complete the performance improvement plan.

(1) The center operator must implement the actions outlined in the performance improvement plan.

(2) If the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a) of this section.

(i) Such a center will remain on a performance improvement plan and the Secretary will take action as described in paragraph (c) of this section.

(ii) If a Civilian Conservation Center fails to meet expected levels of performance relating to the primary indicators of performance specified in § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) of this section after 3 program years, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the Civilian Conservation Center on a competitive basis, in accordance with the requirements of § 686.310. (WIOA sec. 159(f)(4))

(c) Under a performance improvement plan, the Secretary may take the following actions, as necessary:

(1) Providing technical assistance to the center (WIOA sec. 159(f)(2)(A));

(2) Changing the management staff of a center (WIOA sec. 159(f)(2)(C));

(3) Changing the career technical training offered at the center (WIOA sec. 159(f)(2)(B));

(4) Replacing the operator of the center (WIOA sec. 159(f)(2)(D));

(5) Reducing the capacity of the center (WIOA sec. 159(f)(2)(E));

(6) Relocating the center (WIOA sec. 159(f)(2)(F)); or

(7) Closing the center (WIOA sec. 159(f)(2)(G)) in accordance with the criteria established under § 670.200(b).

■ 14. Add part 687 to read as follows:

## PART 687—NATIONAL DISLOCATED WORKER GRANTS

Sec.

687.100 What are the types and purposes of national disclosed worker grants under the Workforce Innovation and Opportunity Act?
687.110 What are major economic dislocations or other events which may qualify for a national dislocated worker grant?
687.120 Who is eligible to apply for national dislocated worker grants?
687.130 When should applications for national dislocated worker grants be submitted to the Department?
687.140 What activities are applicants expected to conduct before a national dislocated worker grant application is submitted?
687.150 What are the requirements for submitting applications for national dislocated worker grants?
687.160 What is the timeframe for the Department to issue decisions on national dislocated worker grant applications?
687.170 Who is eligible to be served under national dislocated worker grants?
687.180 What are the allowable activities under national dislocated worker grants?
687.190 How do statutory and regulatory waivers apply to national dislocated worker grants?
687.200 What are the program and administrative requirements that apply to national dislocated worker grants?

**Authority:** Secs. 170, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

**§ 687.100 What are the types and purposes of national disclosed worker grants under the Workforce Innovation and Opportunity Act?**

There are two types of national dislocated worker grants (NDWGs) under sec. 170 of the WIOA: Regular NDWGs and Disaster NDWGs.

(a) Regular NDWGs provide career services for dislocated workers and other eligible populations. They are intended to expand service capacity temporarily at the State and local levels, by providing time-limited funding assistance in response to significant events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

(b) Disaster NDWGs allow for the creation of temporary employment to assist with clean-up and recovery efforts from emergencies or major disasters and the provision of career services in certain situations, as provided in § 687.180(b).

**§ 687.110 What are major economic dislocations or other events which may qualify for a national dislocated worker grant?**

(a) Qualifying events for Regular NDWGs include:

(1) Mass layoffs affecting 50 or more workers from one employer in the same area;

(2) Closures and realignments of military installations;

(3) Layoffs that have significantly increased the total number of unemployed individuals in a community;

(4) Situations where higher than average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in § 687.170(a)(1)(iii), exceeds State and local resources for providing such activities; and

(5) Other events, as determined by the Secretary.

(b) Qualifying events for Disaster NDWGs include:

(1) Emergencies or major disasters, as defined in paragraphs (1) and (2), respectively, of sec. 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA);

(2) An emergency or disaster situation of national significance that could result in a potentially large loss of employment, as declared or otherwise recognized by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation; and

(3) Situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area.

**§ 687.120 Who is eligible to apply for national dislocated worker grants?**

(a) For Regular NDWGs, the following entities are eligible to apply:

(1) States or outlying areas, or a consortium of States;

(2) Local Boards, or a consortium of boards;

(3) An entity described in sec. 166(c) of WIOA relating to Native American programs; and,

(4) Other entities determined to be appropriate by the Governor of the State or outlying area involved; and

(5) Other entities that demonstrate to the Secretary the capability to respond effectively to circumstances relating to particular dislocations.

(b) For Disaster NDWGs, only States, outlying areas, and Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(6)) are eligible to apply.

**§ 687.130 When should applications for national dislocated worker grants be submitted to the Department?**

(a) Applications for Regular NDWGs may be submitted at any time during the year and should be submitted to respond to eligible events as soon as possible when:

(1) The applicant receives a notification of a mass layoff or a closure as a result of a Worker Adjustment and Retraining Notification (WARN) Act notice, a general announcement, or some other means, or in the case of applications to address situations described in § 687.110(a)(4), when higher than average demand for employment and training activities for those members of the Armed Forces and military spouses exceeds State and local resources for providing such activities;

(2) Worker need and interest in services has been determined through Rapid Response, or other means, and is sufficient to justify the need for a NDWG; and

(3) A determination has been made, in collaboration with the applicable local area, that State and local formula funds are inadequate to provide the level of services needed by the affected workers.

(b) Applications for Disaster NDWGs to respond to an emergency or major disaster should be submitted as soon as possible when:

(1) As described in § 687.110(b)(1), FEMA has declared that the affected area is eligible for public assistance;

(2) An emergency or disaster situation of national significance that could result in a potentially large loss of employment occurs, and the Federal agency with jurisdiction over the Federal response has issued an appropriate declaration, as described in § 687.110(b)(2) (such applications must indicate the applicable Federal agency declaration, describe the impact on the local and/or State economy, and describe the proposed activities); or

(3) A substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area, as provided under § 687.110(b)(3), and interest in services has been determined and is sufficient to justify the need for a NDWG.

**§ 687.140 What activities are applicants expected to conduct before a national dislocated worker grant application is submitted?**

Prior to submitting an application for NDWG funds, applicants must:

(a) For Regular NDWGs:

(1) Collect information to identify the needs and interests of the affected workers through Rapid Response activities (described in § 682.330), or other means;

(2) Provide appropriate services to eligible workers with State and local funds, including funds from State allotments for dislocated worker training and statewide activities provided under sec. 132(b)(2)(B) of WIOA, as available; and

(3) Coordinate with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed NDWG project is to operate.

(b) For Disaster NDWGs:

(1) Conduct a preliminary assessment of the clean-up and humanitarian needs of the affected areas;

(2) Put a mechanism in place to reasonably ascertain that there is a sufficient population of eligible individuals to conduct the planned work; and

(3) Coordinate with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

**§ 687.150 What are the requirements for submitting applications for national dislocated worker grants?**

The Department will publish additional guidance on NDWGs and the requirements for submitting applications for NDWGs. A project implementation plan must be submitted after receiving the NDWG award. The additional guidance also will identify the information which must be included in the required project implementation plan. The project implementation plan will include more detailed information than is required for the initial application.

**§ 687.160 What is the timeframe for the Department to issue decisions on national dislocated worker grant applications?**

The Department will issue a final decision on a NDWG application within 45 calendar days of receipt of an application that meets the requirements of this part. Applicants are strongly encouraged to review their NDWG

application submissions carefully and consult with the appropriate Employment and Training Administration Regional Office to ensure their applications meet the requirements established in this part and those that may be set forth in additional guidance.

**§ 687.170 Who is eligible to be served under national dislocated worker grants?**

(a) For Regular NDWGs:

(1) In order to receive career services, as prescribed by sec. 134(c)(2)(A) of WIOA and § 680.130(a) of this chapter under a NDWG, an individual must be:

(i) A dislocated worker within the meaning of sec. 3(15) of WIOA;

(ii) A person who is either:

(A) A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed or will undergo realignment within 24 months after the date of determination of eligibility; or

(B) An individual employed in a non-managerial position with a Department of Defense contractor determined by the Secretary of Defense to be at risk of termination from employment as a result of reductions in defense expenditures and whose employer is converting from defense to non-defense applications in order to prevent worker layoffs; or

(iii) A member of the Armed Forces who:

(A) was on active duty or full-time National Guard duty;

(B) is involuntarily separated from active duty or full-time National Guard duty (as defined in 10 U.S.C. 1141), or is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under 10 U.S.C. 1174a or the voluntary separation incentive program under 10 U.S.C. 1175;

(C) is not entitled to retired or retained pay incident to the separation described in paragraph (a)(1)(ii) of this section; and

(D) applies for employment and training assistance under this part before the end of the 180-day period beginning on the date of the separation described in paragraph (a)(1)(ii) of this section.

(iv) For Regular NDWGs awarded for situations described in § 687.110(a)(4), a person who is:

(A) A dislocated member of the Armed Forces, or member of the Armed Forces described in paragraph (a)(1)(iii) of this section; or

(B) The dislocated spouse of a member of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)).

(b) For Disaster NDWGs:

(1) In order to be eligible to receive disaster relief employment under sec. 170(b)(1)(B)(i) of WIOA, an individual must be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

(2) In order to be eligible to receive employment-related assistance, and in rare instances, humanitarian-related temporary employment under sec. 170(b)(1)(B)(ii) of WIOA, an individual must have relocated or evacuated from an area as a result of a disaster that has been declared or otherwise recognized, and be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

**§ 687.180 What are the allowable activities under national dislocated worker grants?**

(a) For Regular NDWGs:

(1) Employment and training activities include career services and training authorized at secs. 134(c)–(d) and 170(b)(1) of WIOA. The services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant, and may be changed through grant modifications, if necessary.

(2) NDWGs may provide for supportive services, including needs-related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable), to help workers who require such assistance to participate in the activities provided for in the grant. Generally, the terms of a grant must be consistent with local policies governing such financial assistance under its formula funds (including the payment levels and duration of payments). The terms of the grant agreement may diverge from established local policies, in the following instances:

(i) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement established by sec. 134(d)(3)(B) of WIOA because of the lack of formula or NDWG funds in the State or local area at the time of the dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the NDWG award; or

(ii) Under other circumstances as specified in the NDWG application requirements.

(b) For Disaster NDWGs: NDWG funds provided under sec. 170(b)(1)(B) of WIOA can support a different array of activities, depending on the circumstances surrounding the situation for which the grant was awarded:

(1) For NDWGs serving individuals in a disaster area declared eligible for public assistance by FEMA disaster relief, employment is authorized to support projects that provide food, clothing, shelter, and other humanitarian assistance for emergency and disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area and in offshore areas related to the emergency or disaster in coordination with the Administrator of FEMA. Employment and training activities may also be provided, as appropriate. An individual's disaster relief employment is limited to 12 months or less for work related to recovery from a single emergency or disaster. The Secretary may extend an individual's disaster relief employment for up to an additional 12 months, if it is requested and sufficiently justified by the State.

(2) For NDWGs serving individuals who have relocated from a disaster area, only career services and training activities will be authorized, except where temporary employment for humanitarian assistance is appropriate.

(3) For NDWGs awarded to States for events that have designations from Federal agencies (other than FEMA) that recognize an emergency or disaster situation as one of national significance that could result in a potentially large loss of employment, disaster relief employment and/or career services may be authorized, depending on the circumstances associated with the specific event.

(4) Disaster NDWG funds may be expended through public and private agencies and organizations engaged in the disaster relief, humanitarian assistance, and clean-up projects described in this paragraph (b) of this section.

**§ 687.190 How do statutory and regulatory waivers apply to national dislocated worker grants?**

(a) Grantees may request and the Department may approve the application of existing general statutory or regulatory waivers to a NDWG award. The application for NDWG grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and/or Local Board, as applicable, have been granted under its waiver plan. The Department will consider such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed, and the effect upon the outcome of the project.

**§ 687.200 What are the program and administrative requirements that apply to national dislocated worker grants?**

(a) Unless otherwise authorized in a NDWG agreement, the financial and administrative rules contained in part 683 apply to awards under this part.

(b) Exceptions include:

(1) Funds provided in response to a disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, and, in some instances, areas impacted by an emergency or disaster situation of national significance, as provided in § 687.110(b)(2), and subject to the limitations of sec. 170(d) of WIOA, this part, and any additional guidance issued by the Department;

(2) Per sec. 170(d)(4) of WIOA, in extremely limited instances, as determined by the Secretary or the Secretary's designee, any Disaster NDWG funds that are available for expenditure under any grant awarded under this part may be used for additional disasters or situations of national significance experienced by the State in the same program year the funds were awarded;

(3) NDWG funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. The Department will negotiate administration costs with the applicant as part of the application review and grant award and modification processes;

(4) The period of availability for expenditure of funds under a NDWG is specified in the grant agreement;

(5) The Department may establish supplemental reporting, monitoring, and oversight requirements for NDWGs. The requirements will be identified in the grant application instructions or the grant document; and

(6) The Department may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

■ 15. Add part 688 to read as follows:

## PART 688—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

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### Subpart F—Additional Requirements

Sec.
688.700 What are the safety requirements for the YouthBuild program?
688.710 What are the reporting requirements for youth safety?
688.720 What environmental protection laws apply to the YouthBuild program?
688.730 What requirements apply to YouthBuild housing?

**Authority:** Secs. 171, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

## Subpart A—Purpose and Definitions

**§ 688.100 What is YouthBuild?**

(a) YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth who is homeless, an offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth.

(b) Program participants receive education services that may lead to either a high school diploma or its State-recognized equivalent. Further, they receive occupational skills training and are encouraged to pursue post-secondary education or additional training, including registered apprenticeship and pre-apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless and low-income individuals and families, as well as

public facilities, or in other in-demand jobs. The program also benefits the larger community because it provides increased access to affordable housing.

**§ 688.110 What are the purposes of the YouthBuild program?**

The overarching goal of the YouthBuild program is to provide disadvantaged and low-income youth the opportunity to obtain education and employment skills in local in-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals:

(a) To enable disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency through employment in in-demand occupations and pursuit of post-secondary education and training opportunities;

(b) To provide disadvantaged youth with opportunities for meaningful work and service to their communities;

(c) To foster the development of employment and leadership skills and commitment to community development among youth in low-income communities;

(d) To expand the supply of permanent affordable housing for homeless individuals and families, homeless youth, and low-income families by utilizing the talents of disadvantaged youth. The program seeks to increase the number of affordable and transitional housing units available to decrease the rate of homelessness in communities with YouthBuild programs.

(e) To improve the quality and energy efficiency of community and other non-profit and public facilities, including those that are used to serve homeless and low-income families.

**§ 688.120 What definitions apply to this part?**

In addition to the definitions at sec. 3 of WIOA and 20 CFR 675.300, the following definitions apply:

*Adjusted income* means, with respect to a family, the amount (as determined by the Housing Development Agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(1) *Mandatory exclusions.* In determining adjusted income, a Housing Development Agency must exclude from the annual income of a family the following amounts:

(2) *Elderly and disabled families.* $400 for any elderly or disabled family.

(3) *Medical expenses.* The amount by which three percent of the annual family income is exceeded by the sum of:

(i) Unreimbursed medical expenses of any elderly family or disabled family;

(ii) Unreimbursed medical expenses of any family that is not covered under paragraph (3)(i) of this definition, except that this paragraph applies only to the extent approved in appropriation Acts; and

(iii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(4) *Child care expenses.* Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(5) *Minors, students, and persons with disabilities.* $480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(6) *Child support payments.* Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause applies only to the extent approved in appropriations Acts.

(7) *Spousal support expenses.* Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded under this clause must not exceed the lesser of the amount that such family member has a legal obligation to pay, or $550 for each individual for whom such payment is made; except that this clause applies only to the extent approved in appropriations Acts.

(8) *Earned income of minors.* The amount of any earned income of a member of the family who is not:

(i) 18 years of age or older; and

(ii) The head of the household (or the spouse of the head of the household).

(9) *Permissive exclusions for public housing.* In determining adjusted income, a Housing Development Agency may, in the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(10) *Excessive travel expenses.* Excessive travel expenses in an amount not to exceed $25 per family per week, for employment or education-related travel.

(11) *Earned income.* An amount of any earned income of the family, established at the discretion of the Housing Development Agency, which may be based on—

(i) All earned income of the family,

(ii) The amount earned by particular members of the family;

(iii) The amount earned by families having certain characteristics; or

(iv) The amount earned by families or members during certain periods or from certain sources.

(12) *Others.* Such other amounts for other purposes, as the Housing Development Agency may establish.

*Applicant* means an eligible entity that has submitted an application under § 688.210.

*Basic Skills Deficient* means an individual:

(1) Who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Who is a youth or adult, that the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

*Community or other public facility* means those facilities which are either privately owned by non-profit organizations, including faith-based and community-based organizations, and publicly used for the benefit of the community, or publicly owned and publicly used for the benefit of the community.

*Construction Plus* means the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction.

*Eligible entity* means a public or private non-profit agency or organization (including a consortium of such agencies or organizations), including:

(1) A community-based organization;

(2) A faith-based organization;

(3) An entity carrying out activities under this title, such as a Local Board;

(4) A community action agency;

(5) A State or local housing development agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other

than the program carried out under this section).

*English language learner,* when used with respect to a participant, means an eligible individual who has limited ability in reading, writing, speaking, or comprehending the English language, and:

(1) Whose native language is a language other than English; or

(2) Who lives in a family or community environment where a language other than English is the dominant language.

*Exit,* as used in § 688.400, has the same meaning as in § 676.150(c).

*Follow-up services* include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Services necessary to ensure the success of youth participants in employment and/or post-secondary education.

*Homeless individual* means an individual who lacks a fixed, regular, and adequate nighttime residence and includes an individual who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter;

(4) Is abandoned in a hospital; or is awaiting foster care placement;

(5) An individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodation for human beings; or

(6) Migratory children who qualify as homeless under this section because the children are living in circumstances described in this definition.

*Homeless child or youth* means an individual who lacks a fixed, regular, and adequate nighttime residence and includes:

(1) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(2) Are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;

(3) Are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(4) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(5) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(6) Migratory children who qualify as homeless for the purposes of this part because the children are living in circumstances described in this definition.

*Housing Development Agency* means any agency of a Federal, State or local government, or any private non-profit organization, that is engaged in providing housing for homeless individuals or low-income families.

*Income,* as defined in the United States Housing Act of 1937 (42 U.S.C. 1437 a(b)(2)), means income is from all sources of each member of the household, as determined in accordance with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this definition.

*In-Demand Industry Sector or Occupation* means:

(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting business, or the growth of other industry sectors; or

(2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

*Indian,* as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), means a person who is a member of an Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Individual with a disability* means an individual:

(1) With a physical or mental impairment that substantially limits one or more major life activities of such individual;

(2) With a record of such an impairment; or

(3) Regarded as having such an impairment.

(i) An individual is regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited under the Americans with Disabilities Act of 1990 because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(ii) An individual is not considered an individual with a disability under paragraph (3) of this section if the impairment has an actual or expected duration of 6 months or less.

(4) For purposes of paragraphs (1) through (3) of this definition, major life activity, includes, but is not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and

(ii) The operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*Low-income family* means a family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. This definition includes families consisting of one person as defined by 42 U.S.C. 1437a(b)(3).

*Migrant youth* means a youth, or a youth who is the dependent of someone who, during the previous 12 months has:

(1) Worked at least 25 days in agricultural labor that is characterized by chronic unemployment or underemployment;

(2) Made at least $800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(3) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(4) Was employed in agricultural labor that requires travel to a jobsite such that the farmworker is unable to return to a permanent place of residence within the same day.

*Needs-based payments* means additional payments beyond regular stipends for program participation that are based on defined needs that enable a youth to participate in the program.

*Occupational skills training* means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Occupational skills training includes training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Result in attainment of a recognized post-secondary credential.

*Offender* means an adult or juvenile who:

(1) Is or has been subject to any stage of the criminal justice process, and who may benefit from WIOA services; or

(2) Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

*Participant* means an individual who has been determined eligible to participate in the YouthBuild program, and that enrolls in the program and receives services or training described in § 688.320.

*Pre-apprenticeship* means a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship programs. A quality pre-apprenticeship program incorporates at least one of the following elements:

(1) Approved training and curriculum;

(2) Strategies for long-term success;

(3) Access to appropriate support services;

(4) Promotes greater use of registered apprenticeship to increase future opportunities;

(5) Meaningful hands-on training that does not displace paid employees; and

(6) Facilitated entry and/or articulation.

*Recognized post-secondary credential* means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree.

*Registered apprenticeship program* means an apprenticeship program that:

(1) Is registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 20 U.S.C. 50 *et seq.*); and

(2) Meets such other criteria as the Secretary may establish.

*School dropout* means an individual who no longer attends any school and who has not received a secondary school diploma or its State-recognized equivalent.

*Secondary school* means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade twelve.

*Section 3* means to a program described in sec. 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992.

*Supportive services* means services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Referrals to child support;

(5) Assistance with housing;

(6) Needs-related payments;

(7) Assistance with educational testing;

(8) Reasonable accommodations for youth with disabilities

(9) Referrals to medical services; and

(10) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear.

*Transitional housing* means housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period.

*YouthBuild program* means any program that receives assistance under this section and provides disadvantaged youth with opportunities for employment, education, leadership development, and training through the rehabilitation (which for purposes of this section, includes energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities.

*Youth in foster care* means youth currently in foster care or youth who have ever been in foster care.

## Subpart B—Funding and Grant Applications

### § 688.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of the Act. YouthBuild grants are awarded to eligible entities, as defined in § 688.120, through the competitive selection process described in § 688.210.

### § 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?

The Secretary announces the availability of grant funds through a Funding Opportunity Announcement (FOA). The FOA contains instructions for what the Department requires in the grant application, describes eligibility requirements, the rating criteria that the Department will use in reviewing grant applications, and special reporting requirements to operate a YouthBuild project. The FOA, along with the requisite forms needed to apply for grant funds, can be found at*http://www.doleta.gov/grants/find_grants.cfm.*

### § 688.220 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity must meet selection criteria established by the Secretary which include:

(a) The qualifications or potential capabilities of an applicant;

(b) An applicant's potential to develop a successful YouthBuild program;

(c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and community and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);

(d) The commitment of an applicant to provide skills training, leadership development, counseling and case management, and education to participants;

(e) The focus of a proposed program on preparing youth for local in-demand sectors or occupations, or post-secondary education and training opportunities;

(f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:

(1) Local Boards, one-stop career center operators, and one-stop partners participating in the operation of the one-stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or post-secondary education or other systems that relate to the goals of the proposed program; and

(3) Employers in the local area.

(g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;

(h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

(1) An applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIOA;

(i) An applicant's ability to enter partnerships with:

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities;

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates.

(3) The workforce investment system which may include:

(i) State and Local Workforce Development Boards;

(ii) State workforce agencies; and

(iii) One-stop career centers and their cooperating partners.

(4) The juvenile and adult justice systems, and the extent to which they provide:

(i) Support and guidance for YouthBuild participants with court involvement;

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or reentry from incarceration.

(5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate.

(j) The applicant's potential to serve different regions, including rural areas and States that may not have previously received grants for YouthBuild programs; and

(k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

(l) The weight to be given to these factors will be described in the FOA issued under § 688.210.

**§ 688.230 What are the minimum requirements to apply for YouthBuild funds?**

At minimum, applications for YouthBuild funds must include the following elements:

(a) Labor market information for the relevant labor market area, including both current data (as of the date of submission of the application) and projections on career opportunities in construction and in-demand industry sectors or occupations;

(b) A request for the grant, specifying the amount of the grant requested and its proposed uses;

(c) A description of the applicant and a statement of its qualifications, including a description of the applicant's relationship with Local Boards, one-stop operators, local unions, entities carrying out registered apprenticeship programs, other community groups, and employers, and the applicant's past experience, with rehabilitation or construction of housing or public facilities (including experience with HUD's Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and with youth education and employment training programs;

(d) A description of the proposed site for the proposed program;

(e) A description of the educational and job training activities, work opportunities, post-secondary education and training opportunities, and other services that will be provided to participants, and how those activities, opportunities and services will prepare youth for employment in in-demand industry sectors or occupations in the labor market area described in paragraph (a) of this section;

(1) A description of the proposed activities to be undertaken under the grant related to rehabilitation or construction, and, in the case of an applicant requesting approval from the Secretary to carry out additional activities related to in-demand industry sectors or occupations, a description of such additional activities.

(2) The anticipated schedule for carrying out all activities proposed under paragraph (f) of this section;

(f) A description of the manner in which eligible youth will be recruited and selected as participants, including a description of arrangements that will be made with Local Boards, one-stop operators, faith and community-based organizations, State educational agencies or local education agencies (including agencies of Indian tribes), public assistance agencies, the courts of jurisdictions, agencies that serve youth who are homeless individuals (including those that operate shelters), foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children) as participants;

(h) A description of the specific role of employers in the proposed program, such as their role in developing the proposed program and assisting in

service provision and placement activities;

(i) A description of how the proposed program will be coordinated with other Federal, State, and local activities conducted by Indian tribes, such as workforce investment activities, career and technical education and training programs, adult and language instruction educational programs, activities conducted by public schools, activities conducted by community colleges, national service programs, and other job training provided with funds available under WIOA, in particular how programs will coordinate with local Workforce Development funds outlined in WIOA sec. 129(c)(2).

(j) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the proposed program;

(k) A description of the level of performance to be achieved with respect to primary indicators of performance for eligible youth as described in § 688.410;

(l) The organization's past performance under a grant issued by the Secretary to operate a YouthBuild program;

(m) A description of the applicant's relationship with local building trade unions regarding their involvement in training to be provided through the proposed program, the relationship of the proposed program to established registered apprenticeship programs and employers, the ability of the applicant to grant an industry-recognized certificate or certification through the program, and the quality of the program leading to the certificate or certification;

(n) A description of activities that will be undertaken to develop leadership skills of participants;

(o) A detailed budget and description of the system of fiscal controls, and auditing and accounting procedures, that will be used to ensure fiscal soundness for the proposed program;

(p) A description of the commitments for any additional resources (in addition to funds made available through the grant) to be made available to the proposed program from:

(1) The applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance that will sponsor any part of the rehabilitation or construction, operation or maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State or local activities conducted by Indian tribes, including career and technical education and training programs, and job training provided with funds under WIOA.

(q) Information identifying, and a description of, the financing proposed for any:

(1) Rehabilitation of the property involved;

(2) Acquisition of the property; or

(3) Construction of the property;

(r) Information identifying, and a description, of the entity that will manage and operate the property;

(s) Information identifying, and a description of, the data collection systems to be used;

(t) A certification, by a public official responsible for the housing strategy for the State or unit of general local government within which the proposed program is located, that the proposed program is consistent with the housing strategy; and

(u) A certification that the applicant will comply with requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and will affirmatively further fair housing.

(v) Any additional requirements that the Secretary determines are appropriate.

#### § 688.240 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to a FOA.

### Subpart C—Program Requirements

#### § 688.300 Who is an eligible participant?

(a) *Eligibility criteria.* Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if the individual is:

(1) Not less than age 16 and not more than age 24 on the date of enrollment; and

(2) A school dropout or an individual who has dropped out of school and has subsequently reenrolled; and

(3) Is one or more of the following:

(i) A member of a low-income family;

(ii) A youth in foster care;

(iii) An offender;

(iv) A youth who is an individual with a disability;

(v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth.

(b) *Exceptions.* Not more than 25 percent of the participants in a program, under this section, may be individuals who do not meet the requirements of paragraph (a)(2) or (3) of this section, if such individuals:

(1) Are basic skills deficient, as defined in § 688.120, despite attainment of a secondary school diploma or its recognized State equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities); or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma if such referral is to a YouthBuild program offering a secondary school diploma.

#### § 688.310 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in 20 CFR 683.230 and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

#### § 688.320 What eligible activities may be funded under the YouthBuild program?

Grantees may provide one or more of the following education and workforce investment and other activities to YouthBuild participants—

(a) Eligible education and workforce activities including:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs), including:

(i) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals or low-income families, or transitional housing for homeless individuals and in additional in-demand industry sectors or occupations in the region in which the program operates (as approved by the Secretary);

(ii) Supervision and training for participants in the rehabilitation or construction of community and other public facilities, except that not more than 15 percent of grant funds-appropriated to carry out this section may be used for this activity; and

(iii) Supervision and training for participants in in-demand industry sectors or occupations in the region in which the program operates, if such activity is approved by the Secretary.

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing;

(4) Services and activities designed to meet the educational needs of participants, including:

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for participants who are English language learners;

(iii) Secondary education services and activities, including tutoring, study skills training, and school dropout prevention and recovery activities, designed to lead to the attainment of a secondary school diploma or its recognized equivalent (including recognized certificates of attendance or similar document for individuals with disabilities);

(iv) Counseling and assistance in obtaining post-secondary education and required financial aid and;

(v) Alternative secondary school services;

(5) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse; referrals to mental health services, and referrals to victim services;

(6) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors, and activities related to youth policy committees that participate in decision-making related to the program;

(7)(i) Supportive services and needs-based payments necessary to enable individuals to participate in the program and to assist individuals for a period of time not to exceed 12 months after the completion of training, in obtaining or retaining employment or applying for and transitioning to post-secondary education or training.

(ii) To provide needs-based payments, a grantee must have a written policy which:

(A) Establishes participant eligibility for such payments;

(B) Establishes the amounts to be provided;

(C) Describes the required documentation and criteria for payments, and

(D) Is applied consistently to all program participants.

(8) Job search and assistance.

(b) Payment of the administrative costs of the applicant, including recruitment and selection of participants, except that not more than 10 percent of the amount awarded under § 688.210 may be used for such costs.

(c) Adult mentoring.

(d) Provision of wages, stipends, or benefits to participants in the program;

(e) Ongoing training and technical assistance that is related to developing and carrying out the program, and;

(f) Follow-up services.

**§ 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?**

At a minimum, in order to qualify as a work site for the purposes of the YouthBuild program, a work site must:

(a) Provide participants with the opportunity to have hands-on training and experience in two or more modules in a construction skills training program that offers an industry-recognized credential;

(b) Be built or renovated for low-income individuals or families;

(c) Provide substantial hands-on experience for youth;

(d) Have a restrictive covenant in place that only allows for rental or resale to low-income participants as required by § 688.730.

(e) Adhere to the allowable construction and other capital asset costs applicable to the YouthBuild program.

**§ 688.340 What timeframes apply to participation?**

An eligible individual selected for participation in the program must be offered full-time participation in the program for not less than 6 months and not more than 24 months.

**§ 688.350 What timeframes must be devoted to education and workforce investment or other activities?**

YouthBuild grantees must structure programs so that participants in the program are offered:

(a) Education and related services and activities designed to meet educational needs, such as those specified in § 688.320(a)(4) through (7), during at least 50 percent of the time during which they participate in the program; and

(b) Workforce and skills development activities, such as those specified in § 688.320(a)(1) through (3), during at least 40 percent of the time during which they participate in the program.

(c) The remaining 10 percent of the time of participation can be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

**§ 688.360 What timeframes apply to follow-up services?**

Grantees must provide follow-up services to all YouthBuild participants for a period of 12 months after a participant successfully exits a YouthBuild program.

**§ 688.370 What are the requirements for exit from the YouthBuild program?**

At a minimum, to be a successful exit, the Department of Labor requires that:

(a) Participants receive hands-on construction training or hands-on training in another industry or occupation, in the case of Construction Plus grantees;

(b) Participants meet the exit policies established by the grantee.

(1) Such policy must describe the program outcomes and/or individual goals that must be met by participants in order to successfully complete the program; and

(2) Grantees must apply the policy consistently to determine when successful exit has occurred.

**§ 688.380 What is the role of the YouthBuild grantee in the one-stop system?**

In those local workforce investment areas where the grantee operates its YouthBuild program, the grantee is a required partner of the local one-stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 678.

## Subpart D—Performance Indicators

**§ 688.400 What are the performance indicators for YouthBuild grants?**

(a) The percentage of program participants who are in education and training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized post-secondary credential or secondary school diploma or its recognized equivalent (and for those achieving the secondary diploma or its recognized equivalent, such participants have also obtained or retained employment or are in an education or training program leading to a recognized post-secondary credential within 1 year after exit from the program);

(e) The percentage of program participants, who during a program year, are in an education and training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(f) The indicator of effectiveness in serving employers described at § 676.155(d)(6); and

(g) Other indicators of performance as may be required by the Secretary.

**§ 688.410 What are the required levels of performance for the performance indicators?**

(a) The Secretary must annually establish expected levels of performance for YouthBuild programs relating to each of the primary indicators of performance. The expected levels of performance for each of the common performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the FOA or grant agreement. Performance level expectations will be based on available YouthBuild data and data from similar WIOA youth programs and may change between grant competitions. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

(b) The levels of performance established will, at a minimum:

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Indicate continuous improvement in performance.

**§ 688.420 What are the reporting requirements for YouthBuild grantees?**

Each grantee must provide such reports as are required by the Secretary in separately issued guidance, including:

(a) The quarterly performance report;

(b) The quarterly narrative progress report;

(c) The financial report; and

(d) Such other reports as may be required by the grant agreement.

**§ 688.430 What are the due dates for quarterly reporting?**

(a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 688.420; and

(b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

## Subpart E—Administrative Rules, Costs, and Limitations

**§ 688.500 What administrative regulations apply to the YouthBuild program?**

Each YouthBuild grantee must comply with the following:

(a) The regulations found in this part.

(b) The general administrative requirements found in 20 CFR part 683, except those that apply only to the WIOA title I–B program and those that have been modified by this section.

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's government-wide grants requirements at 2 CFR 200 and 2900, as applicable;

(2) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA sec. 188;

(3) The Department's regulations at 29 CFR parts 93, 94, and 98 relating to restrictions on lobbying, drug free workplace, and debarment and suspension; and

(4) The audit requirements of the Office of Management and Budget at 2 CFR 200 and 2900, as applicable.

(d) Relevant State and local educational standards.

**§ 688.510 How may grantees provide services under the YouthBuild program?**

Each recipient of a grant under the YouthBuild program may provide the services and activities described in these regulations either directly or through subgrants, contracts, or other arrangements with local educational agencies, post-secondary educational institutions, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

**§ 688.520 What cost limits apply to the use of YouthBuild program funds?**

(a) Administrative costs for programs operated under YouthBuild are limited to 10 percent of the grant award. The definition of administrative costs can be found in 20 CFR 683.215.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 10 percent of the grant award.

**§ 688.530 What are the cost-sharing or matching requirements of the YouthBuild program?**

(a) In addition to the rules described in paragraphs (b) through (f) of this section, the cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

(b) The value of construction materials used in the YouthBuild program is an allowable cost for the purposes of the required non-Federal share or match.

(c) The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match.

(d) Federal funds may not be used as cost-sharing or match resources except as provided by Federal law.

(e) The value of buildings acquired for the YouthBuild program is an allowable match, provided that the following conditions apply:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase price related to direct training activities.

(f) Grantees must follow the requirements of 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share.

**§ 688.540 What are considered to be leveraged funds?**

(a) Leveraged funds may be used to support allowable YouthBuild program activities and consist of payments made for allowable costs funded by both non-YouthBuild Federal, and non-Federal, resources which include:

(1) Costs which meet the criteria for cost-sharing or match in § 688.530 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 688.530 except that they are paid for with other Federal resources; and

(3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.

(b) The use of leveraged funds must be reported in accordance with Departmental instructions.

**§ 688.550 How are the costs associated with real property treated in the YouthBuild program?**

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing.

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing.

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 688.520(b), only 15 percent of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following conditions:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

(1) The costs of acquisition of land.

(2) Brokerage fees.

**§ 688.560 What participant costs are allowable under the YouthBuild program?**

Allowable participant costs include:

(a) The costs of payments to participants engaged in eligible work-related YouthBuild activities.

(b) The costs of payments provided to participants engaged in non-work-related YouthBuild activities.

(c) The costs of needs-based payments.

(d) The costs of supportive services.

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to an apprenticeship, technical, or secondary education program; and

(3) Sponsored health programs.

**§ 688.570 Does the Department allow incentive payments in the YouthBuild program?**

(a) Grantees are permitted to provide incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must tie the incentive payments to the goals of the specific grant program and outline such goals in writing prior to starting the program that makes incentive payments.

(b) Prior to providing incentive payments the organization must have written policies and procedures in place governing the awarding of incentives and the incentives provided under the grant must align with these organizational policies.

(c) All incentive payments must comply with the requirements in 2 CFR 200.

**§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?**

Under 20 CFR 683.275(c), the Department does not consider allowances, earnings, and payments to individuals participating in programs under title I of WIOA as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

**§ 688.590 What program income requirements apply under the YouthBuild program?**

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 2 CFR parts 200 and 2900, apply to YouthBuild grants.

(b) Revenue from the sale of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered program income. Grantees are encouraged to use that revenue for the long-term sustainability of the YouthBuild program.

**§ 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?**

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor standards requirements under the circumstances set forth in paragraph (b) of this section. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work, defined at 29 CFR 5.2(m), on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(c) YouthBuild participants who are not registered and participating in a training program approved by the Employment and Training Administration must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**§ 688.610 What are the recordkeeping requirements for YouthBuild programs?**

(a) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements, at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

## Subpart F—Additional Requirements

**§ 688.700 What are the safety requirements for the YouthBuild program?**

(a) YouthBuild Grantees must comply with 20 CFR 683.280, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects and programs. These health and safety standards include ''hazardous orders'' governing child labor at 29 CFR part 570.

(b) YouthBuild grantees are required to:

(1) Provide comprehensive safety training for youth working on YouthBuild construction projects;

(2) Have written, jobsite-specific safety plans overseen by an on-site supervisor with authority to enforce safety procedures;

(3) Provide necessary personal protective equipment to youth working on YouthBuild projects; and

(4) Submit required injury incident reports.

**§ 688.710 What are the reporting requirements for youth safety?**

YouthBuild grantees must ensure that YouthBuild program sites comply with

the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. A YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at *http://www.osha.gov/recordkeeping/RKforms.html.* Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

**§ 688.720 What environmental protection laws apply to the YouthBuild program?**

YouthBuild Program grantees are required, where applicable, to comply with all environmental protection statutes and regulations.

**§ 688.730 What requirements apply to YouthBuild housing?**

(a) YouthBuild grantees must ensure that all residential housing units which are constructed or rehabilitated using YouthBuild funds must be available solely for:

(1) Sale to homeless individuals and families or low-income families;

(2) Rental by homeless individuals and families or low-income families;

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living. In the case of transitional housing, the unit(s) must be occupied no more than 24 months by the same individual(s); or

(4) Rehabilitation of homes for low-income homeowners.

(b) For rentals of residential units located on the property which are constructed or rehabilitated using YouthBuild funds:

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to not more than 2 years. The leases provided to tenants with higher incomes are not subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b), and (c) of this section and incorporates the following definitions at § 688.120: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 5 years from the time of the issuance of the occupancy permit, unless a time period of more than 5 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 5-year period of the restrictive covenant must inform the buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a) through (d) of this section.

## PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

■ 16. Revise the authority citation for part 651 to read as follows:

**Authority:** Wagner-Peyser Act sec. 49a, as amended by Pub. L. 113–128 sec. 302; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 17. Revise § 651.10 to read as follows:

**§ 651.10 Definitions of terms used in parts 651, 652, 653, and 658.**

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

*Administrator, Office of Workforce Investment (OWI Administrator)* means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

*Affirmative action* means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the affirmative action guidelines of the Equal Employment Opportunity Commission (see 29 CFR part 1608) to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields.

*Agricultural worker* see *Farmworker.*

*Applicant Holding Office* means an employment service office that is in receipt of a clearance order and has access to U.S.-based workers who may be willing and available to perform farmwork on a less than year-round basis.

*Applicant Holding State* means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S.-based workers who may be willing and available to perform farmwork on a less than year-round basis.

*Bona Fide Occupational Qualification (BFOQ)* means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

*Career Services* means the services described in sec. 134(b)(2) of WIOA and 20 CFR 678.430.

*Clearance Order* means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

*Clearance System* means the orderly movement of job seekers as they are referred through the employment placement process by an employment

service office. This includes joint action of local employment service offices in different labor market areas and/or States.

*Complainant* means the individual, employer, organization, association, or other entity filing a complaint.

*Complaint* means a representation made or referred to a State or employment service office of an alleged violation of the employment service regulations and/or other Federal laws enforced by DOL's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.

*Decertification* means the rescission by the Secretary of the year-end certification made under sec. 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

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

*Employer* means a person, firm, corporation or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

*Employment and Training Administration (ETA)* means the component of the Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public employment service programs, and unemployment insurance benefits. These services are primarily provided through State and local workforce development systems.

*Employment-related laws* means those laws enforced by DOL's Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), or by other Federal, State, or local agencies enforcing employment-related laws.

*Employment Service (ES)* means the national system of public employment service offices described under the Wagner-Peyser Act. The employment services are delivered through a nationwide system of one-stop centers, and are managed by State agencies and the various offices of the State agencies, and funded by the United States Department of Labor.

*Employment Service Office* means a local office of a State Workforce Agency (SWA).

*Employment Service regulations* means the Federal regulations at 20 CFR parts 651, 652, 653, 654, 658, and 29 CFR part 75.

*Establishment* means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community should be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) should also be considered as part of the parent establishment. For the purpose of the ''seasonal farmworker'' definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

*Farmwork* means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purpose of this section, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. *Farmwork* also means any service or activity covered under 20 CFR 655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

*Farmworker* means an individual employed in farmwork as defined in this section.

*Field Checks* means random, unannounced appearances by State agency personnel at agricultural worksites to which employment service placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

*Field Visits* means appearances by monitor advocates or State agency outreach personnel to the working and living areas of MSFWs. The monitor advocates or outreach personnel must keep records to discuss ES services and other employment-related programs with MSFWs, crew leaders, and employers.

*Governor* means the chief executive of a State or an outlying area.

*Hearing Officer* means a Department of Labor Administrative Law Judge, designated to preside at Department administrative hearings.

*Interstate clearance order* means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an employment service office uses to request recruitment assistance from other employment service offices in a different State.

*Intrastate clearance order* means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an employment service office uses to request recruitment assistance from other employment service offices within the State.

*Job development* means the process of securing a job interview with a public or private employer for a specific applicant for whom the employment service office has no suitable opening on file.

*Job information* means information derived from data compiled in the normal course of employment service activities from reports, job orders, applications, and the like.

*Job opening* means a single job opportunity for which the employment service office has on file a request to select and refer participants.

*Job order* means the document containing the material terms and

conditions of employment relating to wages, hours, working conditions, worksite and other benefits, submitted by an employer.

*Job referral* means:

(1) The act of bringing to the attention of an employer an applicant or group of applicants who are available for specific job openings or for a potential job; and

(2) The record of such referral. ''Job referral'' means the same as ''referral to a job.''

*Labor market area* means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with criteria used by DOL's Bureau of Labor Statistics in defining such areas or similar criteria established by a Governor.

*Local Office Manager* means the official in charge of all employment service activities in a one-stop center.

*Local Workforce Development Board* means a Local Workforce Development Board established under sec. 107 of WIOA.

*Migrant farmworker* means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

*Migrant food processing worker* see *Migrant Farmworker.*

*MSFW* means a migrant farmworker or a seasonal farmworker.

*Occupational Information Network (O*NET)* system means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

*One-stop center* means a one-stop delivery system described in sec. 121(e)(2) of WIOA.

*One-stop delivery system* means a one-stop delivery system described in sec. 121(e) of WIOA.

*One-stop partner* means an entity described in sec. 121(b) of WIOA and 20 CFR 678.400 that is participating in the operation of a one-stop delivery system.

*O*NET–SOC* means the occupational codes and titles used in the O*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department of Labor is authorized to develop additional detailed O*NET occupations within existing SOC categories. The Department uses O*NET–SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

*Onsite Review* means an appearance by the State monitor advocate and/or Federal staff at an employment service office to monitor the delivery of services and protections afforded by employment service regulations to MSFWs by the State agency and local offices.

*Order Holding Office* means an employment service office that has accepted a clearance order from an employer seeking U.S.-based workers to perform farmwork on a less than year-round basis through the Agricultural Recruitment System.

*Outreach Contact* means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from an outreach worker.

*Participant* means a person who applies for or is receiving Wagner-Peyser Act employment services.

*Placement* means the hiring by a public or private employer of an individual referred by the employment service office for a job or an interview, provided that the employment office completed all of the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

*Public housing* means housing operated by or on behalf of any public agency.

*Regional Administrator (RA)* means the chief DOL Employment and Training Administration (ETA) official in each Department regional office.

*Respondent* means the employer or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

*Seasonal farmworker* means an individual who is employed, or was employed in the past 12 months, in farmwork (as described in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

*Secretary* means the Secretary of the U.S. Department of Labor or the Secretary's designee.

*Significant MSFW one-stop centers* are those designated annually by the Department and include those employment service offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines should be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

*Significant MSFW States* are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

*Significant multilingual MSFW one-stop centers* are those designated annually by the Department and include those significant MSFW employment service offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also should be included due to special circumstances.

*Solicitor* means the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

*Standard Metropolitan Statistical Area (SMSA)* means a metropolitan area designated by the Bureau of Census which contains:

(1) At least one city of 50,000 inhabitants or more; or

(2) Twin cities with a combined population of at least 50,000.

*State* means any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

*State Administrator* means the chief official of the State Workforce Agency (SWA).

*State agency* or *State Workforce Agency (SWA)* means the State employment service agency designated under sec. 4 of the Wagner-Peyser Act.

*State hearing official* means a State official designated to preside at State administrative hearings convened to resolve complaints involving ES-regulations pursuant to subpart E of part 658 of this chapter.

*State Workforce Development Board (State Board)* means the entity within a State appointed by the Governor under sec. 101 of WIOA.

*Supply State(s)* means a State that potentially has U.S.-based workers who may be recruited for referral through the Agricultural Recruitment System to the area of intended employment in a different State.

*Supportive services* means services such as transportation, child care, dependent care, housing, needs-related payments, and others, that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act.

*Training Services* means services described in sec. 134(c)(3) of WIOA.

*Unemployment Insurance claimant* means a person who files a claim for benefits under any State or Federal unemployment compensation law.

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

*WIOA* means the Workforce Innovation and Opportunity Act of 2014 (codified at 29 U.S.C. 3901 *et seq.*).

*Workforce and Labor Market Information (WLMI)* means that body of knowledge pertaining to the socio-economic factors influencing the employment, training, and business decisions in national, State, sub-State, and local labor market areas. These factors, which affect labor demand-supply relationships, worker preparation, and educational program offerings, also define the content of the WLMI programs and system. WLMI includes, but is not limited to:

(1) Employment and unemployment numbers and rates;

(2) Population growth and decline, classified by age, sex, race, and other characteristics;

(3) Short- and long-term industry and occupational employment projections;

(4) Information on business employment dynamics, including the number and nature of business establishments, and share and location of industrial production;

(5) Local employment dynamics, including business turnover rates; new hires, job separations, net job losses;

(6) Job vacancy counts;

(7) Job search information and employment data from the public labor exchange system;

(8) Identification of high growth and high demand industries, occupations, and jobs;

(9) Payroll, earnings, work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;

(10) Emerging occupations and evolving skill demands;

(11) Business skill and hiring requirements;

(12) Workforce characteristics, described by skills, experience, education, competencies, etc.;

(13) Workforce available in geographic areas;

(14) Regional and local economic development, including job creation through business start-ups and expansions;

(15) Educational programs, training and apprenticeship opportunities;

(16) Trends in industrial and occupational restructuring;

(17) Shifts in consumer demands;

(18) Data contained in governmental or administrative reporting including wage records as identified in 20 CFR 652.301;

(19) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and

(20) Other economic factors.

*Workforce and Labor Market Information System (WLMIS)* means the system that collects, analyzes, interprets, and disseminates workforce characteristics and employment-related data, statistics, and information at national, State, and local labor market areas and makes that information available to the public, workforce development system, one-stop partner programs, and the education and economic development communities.

*Workforce Development Activity* means an activity carried out through a workforce development program as defined in sec. 3 of WIOA.

*Working days* or *business days* means those days that the order-holding employment service office is open for public business, for purposes of the Agricultural Recruitment System.

*Work test* means activities designed to ensure that an individual whom a State determines to be eligible for unemployment insurance benefits is able to work, available for work, and actively seeking work in accordance with the State's unemployment compensation law.

■ 18. Revise part 652 to read as follows:

## PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

### Subpart A—Employment Service Operations

Sec.
652.1 Introduction.
652.2 Scope and purpose of the employment service system.
652.3 Public labor exchange services system.
652.4 Allotment of funds and grant agreement.
652.5 Services authorized.
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652.7 [Reserved].
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### Subpart B—Services for Veterans

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652.207 How does a State meet the requirement for universal access to services provided under the Act?
652.208 How are applicable career services related to the methods of service delivery described in this part?

652.209 What are the requirements under the Act for providing reemployment services and other activities to referred unemployment insurance claimants?
652.210 What are the Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?
652.211 What are State planning requirements under the Act?
652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Act?
652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Act?

**Subpart D—Workforce and Labor Market Information**

Sec.
652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?
652.301 What are wage records for purposes of the Wagner-Peyser Act?
652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?
652.303 How do the requirements of part 603 of this chapter apply to wage records?

**Authority:** Wagner-Peyser Act sec. 15 as amended by Pub. L. 113–128 sec. 308, 29 U.S.C. 491–2; Pub. L. 113–128 secs. 189, 503.

## Subpart A—Employment Service Operations

### § 652.1 Introduction.

These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Act, as amended by the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128. Congress intended that the States exercise broad authority in implementing provisions of the Act.

### § 652.2 Scope and purpose of the employment service system.

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

### § 652.3 Public labor exchange services system.

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

(a) To assist jobseekers in finding employment, including promoting their familiarity with the Department's electronic tools;

(b) To assist employers in filling jobs;

(c) To facilitate the match between jobseekers and employers;

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Act;

(e) To meet the work test requirements of the State unemployment compensation system; and

(f) Provide labor exchange services as identified in § 678.430(a) of this chapter and sec. 134(c)(2)(A)(iv) of WIOA.

### § 652.4 Allotment of funds and grant agreement.

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

(b) *Grant agreement.* To establish a continuing relationship under the Act, the Governor and the Secretary must sign a grant agreement, including a statement assuring that the State must comply with the Act and all applicable rules and regulations. Consistent with this agreement and sec. 6 of the Act, State allotments will be obligated through a notification of obligation.

### § 652.5 Services authorized.

The funds allotted to each State under sec. 6 of the Act must be expended consistent with an approved plan under 20 CFR 676.100 through 676.135 and § 652.211. At a minimum, each State must provide the minimum labor exchange elements listed at § 652.3.

### § 652.6 [Reserved].

### § 652.7 [Reserved].

### § 652.8 Administrative provisions.

(a) *Administrative requirements.* The Employment Security Manual is not applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part 652 are as specified in 2 CFR 200 and 2900.

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

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

(c) *Reports required.* (1) Each State must make reports pursuant to instructions issued by the Secretary and in such format as the Secretary prescribes.

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

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

(2) Prior approval authority, as described in various sections of 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Office of Management and Budget Circular A–87 (Revised), is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 2 CFR 200 and 2900. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

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

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

(5) Each State must retain basic documents for the minimum period specified below, consistent with 2 CFR 200 and 2900:

(i) Work application: 3 Years.

(ii) Job order: 3 Years.

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

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

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(6)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act funds used for administrative expenditures.

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

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

(f) *Audits.* (1) The State must follow the audit requirements found at 20 CFR 683.210, except that funds expended pursuant to sec. 7(b) of the Act must be audited annually.

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

(3) The audit, conducted pursuant to paragraph (f)(1) or (2) of this section, must be submitted to the Secretary who will follow the resolution process specified in 20 CFR 667.420 through 667.440.

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

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

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

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt;

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

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

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

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

(j) *Nondiscrimination and affirmative action requirements.* States must:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

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

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

(4) Assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable DOL nondiscrimination regulations.

### § 652.9 Labor disputes.

(a) State agencies may not make a job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

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

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

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

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

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

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

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

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

## Subpart B—Services for Veterans

### § 652.100 Services for veterans.

Veterans receive priority of service for all DOL-funded employment and training programs as described in 20 CFR part 1010. The Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program under chapter 41 of title 38 of the U.S. Code and other activities and training programs which provide services to specific populations of eligible veterans. VETS' general regulations are located in parts 1001, 1002, and 1010 of this title.

## Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

### § 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIOA, in a one-stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in 20 CFR part 651 and sec. 2 of the Act apply to this subpart.

### § 652.201 What is the role of the State agency in the one-stop delivery system?

(a) The role of the State agency in the one-stop delivery system is to ensure the delivery of services authorized under sec. 7(a) of the Act. The State agency is a required one-stop partner in each local one-stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 678.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the one-stop delivery system in accordance with sec. 7(e) of the Act;

(2) Be represented on the Workforce Development Boards that oversee the local and State one-stop delivery system and be a party to the Memorandum of Understanding, described at 20 CFR 678.500, addressing the operation of the one-stop delivery system; and

(3) Provide these services as part of the one-stop delivery system.

### § 652.202 May local Employment Service Offices exist outside of the one-stop service delivery system?

No. Local Employment Service Offices may not exist outside of the one-stop service delivery system. A State must collocate employment services, as provided in 20 CFR 678.310–678.315.

### § 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The State agency retains responsibility for all funds authorized under the Act, including those funds authorized under sec. 7(a) required for providing the services and activities delivered as part of the one-stop delivery system.

### § 652.204 Must funds authorized under the Act (the Governor's reserve) flow through the one-stop delivery system?

No, these funds are reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, and services for groups with special needs, as described in sec. 7(b) of the Act. However, these funds may flow through the one-stop delivery system.

### § 652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Act enables States to use funds authorized under sec. 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIOA.

(b) Funds authorized under the Act may be used under sec. 7(c) to provide additional funding to other activities authorized under WIOA if:

(1) The activity meets the requirements of the Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Act;

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

### § 652.206 May a State use funds authorized under the Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

Yes, funds authorized under sec. 7(a) of the Act must be used to provide basic career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)–(xi) of WIOA, and may be used to provide individualized career services as identified in § 678.430(b) of this chapter and sec. 134(c)(2)(A)(xii) of WIOA. Funds authorized under sec. 7(b) of the Act may be used to provide career services. Career services must be provided consistent with the requirements of the Wagner-Peyser Act.

### § 652.207 How does a State meet the requirement for universal access to services provided under the Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a statewide basis through:

(i) Self-service, including virtual services;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local workforce investment area, in at least one comprehensive physical center, staff funded under the Act must provide labor exchange services (including staff-assisted labor exchange services) and career services as described in § 652.206; and

(4) Those labor exchange services provided under the Act in a local workforce investment area must be described in the Memorandum of Understanding (MOU) described in § 678.500.

### § 652.208 How are applicable career services related to the methods of service delivery described in in this part?

Career services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service, including virtual services;

(b) Facilitated self-help service; and

(c) Staff-assisted service.

### § 652.209 What are the requirements under the Act for providing reemployment services and other activities to referred unemployment insurance claimants?

(a) In accordance with sec. 3(c)(3) of the Act, the State agency, as part of the one-stop delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The State agency must also provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by sec. 5(b)(2) of the Act;

(2) Administration of the work test, conducting eligibility assessments, and registering UI claimants for employment services in accordance with a State's unemployment compensation law, and provision of job finding and placement services as required by sec. 3(c)(3) and described in sec. 7(a)(3)(F) of the Act;

(3) Referring UI claimants to, and providing application assistance for, training and education resources and programs, including Federal Pell grants and other student assistance under title IV of the Higher Education Act, the Montgomery GI Bill, Post-9/11 GI Bill, and other Veterans Educational Assistance, training provided for youth, and adult and dislocated workers, as well as other employment training programs under WIOA, and for Vocational Rehabilitation Services under title I of the Rehabilitation Act of 1973.

**§ 652.210 What are the Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?**

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work, including career services specified in § 652.206 and listed in sec. 134(c)(2)A) of WIOA;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) ES staff will provide UI program staff with information about UI claimants' ability or availability for work, or the suitability of work offered to them.

**§ 652.211 What are State planning requirements under the Act?**

The Employment Service is a core program identified in WIOA and must be included as part of each State's Unified or Combined State Plans. See §§ 676.105 through 676.125 for planning requirements for the core programs.

**§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Act?**

This section stipulates that only State merit staff may provide Wagner-Peyser services. The only change proposed in this section is to change ''WIA'' to ''WIOA'' in the section question; the remainder of the text has not changed from the existing regulation. The Department has followed this policy since the earliest years of the ES, in order to ensure minimum standards for the quality of the services provided. A 1998 U.S. District Court decision, *Michigan* v. *Herman,* 81 F. Supp. 2nd 840 (*http://law.justia.com/cases/federal/district-courts/FSupp2/81/840/2420800/*) upheld this policy. State merit staff employees are directly accountable to State government entities, and the standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. State merit staff meet objective professional qualifications and provide impartial, transparent information and services to all customers while complying with established government standards.

**§ 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Act?**

Yes, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting. As part of the local Memorandum of Understanding described in § 678.500, the State agency, as a one-stop partner, may agree to have staff receive guidance from the one-stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit staff employees funded under the Act, remain under the authority of the State agency. The guidance given to employees must be consistent with the provisions of the Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

## Subpart D—Workforce and Labor Market Information

**§ 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?**

(a) The Secretary of Labor must oversee the development, maintenance, and continuous improvement of the workforce and labor market information system defined in Wagner-Peyser Act sec. 15 and 20 CFR 651.10.

(b) With respect to data collection, analysis, and dissemination of workforce and labor market information as defined in Wagner-Peyser Act sec. 15 and 20 CFR 651.10, the Secretary must:

(1) Assign responsibilities within the Department of Labor for elements of the workforce and labor market information system described in sec. 15(a) of the Wagner-Peyser Act to ensure that the statistical and administrative data collected are consistent with appropriate Bureau of Labor Statistics standards and definitions, and that the information is accessible and understandable to users of such data;

(2) Actively seek the cooperation of heads of other Federal agencies to establish and maintain mechanisms for ensuring complementarity and non-duplication in the development and operation of statistical and administrative data collection activities;

(3) Solicit, receive, and evaluate the recommendations of the Workforce Information Advisory Council established by Wagner-Peyser Act sec. 15(d);

(4) Eliminate gaps and duplication in statistical undertakings;

(5) Through the Bureau of Labor Statistics and the Employment and Training Administration, and in collaboration with States, develop and maintain the elements of the workforce and labor market information system, including the development of consistent procedures and definitions for use by States in collecting and reporting the workforce and labor market information data described in Wagner-Peyser Act sec. 15 and defined in 20 CFR 651.10; and

(6) Establish procedures for the system to ensure that the data and information are timely, and paperwork and reporting for the system are reduced to a minimum.

**§ 652.301 What are wage records for purposes of the Wagner-Peyser Act?**

Wage records, for purposes of the Wagner-Peyser Act, are records that contain ''wage information'' as defined in 20 CFR 603.2(k). In this part, ''State wage records'' refers to wage records produced or maintained by a State.

**§ 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?**

(a) State wage records, as defined in § 652.301, are source data used in the development of a significant portion of the workforce and labor market information defined in § 651.10.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and 20 CFR 652.300, the Secretary of Labor will, in consultation with the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), Federal agencies, and States, develop:

(1) Standardized definitions for the data elements comprising ''wage records'' as defined in § 652.301; and

(2) Improved processes and systems for the collection and reporting of wage records.

(c) In carrying out these activities, the Secretary may also consult with other stakeholders, such as employers.

**§ 652.303 How do the requirements of part 603 of this chapter apply to wage records?**

All information collected by the State in wage records referred to in § 652.302 is subject to the confidentiality regulations at 20 CFR part 603.

■ 19. Revise part 653 to read as follows:

## PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

**Subpart A—[Reserved]**

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

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers.
653.102 Job information.
653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.
653.107 Outreach and Agricultural Outreach Plan.
653.108 State Workforce Agency and State monitor advocate responsibilities.
653.109 Data collection and performance accountability measures.
653.110 Disclosure of data.
653.111 State agency staffing requirements.

**Subpart C–E—[Reserved]**

**Subpart F—Agricultural Recruitment System for U.S. Farmworkers (ARS)**

653.500 Purpose and scope of subpart.
653.501 Requirements for processing clearance orders.
653.502 Conditional access to the agricultural recruitment system.
653.503 Field checks.

**Authority:** Pub. L. 113–128 secs. 167, 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113–128 secs. 302–308, 29 U.S.C. 49 *et seq.;* 38 U.S.C. part III, chapters 41 and 42.

## Subpart A—[Reserved]

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

### § 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the United States Employment Service (USES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring that MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

(b) This subpart contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs.

(c) Special services to ensure that MSFWs receive the full range of employment related services are established under this subpart.

### § 653.101 Provision of services to migrant and seasonal farmworkers.

Each employment service office must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, the employment service offices must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

### § 653.102 Job information.

All State agencies must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. Employment service offices must provide adequate staff assistance to MSFWs to access job order information easily and efficiently. In designated significant MSFW multilingual offices, such assistance must be provided to MSFWs in their native language, whenever requested or necessary.

### § 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each employment service office must determine whether or not participants are MSFWs as defined at § 651.10 of this chapter.

(b) All State Workforce Agencies (SWAs) will ensure that MSFWs with limited English proficiency (LEP) receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers.

(c) Employment service office staff members must provide MSFWs a list of available career and supportive services in their native language.

(d) Employment service staff must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

### § 653.107 Outreach and Agricultural Outreach Plan.

(a) *State agency outreach responsibilities.* (1) Each State agency must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas. SWA Administrators must ensure that State monitor advocates and outreach workers coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, States agencies:

(i) Should communicate the full range of workforce development services to MSFWs.

(ii) Should, in supply States, conduct thorough outreach efforts with extensive follow-up activities .

(3) For purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with State agencies' Affirmative Action programs, State agencies must seek, through merit system procedures, qualified candidates:

(i) Who are from MSFW backgrounds;

(ii) Who speak a language common among MSFWs in the State; and

(4) The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire year-round part-time outreach staff and, during periods of the highest MSFW activity must hire full-time outreach staff. All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The State agency must publicize the availability of employment services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.

(b) *Outreach worker's responsibilities.* Outreach workers must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the employment service offices. Outreach worker's responsibilities include:

(1) Explaining to MSFWs at their working, living or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following;

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the employment service complaint system;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including their rights with respect to the terms and conditions of employment;

(2) Outreach workers may not enter an employer's property or work area to perform outreach duties described in this section without permission of the employer, owner, or farm labor contractor, unless otherwise authorized to enter by law. Outreach workers may not enter workers' living areas without the permission of the workers, and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach workers must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, the outreach worker must offer to provide on-site the following:

(i) Assistance in the preparation of applications for employment services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either employment service or employment-related law complaints;

(iv) Referral of complaints to the employment service office complaint specialist or employment service officer manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of his/her family to and from local one-stop centers or other appropriate agencies.

(5) Outreach workers must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (b)(4) of this section.

(6) Outreach workers must be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the employment service office manager for processing in accordance with § 658.411 of this chapter. Additionally, if an outreach worker observes or receives information about apparent violations (as described in 20 CFR 658.419), the outreach worker must document and refer the information to the appropriate local employment service office manager.

(7) Outreach workers must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the employment service system, including training on protecting farmworkers against sexual harassment. They must also be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA; the State monitor advocate must be given an opportunity to review and comment on the State's program.

(8) Outreach workers must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the employment service office manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (*e.g.,* whether a complaint was received, whether a request for career services was received, and whether a referral was made). Outreach workers also must maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to § 653.107(b)(2).

(9) Outreach workers must not engage in political, unionization or anti-unionization activities during the performance of their duties.

(10) Outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency.

(c) *Employment service office outreach responsibilities.* Each employment service office manager must file with the State monitor advocate a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The employment service office manager and/or other appropriate State office staff members must assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach worker. The monthly reports and daily outreach logs must be made available to the State monitor advocate and Federal on-site review teams.

(d) *State Agricultural Outreach Plan (AOP).* (1) Each State agency must develop an AOP every 4 years as part of the Unified or Combined State Plan required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Provide an assessment of available resources for outreach;

(iii) Describe the State agency's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the employment service offices;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, both MSFWs and agricultural employers, through the one-stop centers.

(v) Provide an assurance that the State agency is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers.

(3) The AOP must be submitted in accordance with the regulations at 20 CFR 653.107(d) and planning guidance issued by the Department.

(4) The Annual Summaries required at § 653.108(s) must update annually the Department on the State agency's progress toward meetings its goals set forth in the AOP.

**§ 653.108 State Workforce Agency and State monitor advocate responsibilities.**

(a) State Administrators must assure that their State agencies monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for State agency self-monitoring.

(b) The State Administrator must appoint a State monitor advocate. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State monitor advocate. Among qualified candidates determined through State merit system procedures, the State agencies must seek persons:

(1) Who are from MSFW backgrounds; and/or

(2) Who speak Spanish or other languages of a significant proportion of the State MSFW population; and/or

(3) Who have substantial work experience in farmworker activities.

(c) The State monitor advocate must have direct, personal access, when necessary, to the State Administrator. The State monitor advocate must have

status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(d) The State monitor advocates must be assigned staff necessary to fulfill effectively all of their duties as set forth in this subpart. The number of staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The State monitor advocates must devote full-time to monitor advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the State monitor advocate function can be effectively performed with part-time staffing.

(e) All State monitor advocates and their staff must attend, within the first 3 months of their tenure, a training session conducted by the regional monitor advocate. They must also attend whatever additional training sessions are required by the regional or national monitor advocate.

(f) The State monitor advocate must provide any relevant documentation requested from the State agency by the regional monitor advocate.

(g) The State monitor advocate must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by employment service regulations to MSFWs by the State agency and local employment service offices (including progress made in achieving affirmative action staffing goals). The State monitor advocate, without delay, must advise the State agency and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and may request a corrective action plan to address these deficiencies. The State monitor advocate must advise the State agency on means to improve the delivery of services.

(2) Participate in on-site reviews on a regular basis, using the following procedures:

(i) Before beginning an onsite review, the State monitor advocate and/or review staff must study:

(A) Program performance data;

(B) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D) Complaint logs; and

(E) Complaints elevated from the office or concerning the office.

(ii) Ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the State monitor advocate must hold one or more wrap-up sessions with the employment service office manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review the State monitor advocate must conduct an in-depth analysis of the review data. The conclusions and recommendations of the State monitor advocate must be put in writing, and must be sent to the State Administrator, to the official of the State agency with line authority over the employment service office, and other appropriate State agency officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the employment service office manager must develop and propose a written corrective action plan. The plan must be approved or revised by appropriate superior officials and the State monitor advocate. The plan must include actions required to correct or to take major steps to correct any compliance issues within 30 days, and if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period must be specifically stated. State agencies are responsible for assuring and documenting that the employment service office is in compliance within the time period designated in the plan.

(vi) State agencies must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for employment service offices.

(vii) The State monitor advocate may recommend that the review described in paragraph (g)(2) of this section be delegated to a responsible, professional member of the administrative staff of the State agency, if and when the State Administrator finds such delegation necessary. In such event, the State monitor advocate is responsible for and must approve the written report of the review.

(3) Assure that all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff, and that, if necessary, those employment service offices in which significant problems are revealed by required reports, management information, the employment service complaint system, or other means are reviewed as soon as possible.

(4) Review and approve the State agency's Agricultural Outreach Plan (AOP).

(5) On a random basis, review outreach workers' daily logs and other reports including those showing or reflecting the workers' activities.

(6) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator as described in paragraph (s) of this section.

(h) The State monitor advocate must participate in Federal reviews conducted pursuant to 20 CFR part 658 subpart G.

(i) At the discretion of the State Administrator, the State monitor advocate may be assigned the responsibility as the complaint specialist. The State monitor advocate must participate in and monitor the performance of the complaint system, as set forth at 20 CFR 658.400 *et seq.* The State monitor advocate must review the employment service office managers' informal resolution of complaints relating to MSFWs and must ensure that the local employment service office manager transmits copies of the logs of all MSFW complaints pursuant to 20 CFR 658 subpart E to the State agency.

(j) The State monitor advocate must serve as an advocate to improve services for MSFWs.

(k) The State monitor advocate must establish an ongoing liaison with WIOA title I sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(l) The State monitor advocate must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraph (k) of this section, to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with employment service offices or improving the coordination of services to MSFWs. To foster such collaboration, a Memorandum of Understanding (MOU) (or multiple MOUs) must be established between the State monitor advocate and the different organizations.

(m) The State monitor advocate must conduct frequent field visits to the working and living areas of MSFWs, and must discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(n) The State monitor advocate must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety

and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(o) The State monitor advocate must ensure that outreach efforts in all significant MSFW employment service offices are reviewed at least yearly. This review will include accompanying at least one outreach worker from each significant MSFW local office on their field visits to MSFWs' working and living areas. The State monitor advocate must review findings from these reviews with the employment service office managers.

(p) The State monitor advocate must review on at least a quarterly basis all statistical and other MSFW-related data reported by employment service offices in order:

(1) To determine the extent to which the State agency has complied with the employment service regulations; and

(2) To identify the areas of non-compliance.

(q) The State monitor advocate must have full access to all statistical and other MSFW-related information gathered by State agencies and local employment service offices, and may interview State and local employment service office staff with respect to reporting methods. Subsequent to each review, the State monitor advocate must consult, as necessary, with State and local employment service offices and provide technical assistance to ensure accurate reporting.

(r) The State monitor advocate must review and comment on proposed State employment service directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations, and

(2) That they are clear and workable. The State monitor advocate also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(s) *Annual summary.* The State monitor advocates must prepare for the State Administrator, the regional monitor advocate, and the national monitor advocate an annual summary describing how the State provides employment services to MSFWs within their State based on statistical data and their reviews and activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the State monitor advocate pertaining to his/her responsibilities set forth in this section and other applicable regulations in this part.

(2) An assurance that the State monitor advocate has direct, personal access, whenever he/she finds it necessary, to the State Administrator and that the State monitor advocate has status and compensation approved by the civil service classification system, and is comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(3) An assurance that the State monitor advocate devotes all of his/her time to monitor advocate functions, or, if the State agency proposes conducting necessary State monitor advocate functions on a part-time basis, an explanation of how the State monitor advocate functions are effectively performed with part-time staffing.

(4) A summary of the monitoring reviews conducted by the State monitor advocate, including:

(i) A description of any problems, deficiencies, or improper practices the State monitor advocate identified in the delivery of services,

(ii) A summary of the actions taken by the State agency to resolve the problems, deficiencies, or improper practices described in its service delivery, and

(iii) A summary of any technical assistance the State monitor advocate provided for the State agency and the local employment service offices.

(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW employment service offices.

(6) A summary of the State's actions taken under the complaint system described in 20 CFR 658 subpart E, identifying any challenges, complaint trends, findings from reviews of the complaint system, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the complaint system.

(7) A summary of how the State monitor advocate is working with WIOA title I sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations, in the State, and an assurance that the State monitor advocate is meeting at least quarterly with representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by State agencies and employment service offices for the year, including an overview of the State monitor advocate's involvement in the State agency's reporting systems.

(9) A summary of the training conducted for State agency personnel, including local office personnel, on techniques for accurately reporting data.

(10) A summary of activities related to the agricultural outreach plan, and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the State agency's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the State agency will take to address those deficiencies.

(11) For significant MSFW employment offices, a summary of the functioning of the State's affirmative action staffing program under 20 CFR 653.111.

**§ 653.109 Data collection and performance accountability measures.**

State agencies must:

(a) Collect career service indicator data specified in WIOA title I sec. 134(c)(2)(A)(xii).

(b) Collect data, in accordance with applicable ETA Reports and Guidance, on:

(1) The number of MSFWs contacted through outreach activities;

(2) The number of MSFWs and non-MSFWs registered for career services;

(3) The number of MSFWs referred to and placed in agricultural jobs;

(4) The number of MSFWs referred to and placed in non-agricultural jobs;

(5) The entered employment rate for MSFWs;

(6) The average earnings for MSFWs in both agricultural and non-agricultural jobs;

(7) The employment retention rate for MSFWs;

(8) The number of MSFWs served who identified themselves as male, female, African-American, Hispanic, American Indian, Asian, or Pacific Islander;

(9) Agricultural clearance orders (including field checks), MSFW complaints, and monitoring activities; and

(10) Any other data required by the Department.

(c) Provide necessary training to State agency personnel, including local office personnel, on techniques for accurately reporting data;

(d) Collect and submit data on MSFWs required by the Unified State Plan, as directed by the Department.

(e) Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, and submit the data for verification to

the Department, as directed by the Department.

(f) Submit additional reports to the Department as directed.

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW State agencies will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job; individuals placed long-term (150 days or more) in a non-agricultural job; a review of significant MSFW local employment service offices; field checks conducted, outreach contacts per week; and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year must be based on the following:

(1) Past State agency performance in serving MSFWs, as reflected in on-site reviews and data collected under § 653.109;

(2) The need for services to MSFWs in the following year, comparing prior and projected levels of MSFW activity.

**§ 653.110 Disclosure of data.**

(a) State agencies must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by State and local employment service offices pursuant to § 653.109, if possible within 10 working days after receipt of the request.

(b) If a request for data held by a State agency is made to the ETA national or regional office, the ETA must forward the request to the State agency for response.

(c) If the State agency cannot supply the requested data within 10 business days after receipt of the request, the State agency must respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, or are otherwise privileged against disclosure, may also be withheld provided the reason is given to the requestor in writing.

**§ 653.111 State agency staffing requirements.**

(a) The State agency must implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers, and will employ ES staff in a manner facilitating the delivery of ES services tailored to the special needs of MSFWs, including:

(1) The positioning of multilingual staff in offices serving a significant number of Spanish-speaking or LEP participants; and

(2) The hiring of staff members from the MSFW community or members of community-based migrant programs.

(b) The State agency must hire sufficient numbers of qualified, permanent minority staff in significant MSFW employment service offices. State agencies will determine whether a ''sufficient number'' of staff has been hired by conducting a comparison between the characteristics of the staff and the workforce and determining if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the work force in the local employment office service area(s). State agencies with significant MSFW local employment service offices, must undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff.

(1) Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff must be hired in accordance with State merit system procedures, where applicable.

(2) If a local employment service office does not have a sufficient number of qualified minority staff, the State agency must establish a goal to achieve sufficient staffing at the local employment service office. The State agency will also establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the State agency must consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds. All affirmative action programs must establish timetables that are designed to achieve the staffing goal no later than 1 year after the submission of the Unified or Combined State Plan or annual summary, whichever is sooner. Once such goals have been achieved, the State agency must submit a State Plan modification request to the Department with the assurance that the requirements of paragraph (b) of this section have been achieved.

(3) The State monitor advocates, regional monitor advocates, or the national monitor advocate, as part of their regular reviews of State agency compliance with these regulations, must monitor the extent to which the State agency has complied with its affirmative action program.

## Subpart C–E—[Reserved]

## Subpart F—Agricultural Recruitment System for U.S. Farmworkers (ARS)

**§ 653.500 Purpose and scope of subpart.**

This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This section affects all job orders for workers who are recruited through the employment service interstate and intrastate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

**§ 653.501 Requirements for processing clearance orders.**

(a) No local employment service office or State agency may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The local employment service office and employer have attempted, and have not been able, to obtain sufficient workers within the local labor market area, or

(2) The local employment service office anticipates a shortage of local workers.

(b) *Employment service office responsibilities.* (1) Each employment service office must ensure that the agricultural clearance form prescribed by the Department (ETA Form 790 or its subsequently issued form), and its attachments are complete when placing intrastate or interstate clearance orders seeking farmworkers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the local employment service office incorporates offices beyond the local office commuting area, the employment service office must suppress the employer information in order to facilitate the orderly movement of workers within the employment service system.

(3) Employment service staff must determine, through a preoccupancy housing inspection performed by employment service staff or other appropriate public agency, that the housing assured by the employer is either available and meets the applicable housing standards or has been approved for conditional access to the clearance system as set forth in 20 CFR 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) *State agency responsibilities.* (1) State agencies must ensure that intrastate and interstate orders:

(i) Include the following language: ''In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the employment service constitute a contractual job offer to which the ETA or a State agency is in any way a party;''

(ii) Do not contain an unlawful discriminatory specification by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information;

(iii) Are signed by the employer; and

(iv) State all the material terms and conditions of the employment, including:

(A) The crop;

(B) The nature of the work;

(C) The anticipated period and hours of employment;

(D) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(E) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

(F) Any deductions to be made from wages;

(G) A specification of any non-monetary benefits to be provided by the employer;

(H) Any hours, days or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) of this section, the exclusive manner in which the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

(I) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.

(2) State agencies must ensure that:

(i) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to employment service staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher; and

(ii) The employer has agreed to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.

(3) State agencies must ensure that the clearance order includes the following assurances:

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office. The State agency must make a record of this notification and must attempt to expeditiously inform referred workers of the change.

(ii) No extension of employment beyond the period of employment specified in the clearance order may relieve the employer from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

(iii) The working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

(iv) The employer will expeditiously notify the order-holding office or State agency by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment.

(v) The employer, if acting as a farm labor contractor (''FLC'') or farm labor contractor employee (''FLCE'') on the order, has a valid Federal FLC certificate or Federal FLCE identification card; and when appropriate, any required State farm labor contractor certificate.

(vi) The availability of no cost or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance system. This assurance must cover the availability of housing for only those workers, and, when applicable, family members who are unable to return to their residence in the same day.

(vii) Outreach workers must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(viii) The job order contains all the material terms and conditions of the job. The employer must assure this by signing the following statement in the clearance order: ''This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.''

(4) If a State agency discovers that an employer's clearance order contains a material misrepresentation, the State agency may initiate the Discontinuation of Services as set forth in 20 CFR part 658, subpart F.

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office at least 10 working days prior to the original date of need the employer must pay eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the clearance order. If an employer fails to comply under this

section the order holding office may notify DOL's Wage and Hour Division for possible enforcement.

(d) *Processing clearance orders.* This section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to 20 CFR 655 subpart B.

(1) The order-holding office must transmit an electronic copy of the approved clearance order to the State agency. The State agency must distribute additional electronic copies of the form with all attachments (except that the State agency may, at its discretion, delegate this distribution to the local office) as follows:

(i) At least one copy of the clearance order must be sent to each of the State agencies selected for recruitment (areas of supply);

(ii) At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;

(iii) At least one copy of the clearance order must be sent to the order-holding ETA regional office; and

(iv) At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

(2) The local office may place an intrastate or interstate order seeking workers to perform farmwork for a specific farm labor contractor or for a worker preferred by an employer provided the order meets employment service nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a ''white male crew leader'' or ''any white male crew leader.''

(3) The ETA regional office must review and approve the order within 10 working days of its receipt of the order, and the Regional Administrator or his/her designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or his/her designee must be in writing and state the reasons for the denial.

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact a local employment service office, preferably the order-holding office, to verify the date of need cited in the clearance order between nine and 5 working days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The State agency must make a record of this notification.

(5) If the worker referred through the clearance system contacts a local employment service office (in any State) other than the order holding office, that local employment service office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.

(6) Local employment service office staff must assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications of the clearance order.

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels, have changed since the date the clearance order was accepted, the agency must immediately contact the applicant holding office which must immediately inform crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, State agencies must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

(9) If weather conditions, over-recruitment or other conditions have eliminated the scheduled job opportunities, the State agencies involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is already en-route or at the job site. Employment service office staff must keep records of actions under this section.

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. Such checklists, where necessary, must be in the workers' native language. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request. State agencies must use a standard checklist format provided by the Department (such as in Form WH516 or a successor form).

(11) The applicant-holding office must give each referred worker a copy of the list of worker's rights described in the Department's ARS Handbook.

(12) If the labor supply State agency accepts a clearance order, the State agency must actively recruit workers for referral. In the event a potential labor supply State agency rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the State agency. The Regional Administrator will examine the reasons for rejection, and, if the Regional Administrator agrees, will inform the Regional Administrator with jurisdiction over the order-holding State agency of the rejection and the reasons. If the Regional Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will inform the national monitor advocate, who, in consultation with the Administrator of ETA's Office of Workforce Investment, will make a final determination on the acceptance or rejection of the order.

**§ 653.502 Conditional access to the agricultural recruitment system.**

(a) *Filing requests for conditional access*—(1) *''Noncriteria'' employers.* Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the local employment service office serving the area in which its housing is located, a written request that its clearance orders be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures that its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) *''Criteria'' employers.* If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a clearance order pursuant to an application for temporary alien agricultural labor certification for H–2A workers under subpart B of part 655 of this chapter, the request must be filed with the Certifying Officer (CO) at the Department's Chicago National Processing Center (NPC) designated by the Office of Foreign Labor Certification (OFLC) Administrator to make determinations on applications for temporary

employment certification under the H–2A program.

(3) *Assurance.* The employer's request pursuant to paragraphs (a)(1) or (2) of this section must contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days (stating the specific date) before the housing is to be occupied.

(b) *Processing requests*—(1) *State agency processing.* Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the local employment service office must send the request to the State agency, which, in turn, must forward it to the Regional Administrator.

(2) *Regional office processing and determination.* Upon receipt of a request for conditional access pursuant to paragraph (b)(1) of this section, the Regional Administrator must review the matter and, as appropriate, must either grant or deny the request.

(c) *Authorization.* The authorization for conditional access to the intrastate or interstate clearance system must be in writing, and must state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until a specified date. The Regional Administrator must send the authorization to the employer and must send copies (hard copy or electronic) to the appropriate State agency and local employment service office. The employer must submit and the local employment service office must attach copies of the authorization to each of the employer's clearance orders which is placed into intrastate or interstate clearance.

(d) *Notice of denial.* If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system they must provide written notice to the employer, the appropriate State agency, and the local employment service office, stating the reasons for the denial.

(e) *Inspection.* The local employment service office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system must assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the applicable housing standards. An employer, however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local employment service office must afford the employer 5 calendar days to bring the housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local employment service office immediately:

(1) Must notify the RA, or the NPC designated by the Regional Administrator;

(2) Must remove the employer's clearance orders from intrastate and interstate clearance; and

(3) Must, if workers have been recruited against these orders, in cooperation with the employment service agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

**§ 653.503 Field checks.**

(a) If a worker is placed on a clearance order, the State agency must notify the employer in writing that the State agency, through its local employment service offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(b) The State agency must conduct field checks on at least 25 percent of all agricultural worksites where placements have been made through the intrastate or interstate clearance system or at 100 percent of the worksites where less than 10 employment service placements have been made. This requirement must be met on a quarterly basis.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, local employment service staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If State agency or Federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the State agency must document the finding and attempt informal resolution. If the matter has not been resolved within 5 working days, the State agency must initiate the Discontinuation of Services as set forth at 20 CFR part 658 subpart F and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) State agencies may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of State agency personnel. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment related laws. An enforcement agency field check must satisfy the requirement for State agency field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The State agency must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(g) ES staff must keep records of all field checks.

## PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

■ 20. Revise the authority citation for part 654 to read as follows:

**Authority:** 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

■ 21. Revise subpart E of part 654 to read as follows:

**Subpart E—Housing for Agricultural Workers**

**Purpose and Applicability**

Sec.
654.400 Scope and purpose.
654.401 Applicability.
654.402 Variances.
654.403 [Reserved].

**Housing Standards**

654.404 Housing site.
654.405 Water supply.
654.406 Excreta and liquid waste disposal.
654.407 Housing.
654.408 Screening.
654.409 Heating.
654.410 Electricity and lighting.
654.411 Toilets.
654.412 Bathing, laundry, and hand washing.
654.413 Cooking and eating facilities.
654.414 Garbage and other refuse.
654.415 Insect and rodent control.
654.416 Sleeping facilities.
654.417 Fire, safety, and first aid.

## Subpart E—Housing for Agricultural Workers

### Purpose and Applicability

**§ 654.400 Scope and purpose.**

(a) This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances.

Local employment service offices, as part of the State employment service agencies and in cooperation with the United States Employment Service, assist employers in recruiting agricultural workers from places outside the area of intended employment. The experiences of the employment service agencies indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State employment service system to deny its intrastate and interstate recruitment services to employers until the State employment service agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted and the employment service staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or 20 CFR 654 subpart E, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) Per § 654.401(a) below, this subpart is effective only until [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

**§ 654.401 Applicability.**

(a) Housing that was completed or under construction prior to April 3, 1980 or was under a signed contract for construction prior to March 4, 1980 may continue to follow the full set of the Department's ETA standards set forth in this subpart until the date specified in paragraph (b) of this section.

(b) On [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] all housing for agricultural workers governed by the standards set forth in this subpart must comply with the Occupational Safety and Health Administration's (OSHA) housing standards set forth in 29 CFR 1910.142.

(c) To effectuate the transition to the OSHA standards, agricultural housing to which this subpart applies and which complies with the full set of standards and provisions set forth in this subpart must be considered to be in compliance with the OSHA temporary labor camp standards at 29 CFR 1910.142 until [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

**§ 654.402 Variances.**

(a) An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local employment service office serving the area in which the housing is located. This application must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local employment service office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.

(c) The variance granted by the RA must be in writing, must state the particular standard(s) involved, and must state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State agency and the local employment service office. The employer must submit and the local employment service office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local employment service office. The notice must also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§ 658.424 and 658.425 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404–654.417 of this subpart.

(f) All requests and/or approvals for variance under this section will expire on [ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. After that date no requests for variance will be accepted by the Department.

**§ 654.403 [Reserved].**

**Housing Standards**

**§ 654.404 Housing site.**

(a) Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing must not be subject to, or in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

**§ 654.405 Water supply.**

(a) An adequate and convenient supply of water that meets the standards of the State health authority must be provided.

(b) A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.

(c) Common drinking cups are not permitted.

**§ 654.406 Excreta and liquid waste disposal.**

(a) Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-

seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

**§ 654.407 Housing.**

(a) Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.

(b) Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements must be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations must be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.

(g) At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

**§ 654.408 Screening.**

(a) All outside openings must be protected with screening of not less than 16 mesh.

(b) All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

**§ 654.409 Heating.**

(a) All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 °F if during the period of normal occupancy the temperature in such quarters falls below 68 °F.

(b) Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(d) When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

**§ 654.410 Electricity and lighting.**

(a) All housing sites must be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.

(c) Adequate lighting must be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures must be installed and maintained in a safe condition.

**§ 654.411 Toilets.**

(a) Toilets must be constructed, located and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked ''men'' and ''women'' in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.

(f) Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.

(g) Toilet facilities must be located within 200 feet of each living unit.

(h) Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits must be fly tight. Privy pits must have adequate capacity for the required seats.

**§ 654.412 Bathing, laundry, and hand washing.**

(a) Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.

(b) There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated ''men'' or ''women'' in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, must

be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

**§ 654.413 Cooking and eating facilities.**

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

(1) A cookstove or hot plate with a minimum of two burners;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;

(4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and

(5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

(1) Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Mechanical refrigeration for food at a temperature of not more than 45 °F.;

(4) Tables and chairs or equivalent seating adequate for the intended use of the facility;

(5) Adequate sinks with hot and cold water under pressure;

(6) Adequate lighting and ventilation; and

(7) Floors must be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

**§ 654.414 Garbage and other refuse.**

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions must be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

**§ 654.415 Insect and rodent control.**

Housing and facilities must be free of insects, rodents, and other vermin.

**§ 654.416 Sleeping facilities.**

(a) Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator must be clean and sanitary.

(c) Triple deck bunks may not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

**§ 654.417 Fire, safety, and first aid.**

(a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 × 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

■ 22. Revise part 658 to read as follows:

## PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

**Subpart A–D—[Reserved]**

**Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)**

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**Subpart F—Discontinuation of Services to Employers by the Employment Service System**

658.500 Scope and purpose of subpart.
658.501 Basis for discontinuation of services.
658.502 Notification to employers.
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**Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations**

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658.601 State agency responsibility.
658.602 Employment and Training Administration National Office responsibility.
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**Subpart H—Federal Application of Remedial Action to State Agencies**

658.700 Scope and purpose of subpart.
658.701 Statements of policy.
658.702 Initial action by the Regional Administrator.
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658.708 Hearings.
658.709 Conduct of hearings.
658.710 Decision of the Administrative Law Judge.
658.711 Decision of the Administrative Review Board.

**Authority:** Pub. L. 113–128 secs. 189, 503; Wagner-Peyser Act, as amended by Pub. L. 113–128 secs. 302–308, 29 U.S.C. 49 *et seq.*

## Subpart A–D—[Reserved]

## Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

### § 658.400 Purpose and scope of subpart.

(a) This subpart sets forth the regulations governing the Complaint System for the employment service system at the State and Federal levels. Specifically, the Complaint System handles complaints against an employer about the specific job to which the applicant was referred through the employment service system and complaints involving the failure to comply with the employment service regulations under this part. As noted below, this subpart only covers employment service-related complaints made within 2 years of the alleged violation.

(b) Any complaints alleging violations under the Unemployment Insurance program, under WIOA title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 are not covered by this subpart, rather they are referred to the appropriate administering agency which would follow the procedures set forth in the respective regulations.

(c) The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in 20 CFR 651.10.

### Complaints Filed at the Local and State Level

### § 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System. At the local employment service office level the manager must be responsible for the operation of the Complaint System.

(c) SWAs must ensure that centralized control procedures are established for the processing of complaints. The manager of the local employment service office and the SWA Administrator must ensure that a central complaint log is maintained, listing all complaints taken by the local employment service office or the SWA, and specifying for each complaint:

(1) The name of the complainant;

(2) The name of the respondent (employer or State agency);

(3) The date the complaint is filed;

(4) Whether the complaint is by or on behalf of an MSFW;

(5) Whether the complaint concerns an employment-related law or the employment services regulations; and

(6) The action taken and whether the complaint has been resolved.

(d) State agencies must ensure that information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an ETA-approved Complaint System poster in each one-stop center.

(e) Each local employment service office must ensure that there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any local employment service office of the State employment service agency, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local employment service office must be handled by a trained Complaint System representative.

(h) All complaints received by a SWA must be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints must be the State monitor advocate (SMA).

(i) State agencies must ensure that any action taken by the Complaint System representative, including referral, on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any employment service related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the employment service office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate SWA or local employment office representative handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different local employment service office.

(m) Follow-up on unresolved complaints. When a complaint is submitted or referred to a SWA, the Complaint System representative (where the complainant is an MSFW, the Complaint System representative will be the SMA), must follow-up monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and must inform the complainant of the status of the complaint periodically.

### § 658.411 Action on complaints.

(a) *Filing complaints.* (1) Whenever an individual indicates an interest in filing a complaint with a local employment service office or SWA representative, or an outreach worker, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

(2) During the initial discussion with the complainant, the staff taking the complaint must:

(i) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email, and telephone numbers through which he/she might be contacted during the investigation of the complaint;

(iii) Request that the complainant contact the Complaint System

representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

(3) The staff must ensure that the complainant submits the complaint on the Complaint/Referral Form prescribed or approved by the Department. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named on the Complaint/Referral Form. The complainant must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed Complaint/Referral Form must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System representative described in § 658.410 (g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. A letter (via hard copy or email) confirming that the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System representative. The Complaint System representative must request additional information from the complainant if the complaint does not provide sufficient information to investigate the matter expeditiously.

(b) *Complaints regarding an employment-related law.* (1) When a complaint is filed regarding an employment-related law with a local employment service office or a SWA the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral the local or State representative is not required to follow-up with the complainant.

(ii) If the complainant is a MSFW, the local employment service office or SWA Complaint System representative must:

(A) Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s);

(B) Attempt to resolve the issue at the local level, except in cases where the complaint was submitted to the SWA and the SMA determines that he/she must take immediate action. Concurrently, the representative must offer to refer the MSFW to other employment services should the MSFW be interested.

(C) If the issue is not resolved within 5 business days, the representative must determine if the complaint should be referred to the appropriate enforcement agency, another public agency, a legal aid organization, or a consumer advocate organization, as appropriate, for further assistance.

(D) If the local employment service office or SWA Complaint System representative determines that the complaint should be referred to a State or Federal agency, he/she must refer the complaint to the SMA who must immediately refer the complaint to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred to the SMA under paragraph (b)(1)(ii)(D) of this section, the representative must provide the SMA's contact information to the complainant. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

(2) If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with subpart F. If this occurs, the SWA must notify the complainant and the employer of this action.

(c) *Complaints alleging a violation of rights under the Equal Employment Opportunity Commission Regulations.* (1) All complaints received by a local employment service office alleging unlawful discrimination by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information, as well as reprisal for protected activity, the local Complaint System representative must refer the complaint to a local employment service Equal Opportunity (EO) representative and must notify the complainant of the referral in writing.

(2) If the local employment service office does not have an EO representative, the complaint must be sent to the SWA for assignment to the State EO representative or, where appropriate, handled in accordance with the procedures set forth at 29 CFR part 31.

(3) All such complaints initially received by the State Agency must be assigned to the State EO and, where appropriate, handled in accordance with the procedures set forth at 29 CFR part 31.

(4) Regardless of whether the complaint is initially received or referred to the State agency, the State EO representative must determine if the complaint is alleging discrimination by an employer. If so, the State EO representative must refer the complaint to the Equal Employment Opportunity Commission (EEOC) or another appropriate enforcement agency. Complaints not referred must be subject to the hearing and appeal rights provided in this subpart. The Complaint System representative must notify the complainant of the referral in writing.

(d) *Complaints regarding the Employment Services Regulations (ES Complaints).* (1) When an ES complaint is filed with a local employment service office or a SWA the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to handle the complaint is the local employment service office serving the area in which the employer is located.

(ii) When a complaint is against an employer in another State or against another SWA:

(A) The local employment service office or SWA receiving the complaint must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must handle the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is handled in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state.

(The complaint must be processed as separate complaints and must be handled according to procedures at paragraph (d) of this section.)

(iii) When an ES complaint is filed against a local employment service office, the proper office to handle the complaint is the local employment service office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one local employment service office and is in regard to an alleged agency-wide violation the SWA representative or his/her designee must process the complaint.

(v) When a complaint is filed alleging a violation that occurred in the same State but through a different local employment service office, the local employment service office where the complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local employment service office for tracking, further referral if necessary, and follow-up. A copy of the referral letter must be sent to the complainant via hard copy or electronic mail.

(2)(i) If a complaint regarding the employment services regulations is filed in a local employment service office by either a non-MSFW or MSFW, or their representatives, the appropriate local employment service office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, the Complaint System representative must send the complaint to the SWA for resolution or further action, except that if the local employment service office has made a written request (via hard copy or electronic mail) for information pursuant to paragraph (e)(3) of this section. These time periods do not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section.

(iii) The local employment service office must notify the complainant and the respondent, in writing (via hard copy or electronic mail), of the determination (pursuant to paragraph(d)(5) of this section) of its investigation under paragraph (d)(2)(i) of this section, or of the referral to the SWA (if referred).

(3) When a non-MSFW or his/her representative files a complaint regarding the employment service regulations with a SWA, or when a non-MSFW complaint is referred from a local employment office the following procedures apply:

(i) If the complaint is not transferred to an enforcement agency under paragraph (b)(1)(i) of this section the Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA, whether the complaint was received directly or from a local employment service office pursuant to paragraph (d)(2)(ii) of this section, the SWA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent except if the SWA has made a written request for information pursuant to paragraph (e)(3) of this section, this time period does not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(4)(i) When a MSFW or his/her representative files a complaint regarding the employment service regulations directly with a SWA, or when a MSFW complaint is referred from a local employment office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA, the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent except that if the SWA has made a written request for information pursuant to paragraph (a)(4) of this section, this time period does not apply until the complainant's response is received in accordance with paragraph (e)(3) of this section. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5) Written Determinations.

(i) All written determinations by local employment service or SWA officials on complaints under the employment services regulations must be sent by certified mail (or another legally viable method) and a copy of the determination may be sent via electronic mail. The determination must include all of the following:

(A) The results of any SWA investigation;

(B) The conclusions reached on the allegations of the complaint;

(C) If a resolution was not reached, an explanation of why the complaint was not resolved;

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 working days after the certified date of receipt of the notification.

(ii) If the SWA determines that the employer has not violated the employment service regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) If the SWA, within 20 working days from the certified date of receipt of the notification provided for in paragraph (d)(5) of this section, receives a written request (via hard copy or electronic mail) for a hearing, the SWA must refer the complaint to a State hearing official for hearing. The SWA must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

(A) The parties will be notified of the date, time, and place of the hearing;

(B) The parties may be represented at the hearing by an attorney or other representative;

(C) The parties may bring witnesses and/or documentary evidence to the hearing;

(D) The parties may cross-examine opposing witnesses at the hearing;

(E) The decision on the complaint will be based on the evidence presented at the hearing;

(F) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(G) With the consent of the SWA's representative and of the State hearing official, the party who requested the hearing may withdraw the request for hearing in writing before the hearing.

(iv) If the State agency makes a final determination that the employer who has or is currently using the employment service system has violated the employment service regulations, the determination, pursuant to paragraph (d)(5) of this section, must state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F of this part.

(6) A complaint regarding the employment service regulations must be handled to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

(e) *Resolution of complaints.* A complaint is considered resolved when:

(1) The complainant indicates satisfaction with the outcome via written correspondence;

(2) The complainant chooses not to elevate the complaint to the next level of review;

(3) The complainant or the complainant's authorized representative fails to respond within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate local employment service office or State agency;

(4) The complainant exhausts all available options for review; or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

**§ 658.417 State hearings.**

(a) The hearing described in § 658.411 must be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Examples of hearing officials are referees in State unemployment compensation hearings and officials of the State agency authorized to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously if conducted together.

(c) The State hearing official, upon the referral of a case for a hearing, must:

(1) Notify all involved parties of the date, time, and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(d) In conducting a hearing, the State hearing official must:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary, provided the official has the authority to do so under State law;

(3) Ensure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take all actions necessary to ensure an orderly proceeding.

(e) All testimony at the hearing must be recorded and may be transcribed when appropriate.

(f) The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The State hearing official must receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.

(i) Federal and State rules of evidence do not apply to hearings conducted pursuant to this section; however rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied where reasonably necessary by the State hearing official. The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

(m) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official, the hearing official must:

(1) Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official under paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the State agency is not able, for any reason, to conduct a telephonic hearing under paragraph (m)(2) of this section, the State agencies in the States where the parties are located must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with this section.

**§ 658.418 Decision of the State hearing official.**

(a) The State hearing official may:

(1) Rule that it lacks jurisdiction over the case;

(2) Rule that the complaint has been withdrawn properly in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned;

(4) Render such other rulings as are appropriate to resolve the issues in question. However, the State hearing official does not have authority or jurisdiction to consider the validity or constitutionality of the employment service regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the local employment service offices and State agencies and any evidence provided at the hearing, the State hearing official must prepare a written decision. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, room N2101, 200 Constitution Avenue NW., Washington, DC 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(c) All decisions of a State hearing official must be accompanied by a written notice informing the parties (not including the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity) that they may appeal the judge's decision within 20 working days of the certified date of receipt of the decision, file an appeal in writing with the Regional Administrator. The notice must give the address of the Regional Administrator.

**§ 658.419 Apparent violations.**

(a) If a State agency, local employment service office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or employment service regulations by an employer, except as provided at § 658.419 (field checks) or § 658.411 (complaints), the employee must

document the suspected violation and refer this information to the local employment service office manager.

(b) If the employer has filed a job order with the employment service office within the past 12 months, the local employment service office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the local office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

## When a Complaint Rises to the Federal Level

### § 658.420 Responsibilities of the Employment and Training Administration regional office.

(a) Each Regional Administrator must establish and maintain a Complaint System within each ETA regional office.

(b) The Regional Administrator must designate DOL officials to handle employment service regulation-related complaints as follows:

(1) All complaints alleging discrimination by race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or genetic information, as well as reprisal for protected activity, must be assigned to a Regional Director for Equal Opportunity and Special Review and, where appropriate, handled in accordance with procedures at 29 CFR part 31.

(2) All complaints other than those described in paragraph (b)(1) of this section, must be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to handle MSFW complaints must be the regional monitor advocate (RMA).

(c) The Regional Administrator must designate DOL officials to handle employment-related law complaints in accordance with § 658.411, provided that the regional official designated to handle MSFW employment-related law complaints must be the RMA.

(d) The Regional Administrator must assure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

### § 658.421 Handling of employment service regulation-related complaints.

(a)(1) No complaint alleging a violation of the employment service regulations must be handled at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. If the Regional Administrator determines that a complaint has been prematurely filed with an ETA regional office, the Regional Administrator must inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter and a copy of the complaint must also be sent to the State Administrator.

(2) If the Regional Administrator determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. A hearing must be offered to the parties once the Regional Administrator makes a determination on the complaint.

(ii) If the complaint is filed against a SWA, the regional office must follow procedures established at § 658.411(d).

(b) The ETA regional office is responsible for handling appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint.

(c)(1) Once the Regional Administrator receives a timely appeal he/she must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however if the Regional Administrator determines that it needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator may have 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator must send his/her determination in writing to the appellant within 5 days of the determination and must offer the appellant a hearing before a DOL Administrative Law Judge (ALJ), provided the appellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator's offer of hearing.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator must undertake such an investigation or other action necessary to resolve the complaint.

(f) After taking the actions described in paragraph (e) of this section, the Regional Administrator must either affirm, reverse, or modify the decision of the State hearing official, and must notify each party to the State hearing official's hearing or to whom the State office determination was sent, notice of the determination and notify the parties that they may appeal the determination to the Department of Labor's Office of Administrative Law Judges within 20 business days of the party's receipt of the notice.

(g) If the Regional Administrator finds reason to believe that a SWA or one of its local employment service offices has violated ES regulations, the Regional Administrator must follow the procedures set forth at subpart H of this part.

### § 658.422 Handling of employment-related law complaints by the Regional Administrator.

(a) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action.

(b) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be referred to the appropriate enforcement agency for prompt action.

(c) Upon referring the complaint in accordance with paragraph (a) of this section, the regional official must inform the complainant of the enforcement agency (and individual, if known) to which the complaint was referred.

### § 658.424 Proceedings before the Office of Administrative Law Judges.

(a) If a party requests a hearing pursuant to § 658.417 or § 658.707, the Regional Administrator must:

(1) Send the party requesting the hearing and all other parties to the prior State level hearing, a written notice (hard copy or electronic) containing the statements set forth at § 658.418(c);

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically;

(3) Send simultaneously one hearing file to the DOL Chief Administrative Law Judge (ALJ), 800 K Street NW.,

Suite 400, Washington, DC 20001–8002, one hearing file to the OWI Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Proceedings under this section are governed by the rules of practice and procedure at subpart A of 29 CFR part 18, except where as otherwise specified in this section or § 658.425.

(c) Upon the receipt of a hearing file, the ALJ designated to the case must notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor of Labor of the receipt of the case. After conferring all the parties, the ALJ may decide to make a determination on the record in lieu of scheduling a hearing.

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously.

(e) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the ALJ, the ALJ must:

(1) Whenever possible, hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the ALJ at a location pursuant to paragraph (e)(1) of this section, the ALJ may conduct, with the consent of the parties, the hearing by a telephone conference call. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the ALJ is unable, for any reason, to conduct a telephonic hearing under paragraph (e)(2) of this section, the ALJ must confer with the parties on how to proceed.

(f) Upon deciding to hold a hearing, the ALJ must:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(g) The parties to the hearing must be afforded the opportunity to present, examine, and cross-examine witnesses. The ALJ may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The ALJ must receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing, provided that copies of such evidence is provided to the other parties to the proceeding prior to the hearing at the time required by the ALJ and agreed to by the parties.

(i) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination must be applied where reasonably necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(k) The ALJ must, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

#### § 658.425 Decision of Department of Labor Administrative Law Judge.

(a) The ALJ may:

(1) Rule that he/she they lacks jurisdiction over the case;

(2) Rule that the appeal has been withdrawn, with the written consent of all parties;

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned; or

(4) Render such other rulings as are appropriate to the issues in question. However, the ALJ does not have jurisdiction to consider the validity or constitutionality of the employment service regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the ALJ must prepare a written decision. The ALJ must send a copy of the decision stating the findings of fact and conclusions of law to the parties to the hearing, including the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the ALJ serves as the final decision of the Secretary.

#### § 658.426 Complaints against the United States Employment Service.

(a) Complaints alleging that an ETA regional office or the National Office of the United States Employment Service (USES) has violated ES regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints should include:

(1) A specific allegation of the violation;

(2) The date of the incident;

(3) Location of the incident;

(4) The individual alleged to have committed the violation; and

(5) Any other relevant information available to the complainant.

(b) The Assistant Secretary or the Regional Administrator as designated must make a determination and respond to the complainant after investigation of the complaint.

### Subpart F—Discontinuation of Services to Employers by the Employment Service System

#### § 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant to 20 CFR part 653 to employers by the USES, including SWAs.

#### § 658.501 Basis for discontinuation of services.

(a) The State agency must initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System U.S. Workers at 20 CFR 653 subpart F, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the ES by that enforcement agency;

(5) Are found to have violated ES regulations pursuant to § 658.411;

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) The SWA may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in paragraphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 *et seq.* must be followed.

(c) If it comes to the attention of a local employment service office or SWA that an employer participating in the employment service system may not have complied with the terms of its temporary labor certification, under, for example the H–2A and H–2B visa programs, State agencies must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (a)(8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to 20 CFR 655.184 or 20 CFR 655.73 respectively for subsequent temporary labor certification.

**§ 658.502 Notification to employers.**

(a) The SWA must notify the employer in writing that it intends to discontinue the provision of ES services pursuant to 20 CFR parts 652, 653, 654, and 658, and the reason therefore:

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The employer must be notified in writing that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws, or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws, or

(iii) If the job is no longer available makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved and the assurances involved. The employer must be notified that all ES services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances;

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws; or

(iii) Requests a hearing from the SWA pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the State agency must specify the basis for that determination. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate ES regulations; or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted; or

(ii) Provides adequate evidence that the workers were not available to accept the job; or

(iii) Provides adequate evidence that the workers were not qualified; and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he/she did cooperate; or

(ii) Cooperates immediately in the conduct of field checks; and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the State agency does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.411.

**§ 658.503 Discontinuation of services.**

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

**§ 658.504 Reinstatement of services.**

(a) Services may be reinstated to an employer after discontinuation under § 658.502, if:

(1) The State is ordered to do so by a Federal ALJ Judge or Regional Administrator, or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future, and

(ii) The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, State ES agency, or USES, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The SWA must notify, the employer requesting reinstatement within 20 working days whether his/her request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to paragraph (c) of this section.

## Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

**§ 658.600 Scope and purpose of subpart.**

This subpart sets forth the regulations governing review and assessment of State Workforce Agency (SWA) compliance with the Employment Service regulations at 20 CFR parts 651, 652, 653, 654, and 658. All recordkeeping and reporting requirements contained in parts 653 and 658 have been approved by the Office of Management and Budget as required by the Federal Reports Act of 1942.

**§ 658.601 State agency responsibility.**

(a) Each State agency must establish and maintain a self-appraisal system for employment service operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the local employment service office level must be conducted as follows:

(i) Performance must be measured on a quarterly-basis against planned service levels as stated in the Unified State Plan. The State Plan must be consistent with numerical goals contained in local employment service office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant differences from planned levels, additional analysis must be conducted to isolate possible contributing factors. This data analysis must include, as appropriate, comparisons to past performance, attainment of Unified State Plan goals and consideration of pertinent non-numerical factors.

(iv) Results of local employment service office numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) of this section must be developed to address these deficiencies.

(v) The result of local employment service office appraisal, including corrective action plans, must be communicated in writing to the next higher level of authority for review. This review must cover adequacy of analysis, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district office, a report describing local employment service office performance within the area or district jurisdiction must be communicated to the SWA on a quarterly basis.

(2) Numerical appraisal at the SWA level must be conducted as follows:

(i) Performance must be measured on a quarterly basis against planned service levels as stated in the Unified State Plan. The State Plan must be consistent with numerical goals contained in local employment service office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the ETA 9002A report, or any successor report required by DOL must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) The SWA must review statewide data, and performance against planned service levels as stated in the Unified State Plan on at least a quarterly basis to identify significant statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of Unified State Plan goals.

(iv) Results of numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section must be developed to address these deficiencies. These plans must be submitted to the ETA Regional Office as part of the periodic performance process described at § 658.603(d)(2).

(3) Non-numerical (qualitative) appraisal of local employment service office activities must be conducted at least annually as follows:

(i) Each local employment service office must assess the quality of its services to applicants, employers, and the community and its compliance with Federal regulations.

(ii) At a minimum, non-numerical review must include an assessment of the following factors:

(A) Appropriateness of services provided to participants and employers;

(B) Timely delivery of services to participants and employers;

(C) Staff responsiveness to individual participants and employer needs;

(D) Thoroughness and accuracy of documents prepared in the course of service delivery; and

(E) Effectiveness of ES interface with external organizations, *i.e.*, other ETA-funded programs, community groups, etc.

(iii) Non-numerical review methods must include:

(A) Observation of processes;

(B) Review of documents used in service provisions; and

(C) Solicitation of input from applicants, employers, and the community.

(iv) The result of non-numerical reviews must be documented and deficiencies identified. A corrective action plan that addresses these deficiencies as described in paragraph (a)(6) of this section must be developed.

(v) The result of local employment service office non-numerical appraisal, including corrective actions, must be communicated in writing to the next higher level of authority for review. This review must cover thoroughness and adequacy of local employment service office appraisal, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district level, a report summarizing local employment service office performance within that jurisdiction must be communicated to the SWA on an annual basis.

(4) As part of its oversight responsibilities, the SWA must conduct onsite reviews in those local employment service offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, non-numerical appraisal, or other sources of information.

(5) Non-numerical (qualitative) review of SWA employment service activities must be conducted as follows:

(i) SWA operations must be assessed annually to determine compliance with Federal regulations.

(ii) Results of non-numerical reviews must be documented and deficiencies identified. A corrective action plan that addresses these deficiencies must be developed.

(6) Corrective action plans developed to address deficiencies uncovered at any administrative level within the State as a result of the self-appraisal process must include:

(i) Specific descriptions of the type of action to be taken, the time frame involved and the assignment of responsibility.

(ii) Provision for the delivery of technical assistance as needed.

(iii) A plan to conduct follow-up on a timely basis to determine if action taken to correct the deficiencies has been effective.

(7)(i) The provisions of the ES regulations which require numerical and non-numerical assessment of service to special applicant groups, *e.g.*, services to veterans at 20 CFR part 1001—Services for Veterans and services to MSFWs at 20 CFR 653 and 658, are supplementary to the provisions of this section.

(ii) Each State Administrator and local employment service office manager must ensure that their staff know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the SWA or by the Department.

(iii) Each State Administrator must ensure that the SWA complies with its approved Unified State Plan.

(iv) Each State Administrator must ensure to the maximum extent feasible the accuracy of data entered by the SWA into Department-required management information systems. Each SWA must establish and maintain a data validation system pursuant to Department instructions. The system must review every local employment service office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

**§ 658.602 Employment and Training Administration National Office responsibility.**

The ETA National Office must:

(a) Monitor ETA Regional Offices' operations under ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and SWA compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and SWAs in carrying out ES regulations and programs;

(d) Have report validation surveys conducted in support of resource allocations;

(e) Develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations.

(f) ETA must appoint a national monitor advocate (NMA), who must devote full time to the duties set forth in this subpart. The NMA must:

(1) Review the effective functioning of the Regional monitor advocates (RMAs) and SMAs;

(2) Review the performance of SWAs in providing the full range of ES services to MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;

(4) Take steps to refer non ES-related problems of MSFWs which come to his/her attention;

(5) Recommend to the Administrator changes in policy toward MSFWs; and

(6) Serve as an advocate to improve services for MSFWs within the employment service system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and/or other OSHA and WHD task forces, and/or other committees as appropriate.

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in 20 CFR 653.108(b).

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit an annual report (Annual Report) to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee covering the matters set forth in this subpart.

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. His/her assessment must consider:

(1) Information from RMAs and SMAs;

(2) Program performance data, including the service indicators;

(3) Periodic reports from regional offices;

(4) All Federal on-site reviews;

(5) Selected State on-site reviews;

(6) Other relevant reports prepared by USES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to State ES offices, agricultural work sites and migrant camps. In the annual report, the NMA must include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

(k) The NMA must review the activities of the State/Federal monitoring system as it applies to services to MSFWs and the Complaint System including the effectiveness of the regional monitoring function in each region and must recommend any appropriate changes in the operation of the system. The NMA's findings and recommendations must be fully set forth in the annual report.

(l) If the NMA finds that the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other Regional Office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator or other State or Federal ES official, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within USES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. He/she must also recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 *et seq.* As part of such participation, the NMA, or if he/she is unable to participate a RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities in the course of each State on-site review:

(1) He/she must accompany selected outreach workers on their field visits.

(2) He/she must participate in a random field check[s] of migrant camps or work site[s] where MSFWs have been placed on inter or intrastate clearance orders.

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and, discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) He/she must meet with the SMA and discuss the full range of the ES services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f)(8) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery, and

(2) Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES service delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 *et seq.* As part of this function, he/she must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. He/she must attend conferences or meetings of these groups wherever possible and must report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the annual report recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency or MSFW group refers a matter to the NMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of ES services and protections afforded by these regulations to MSFWs. The NMA must:

(1) Use the regular reports on complaints submitted by SWAs and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(2) Provide technical assistance to ETA regional office and State agency staff for administering the Complaint System, and any other ES services as appropriate.

(3) Recommend to the Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning ES services to MSFWs, the NMA must provide to the Administrator a brief summary of ES-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Administrator and ETA reviewing organization deem appropriate.

(4) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by WHD and OSHA regional office staff to correct any non-ES-related systemic deficiencies of which he/she is aware.

**§ 658.603 Employment and Training Administration regional office responsibility.**

(a) The Regional Administrator must have responsibility for the regular review and assessment of SWA performance and compliance with ES regulations.

(b) The Regional Administrator must participate with the National Office staff in reviewing and approving the Unified State Plan for the SWAs within the region. In reviewing the Unified State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

(1) State agency compliance with ES regulations;

(2) State agency performance against the goals and objectives established in the previous Unified State Plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on the SWA's performance;

(4) State agency adherence to national program emphasis; and

(5) The adequacy and appropriateness of the Unified State Plan for carrying out ES programs.

(c) The Regional Administrator must assess the overall performance of SWAs on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators must conduct or have conducted:

(1) Comprehensive on-site reviews of SWAs and their offices to review SWA organization, management, and program operations;

(2) Periodic performance reviews of SWA operation of ES programs to measure actual performance against the Unified State Plan, past performance, the performance of other SWAs, etc.;

(3) Audits of SWA programs to review their program activity and to assess

whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators may also conduct audits through other agencies or organizations or may require the SWA to have audits conducted;

(4) Validations of data entered into management information systems to assess:

(i) The accuracy of data entered by the SWAs into the management information system;

(ii) Whether the SWAs' data validating and reviewing procedures conform to Department instructions; and

(iii) Whether SWAs have implemented any corrective action plans required by the Department to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist SWAs in carrying out ES regulations and programs;

(6) Reviews to assess whether the SWA has complied with corrective action plans imposed by the Department or by the SWA itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings should be documented on the ES Complaint Referral Form and provided to the State agency to be handled as a complaint under § 658.411.

(e) The Regional Administrator must provide technical assistance to SWAs to assist them in carrying out ES regulations and programs.

(f) The Regional Administrator must appoint a RMA who must devote full time to the duties set forth in this subpart. The RMA must:

(1) Review the effective functioning of the SMAs in his/her region;

(2) Review the performance of SWAs in providing the full range of ES services to MSFWs;

(3) Take steps to resolve ES-related problems of MSFWs which come to his/her attention;

(4) Recommend to the Regional Administrator changes in policy towards MSFWs;

(5) Review the operation of the Complaint System; and

(6) Serve as an advocate to improve service for MSFWs within the ES system. The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in 20 CFR 653.108(b).

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this section are assigned. The RMA must notify the Regional Administrator of any staffing deficiencies and the Regional Administrator must take appropriate action.

(i) The RMA within the first 3 months of their tenure must participate in a training session(s) approved by the National Office.

(j) At the regional level, the RMA must have primary responsibility for:

(1) Monitoring the effectiveness of the Complaint System set forth at subpart E of this part;

(2) Apprising appropriate State and ETA officials of deficiencies in the Complaint System; and

(3) Providing technical assistance to SMAs in the region.

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring that SWA compliance with ES regulations as they pertain to services to MSFWs is monitored by the regional office. He/she must independently assess on a continuing basis the provision of ES services to MSFWs, seeking out and using:

(1) Information from SMAs, including all reports and other documents;

(2) Program performance data;

(3) The periodic and other required reports from State ES offices;

(4) Federal on-site reviews;

(5) Other reports prepared by the National Office;

(6) Information received from farmworker organizations and employers; and

(7) Any other pertinent information which comes to his/her attention from any possible source.

(8) In addition, the RMA must consider his/her personal observations from visits to ES offices, agricultural work sites and migrant camps.

(l) The RMA must assist the Regional Administrator and other appropriate line officials in applying appropriate corrective and remedial actions to State agencies.

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an annual summary from the region. The summary also must include both a quantitative and a qualitative analysis of his/her reviews and must address all the matters with respect to which he/she has responsibilities under these regulations.

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

(1) Does not have adequate access to information;

(2) Is being impeded in fulfilling his/her duties; or

(3) Is making recommendations which are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, or any Federal officials, he/she must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o) The RMA must be informed of all proposed changes in policy and practice within USES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs. The RMA may also recommend changes in ES policy or regulations, as well as changes in the funding of State agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(p) The RMA must participate in the review and assessment activities required in this section and 20 CFR part 658.700 *et seq.* He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of ES services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) He/she must accompany selected outreach workers on their field visits;

(2) He/she must participate in a random field check of migrant camps or

work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) He/she must meet with the SMA and discuss the full range of the ES services to MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State agency's capability for providing full services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(r) The RMA each year during the peak harvest season must visit each State in the region not scheduled for an on-site review during that fiscal year and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations to obtain information concerning ES service delivery and coordination with other agencies and interested employer organizations.

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMA in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA must also establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she must also make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies or improper practices concerning services to MSFWs which are regional in scope. Further, he/she must recommend policies, offer technical assistance or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than State-by-State basis, to promote region-wide improvement in the delivery of employment services to MSFWs. He/she must facilitate region-wide coordination and communication regarding provision of ES services to MSFWs among SMAs, State Administrators and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as he/she deems necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live or travel through the region. He/she must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(w) The RMA must establish regular contacts with the regional agricultural coordinators from WHD and OSHA and any other regional staff from other Federal enforcement agencies and, must establish contacts with the staff of other Department agencies represented on the Regional Farm Labor Coordinated Enforcement Committee, and to the extent necessary, on other pertinent task forces or committees.

(x) The RMA must participate in the regional reviews of the Unified State Plans, and must comment to the Regional Administrator as to the SWA compliance with the ES regulations as they pertain to services to MSFWs, including the staffing of employment service offices.

**§ 658.604 Assessment and evaluation of program performance data.**

(a) State agencies must compile program performance data required by the Department, including statistical information on program operations.

(b) The Department must use the program performance data in assessing and evaluating whether each SWA has complied with ES regulations and its Unified State Plan.

(c) In assessing and evaluating program performance data, the Department must act in accordance with the following general principles:

(1) The fact that the program performance data from a SWA, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of ES regulations or of the State agency's responsibilities under its Unified State Plan;

(2) Program performance data, however, may so strongly indicate that a SWA's performance is so poor that the data may raise a presumption (*prima facie* case) that a SWA is violating ES regulations or the Unified State Plan. A SWA's failure to meet the operational objectives set forth in the Unified State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its Unified State Plan. In such cases the Department must afford the SWA an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The Department must take into account that certain program performance data may measure items over which SWAs have direct or substantial control while other data may measure items over which the SWA has indirect or minimal control.

(i) Generally, for example, a SWA has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services and the conduct of field checks.

(ii) State Workforce Agencies, however, have only indirect control over the outcome of services. For example, SWAs cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, such as a sudden heavy increase in unemployment rates, a strike by SWA employees, or a severe drought or flood may skew the results measured by program performance data.

(4) The Department must consider a SWA's failure to keep accurate and complete program performance data

required by ES regulations as a violation of the ES regulations.

**§ 658.605 Communication of findings to State agencies.**

(a) The Regional Administrator must inform SWAs in writing of the results of review and assessment activities and, as appropriate, must discuss with the State Administrator the impact or action required by the Department as a result of review and assessment activities.

(b) The ETA National Office must transmit the results of any review and assessment activities it conducted to the Regional Administrator who must send the information to the SWA.

(c) Whenever the review and assessment indicates a SWA violation of ES regulations or its Unified State Plan, the Regional Administrator must follow the procedures set forth at subpart H of this part.

(d) Regional Administrators must follow-up any corrective action plan imposed on a SWA under subpart H of this part by further review and assessment of the State agency pursuant to this subpart.

## Subpart H—Federal Application of Remedial Action to State Agencies

**§ 658.700 Scope and purpose of subpart.**

This subpart sets forth the procedures which the Department must follow upon either discovering independently or receiving from other(s) information indicating that SWAs may not be adhering to ES regulations.

**§ 658.701 Statements of policy.**

(a) It is the policy of the Department to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure that State agencies comply with all requirements established by ES regulations.

(b) It is the policy of the Department to initiate decertification procedures against SWAs in instances of serious or continual violations of ES regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the Department to act on information concerning alleged violations by SWAs of the ES regulations received from any person or organization.

**§ 658.702 Initial action by the Regional Administrator.**

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in his/her region are in compliance with ES regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible SWA violations of ES regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations or employers which are elevated to the Department after the exhaustion of SWA administrative remedies, the Regional Administrator must conduct an investigation. Within 10 days after receipt of the report or other information, the Regional Administrator must make a determination whether there is probable cause to believe that a SWA has violated ES regulations.

(c) The Regional Administrator must accept complaints regarding possible SWA violations of ES regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator must investigate the matter within 10 working days, may provide the SWA 10 working days for comment, and must make a determination within an additional 10 working days whether there is probable cause to believe that the SWA has violated ES regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, he/she must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she must so notify the Administrator in writing and the time for the investigation must be extended 20 additional working days.

(e) If the Regional Administrator determines that there is probable cause to believe that a SWA has violated ES regulations, he/she must issue a Notice of Initial Findings of Non-compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f)(1) The SWA may have 20 working days to comment on the findings, or a longer period, up to 20 additional days, if the Regional Administrator determines that a longer period is appropriate. The SWA's comments must include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator must prepare within 20 working days, written final findings which specify whether or not the SWA has violated ES regulations. If in the final findings the Regional Administrator determines that the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator must also notify the NMA. If the Regional Administrator determines that a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the NMA.

(g) If the violation involves the misspending of grant funds, the Regional Administrator may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator must give the reasons for the disallowance, inform the SWA that the disallowance is effective immediately and that no more funds may be spent in the disallowed manner, and offer the SWA the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, does not stay the effectiveness of the disallowance. The Regional Administrator must keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that the circumstances warrant other action:

(1) The Final Notice of Noncompliance must direct the SWA to implement a specific corrective action plan to correct all violations. If the SWA's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violation(s) and accept their

resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(2) The Final Notice of Noncompliance must specify the time by which each corrective action must be taken. This period may not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the Complaint System, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and must specify that time period. The specified time period must commence with the date of signature on the registered mail receipt.

(3) When the time period provided for in paragraph (h)(2) of this section elapses, Department staff must review the SWA's efforts as documented by the SWA to determine if the corrective action(s) has been taken and if the SWA has achieved compliance with ES regulations. If necessary, Department staff must conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines that the SWA has corrected the violation(s), the Regional Administrator must record the basis for this determination, notify the SWA, send a copy to the Administrator, and retain a copy in Department files.

(5) If, as a result of this review, the Regional Administrator determines that the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of his/her findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's further follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines that the SWA has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines that the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears that the violation will be fully corrected within a reasonable time period, the SWA must be advised by registered mail or other legally viable means (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period may not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective action requiring a longer time period. In such cases, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and must specify that time period. The specified time period commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given an additional time period pursuant to paragraph (h)(7) of this section, Department staff must review the SWA's efforts as documented by the SWA at the end of the time period. If necessary, the Department must conduct a follow-up visit as part of this review.

(ii) If the SWA has corrected the violation(s), the Regional Administrator must document that finding, notify in writing the SWA and the Administrator, and retain supporting documents in Department files. If the SWA has not corrected the violation(s), the Regional Administrator must apply remedial actions pursuant to § 658.704.

**§ 658.703 Emergency corrective action.**

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator must notify the SWA of the reason for imposing the emergency corrective action prior to providing the SWA an opportunity to comment.

**§ 658.704 Remedial actions.**

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

(1) Imposition of special reporting requirements for a specified period of time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for SWA personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the imposition of Federal staff in key State agency positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the State agency on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the SWA's deficiencies;

(9) Disallowance of funds pursuant to § 658.702 (g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification procedures against the State agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator must send, by registered mail, a Notice of Remedial Action to the SWA. The Notice of Remedial Action must set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (20 CFR 653.100 *et seq.*) or the Complaint System (§§ 658.400 *et seq.*), a copy of said notice must be sent to the Administrator, who must publish the notice promptly in the **Federal Register**.

(c) If the remedial action is other than decertification, the notice must state that the remedial action must take effect immediately. The notice must also state that the SWA may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 working days of the SWA's receipt of the notice. The offer of

hearing, or the acceptance thereof, however, does not stay or otherwise delay the implementation of remedial action.

(d) Within 60 working days after the initial application of remedial action, the Regional Administrator must conduct a review of the SWA's compliance with ES regulations unless the Regional Administrator determines that a longer time period is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate a longer time period, and specify that time period. If necessary, Department staff must conduct a follow-up visit as part of this review. If the SWA is in compliance with the ES regulations, the Regional Administrator must fully document these facts and must terminate the remedial actions. The Regional Administrator must notify the SWA of his/her findings. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy of said notice must be sent to the Administrator, who must promptly publish the notice in the **Federal Register**. The Regional Administrator must conduct, within a reasonable time after terminating the remedial actions, a review of the SWA's compliance to determine whether any remedial actions should be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds that the SWA remains in noncompliance, the Regional Administrator must continue the remedial action and/or impose different additional remedial actions. The Regional Administrator must fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the Complaint System, must send copies to the Administrator, who must promptly publish the notice in the **Federal Register**.

(f)(1) If the SWA has not brought itself into compliance with ES regulations within 120 working days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines that circumstances necessitate continuing remedial action for a longer period of time. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate the longer time period, and specify the time period.

(2) The Regional Administrator must notify the SWA by registered mail or by other legally viable means of the decertification proceedings, and must state the reasons therefor. Whenever such a notice is sent to a State agency, the Regional Administrator must prepare five copies (hard copies or electronic copies) containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, one copy must be sent to the NMA. All copies must also be sent electronically to each respective party. The notice sent by the Regional Administrator must be published promptly in the **Federal Register**.

**§ 658.705 Decision to decertify.**

(a) Within 30 working days of receiving a request for decertification, the ETA Assistant Secretary must review the case and must decide whether to proceed with decertification.

(b) The Assistant Secretary must grant the request for decertification unless he/she makes a finding that:

(1) The violations of ES regulations are neither serious nor continual;

(2) The State agency is in compliance; or

(3) The Assistant Secretary has reason to believe that the SWA will achieve compliance within 80 working days unless exceptional circumstances necessitate a longer time period, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 working days in order to obtain any available additional information.) In making a determination of whether violations are ''serious'' or ''continual,'' as required by paragraph (b)(1) of this section, the Assistant Secretary must consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with ES regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she must write a complete report documenting his/her findings and, if appropriate, instructing that an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary's decision must be published promptly in the **Federal Register**, and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides that decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 working days after receiving the Assistant Secretary's report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless he/she makes one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, he/she must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining his/her reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the State agency. Notice of the Secretary's decision must be published promptly in the **Federal Register**, and the report of the Secretary must be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and order further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time period established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of his/her findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

**§ 658.706 Notice of decertification.**

If the Secretary decides to decertify a SWA, he/she must send a Notice of Decertification to the State agency stating the reasons for this action and providing a 10 working day period during which the SWA may request an administrative hearing in writing to the Secretary. The notice must be published promptly in the **Federal Register**.

**§ 658.707 Requests for hearings.**

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 working days of receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary receives a request for a hearing from a State agency, he/she must send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the DOL Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

(c) The Secretary must publish notice of hearing in the **Federal Register**. This notice must invite all interested parties to attend and to present evidence at the hearing. All interested parties who make written request to participate must thereafter receive copies (hard copy and/or electronic) of all documents filed in said proceedings.

**§ 658.708 Hearings.**

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case must be docketed and notice sent by electronic mail and registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the Regional Administrator and the State Administrator. The notice must set a time, place, and date for a hearing on the matter and must advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee will represent the Department at the hearing.

**§ 658.709 Conduct of hearings.**

(a) Hearings must be conducted in accordance with secs. 5–8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*

(b) Technical rules of evidence do not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied if necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record must be open to examination by the parties. Opportunity must be given to refute facts and arguments advanced on either side of the issue. A transcript must be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, title V, 28 U.S.C., rules 26 through 37, may be made applicable to the extent that the Administrative Law Judge concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order may not affect the substitution.

**§ 658.710 Decision of the Administrative Law Judge.**

(a) The ALJ has jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but does not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the ALJ must be based on the hearing record, must be in writing, and must state the factual and legal basis of the decision. Notice of the decision must be published in the **Federal Register** and the ALJ's decision must be available for public inspection and copying.

(c) Except when the case involves the decertification of a SWA, the decision of the ALJ will be considered the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the State agency, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending by registered mail, return receipt requested, a written appeal to the Administrative Review Board, in care of the Administrative Law Judge who made the decision.

**§ 658.711 Decision of the Administrative Review Board.**

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the ALJ must certify the record in the case to the Administrative Review Board, which must make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board must be final, must be in writing, and must set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision must be published in the **Federal Register**, and copies must be made available for public inspection and copying.

**Thomas E. Perez,**

*Secretary of Labor.*

[FR Doc. 2015–05530 Filed 4–2–15; 4:15 pm]

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Part IV

## Department of Education

34 CFR Parts 461, 462, 463, et al.

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act), Workforce Innovation and Opportunity Act, Miscellaneous Program Changes, and; Proposed Rules

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 461, 462, 463, 472, 477, 489, and 490

**RIN 1830–AA22**

**[Docket ID ED–2015–OCTAE–0003]**

### Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)

**AGENCY:** Office of Career, Technical, and Adult Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to establish regulations to implement changes to the Adult Education and Family Literacy Act (AEFLA) resulting from the enactment of the Workforce Innovation and Opportunity Act of 2014 (WIOA or the Act). The proposed regulations clarify new provisions in the law. The Secretary also proposes to update the regulations that establish procedures for determining the suitability of tests used for measuring State performance on accountability measures under AEFLA. Finally, we propose to remove specific parts of title 34 of the Code of Federal Regulations (CFR) that are no longer in effect.

**DATES:** We must receive your comments on or before June 15, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11–008, Potomac Center Plaza (PCP), Washington, DC 20202–7240.

*Privacy Note:* The U.S. Department of Education's (Department) policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11–008, PCP, Washington, DC 20202–7240.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Executive Summary:*

Purpose of This Regulatory Action: On July 22, 2014, President Obama signed into law WIOA (P.L. 113–128), which replaces the Workforce Investment Act of 1998 (WIA). As under WIA, AEFLA is title II of WIOA (title II). The new law supports innovative strategies to keep pace with changing economic conditions and seeks to improve coordination across the primary Federal programs that support employment services, workforce development, adult education, and vocational rehabilitation activities. The proposed regulations further the Department's implementation of new provisions in the law under AEFLA. Through the proposed regulations, we seek to explain the activities authorized under AEFLA and assist programs in their implementation efforts at the State and local levels.

In developing this notice of proposed rulemaking (NPRM), we have limited our proposed regulations to only those that we believe are absolutely necessary to clarify and reiterate key statutory provisions of WIOA. In the proposed regulations, we incorporate the relevant requirements from the law along with the applicable regulations, to provide context and for reader convenience.

Summary of the Major Provisions of This Regulatory Action: The Secretary proposes to:

1. Remove specific parts of title 34 that are no longer in effect.
2. Update and revise existing AEFLA regulations regarding the suitability of tests for use in the National Reporting System for Adult Education (NRS) to reflect new provisions of WIOA. The proposed regulations also include procedures that States and local eligible providers would be required to follow when using suitable tests for NRS reporting. The changes conform to the statutory language in WIOA and clarify existing requirements.
3. Define the purpose of AEFLA and the programs authorized by the Act, as well as clarify the related Education Department General Administration Regulations (EDGAR) and definitions that apply to the program.
4. Describe the process and requirements for States to award grants or contracts to local providers and the activities that may be charged to local administrative costs. These regulations would implement new requirements established by WIOA, including the requirement that local workforce development boards (Local Boards) review applications for funds prepared by applicants for AEFLA funding, the requirement that entities have ''demonstrated effectiveness'' to be eligible providers, and the requirement that local administrative funds be used to promote the alignment of a provider's activities with the local workforce development plan established under title I of WIOA (title I).
5. Define what constitutes an adult education and literacy activity or program and clarify how funds can be used for activities that are newly authorized by WIOA.
6. Describe how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals, including new activities authorized by WIOA.
7. Clarify the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

*Costs and Benefits:* The benefits and costs of these proposed regulations are discussed in more detail in the Regulatory Impact Analysis section of this preamble. One benefit of the proposed regulations is that they would make necessary updates and conforming changes to part 462 to align the regulations with WIOA. The proposed changes to part 462 also would benefit test publishers by creating more opportunities for them to submit assessments to the Secretary for review. This would likely increase the availability of new assessments for use in the NRS, a benefit for State eligible agencies and eligible local providers. The costs of the amendments to part 462, on the other hand, would be negligible.

One benefit of the proposed regulations in part 463 is the promotion of more efficient and consistent implementation of AEFLA in States and outlying areas by clarifying a number of statutory provisions. The proposed regulations clarify, for example, how an English language acquisition program can meet the statutory requirement that the program ''leads to attainment of a

secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment,'' setting out a consistent standard that would be used by all eligible State agencies. Absent these proposed regulations, each State eligible agency would have to determine on its own how a program can meet the statutory requirement. The proposed regulations in part 463 would not, however, impose additional costs to State eligible agencies, local eligible providers of adult education, or to the Federal government.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 11–008, PCP, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. To make arrangements to view the comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Department proposes to remove 34 CFR part 461 because these regulations are no longer applicable to the Federal adult education program. These regulations were promulgated under the National Literacy Act (Pub. L. 102–73) in 1992, which has since been superseded. We also propose to remove regulations for six discretionary grant programs that are no longer authorized by statute: The National Workplace Literacy Program (part 472), the State Program Analysis Assistance and Policy Studies Program (part 477), the Functional Literacy for State and Local Prisoners Program (part 489), and the Life Skills for State and Local Prisoners Program (part 490).

The Department proposes to update and revise existing regulations in 34 CFR part 462 concerning the Secretary's authority to approve tests suitable for use in measuring State performance on accountability measures. We also propose to establish regulations in part 463 of title 34 of the CFR that would clarify new program activities and requirements under WIOA, as well as the WIA-authorized program activities and requirements that are continued under WIOA. We intend to issue guidance and technical assistance on select title II provisions, as appropriate. The Departments of Education and Labor have also collaborated on the development of proposed regulations related to title I that affect title II programs and activities. These proposed regulations, addressing the Unified or Combined State Plan, the performance accountability system, and the one-stop delivery system, are published elsewhere in this issue of the **Federal Register**.

**Public Participation**

On August 12, 2014, the Office of Career, Technical, and Adult Education and the Office of Special Education and Rehabilitative Services, which administers the Rehabilitation Act of 1973 that was amended by title IV of WIOA, posted a notice on the Department's Web site that solicited comments and recommendations from the public on the implementation of WIOA. We received 277 comments. The Department also held sessions with stakeholders and providers of adult education activities and programs to assist in the development of related guidance and technical assistance.

**Summary of Proposed Changes**

These proposed regulations would—

- Remove specific parts of title 34 that are no longer in effect;
- Revise existing AEFLA regulations that have been in place since 2008 related to the Secretary's authority to review and determine the suitability of tests available for use in the NRS;
- Define the purposes of programs authorized by AEFLA;
- Describe the process and requirements for awarding of grants and contracts to local providers and the activities that may be charged for local administrative costs;
- Define and clarify the new and existing adult education and literacy activities or programs that may be funded under WIOA;
- Describe how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals; and
- Clarify how eligible agencies may use funds for activities and requirements under the Integrated English Literacy and Civics Education program.

**Significant Proposed Regulations**

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

**34 CFR Part 462**

The proposed regulations in 34 CFR part 462 relate to the Secretary's authority to approve tests suitable for use in the NRS. These regulations are authorized under section 212 of AEFLA, which makes adult education and literacy programs and activities subject to the performance accountability requirements of section 116 of WIOA.

Through the proposed regulations, we would further formalize the process for the review and approval of tests for use in the NRS. By creating a uniform review and approval process, the regulations would facilitate the submission process for test publishers and strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures related to adult education and literacy activities under AEFLA, as required under section 116 of WIOA. This proposed process would also provide a means by which the Secretary would assess the continued validity of tests that are currently approved for use in the NRS.

**I. General**

*Section 462.1 What is the authority for this part?*

In § 462.1, and in other sections in part 462 where we cite WIA as the

statutory authority, we propose to revise the authority citation to refer to WIOA, unless otherwise specified.

*Section 462.2 What regulations apply?*

We propose revising the list of applicable regulations in § 462.2 to reflect the current Federal regulations. Specifically, we propose deleting references to EDGAR parts 74, 80, and 85 because these parts have been removed from the CFR. The Department, along with other Federal agencies, has recently adopted and amended as its own regulations the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). To that end, we propose adding references to 2 CFR part 180 and 2 CFR part 200.

*Section 462.3 What definitions apply?*

We propose revising several definitions in § 462.3 to align the terms in § 462.3 with the language in WIOA. For example, to conform with section 203 of AEFLA, we propose replacing the term ''English as a second language (ESL)'' with the term ''English language acquisition (ELA).'' We also propose to remove the reference to the physical location of a copy of the NRS Implementation Guidelines as we seek to reduce costs to the government and provide easier and immediate public access online.

*Section 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?*

We propose to revise § 462.4 to reflect the availability of tests that were reviewed and approved after the existing regulation was published on January 14, 2008. This proposed change would reflect the current process the Department follows, in which providers are notified of a date by which they may no longer use the test determined suitable for use.

**II. What process does the Secretary use to review the suitability of tests for use in the NRS?**

*Section 462.10 How does the Secretary review tests?*

Proposed § 462.10 would establish the new dates by which tests must be submitted for review each year. Currently, tests must be submitted by October 1 of each year. The two additional submission dates of April 1, 2017 and April 1, 2018 in the proposed regulations would provide more opportunities for the Secretary to review and approve assessments and likely increase the availability of new assessments to providers.

*Section 462.11 What must an application contain?*

As proposed, § 462.11(a)(4) would increase the number of application copies that a publisher must submit from three to four. We have increased the number of panel experts who review each application from two to three. Increasing the number of reviewers has provided the Secretary with an additional expert opinion in the event that two reviewers disagree. The proposed changes in the number of required application copies would facilitate this review procedure. One copy of the application would be retained by the Department, and three copies would be submitted to the reviewers.

Proposed § 462.11(j)(4) sets forth examples of situations that would require a test publisher to provide analysis and explanations of the significant revisions made to tests approved prior to the effective date of the proposed regulations. These examples illustrate the kinds of revisions that could affect the psychometric properties of a test and, therefore, would require additional review. The list of examples is illustrative and not intended to be exhaustive. As we propose to remove § 462.44 and revise and publish the descriptors for the NRS educational functioning levels in a document titled *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027), we propose replacing the current references to § 462.44 with references to the Guidelines.

*Section 462.12 What procedures does the Secretary use to review the suitability of tests?*

To conform to WIOA, we have replaced the term ''English as a second language (ESL)'' with ''English language acquisition (ELA)'' in proposed § 462.12.

Additionally, under proposed § 462.12(c)(2) the Secretary would publish a list of the test forms, along with the names of tests, that have been approved as suitable for use in the NRS. This revision would make the regulation consistent with current practice. As a test can have several forms and new forms may be developed at any time, since 2010, the Secretary has identified specific test forms in addition to test names. Only those test forms reviewed and approved by the Secretary are suitable for use in the NRS.

Proposed § 462.12(d)(2) would allow a test publisher to resubmit, during the next annual review cycle, an application that was previously not approved as suitable for use in the NRS. This would replace the current rule that allows a test publisher to request reconsideration within 30 days following notification from the Secretary that a test was not approved as suitable. We believe the current reconsideration process has not yielded the substantive benefits that might otherwise justify the costs and delays that accompany a reconsideration process. Permitting resubmission at the next review cycle would give test publishers time to address any deficiencies in their application and would lessen the burden on the Department by utilizing the existing annual review process, while still affording publishers a reasonably timely opportunity for reconsideration.

Proposed § 462.12(e)(ii) provides additional examples of the circumstances under which a test's approval as suitable for use may be revoked. These circumstances could affect the psychometric properties of the test, and would therefore require additional review and possible revocation. The proposed list of examples is illustrative and not intended to be exhaustive.

In addition, we have revised this section to reflect that the name of the Office of Vocational and Adult Education was officially changed to the Office of Career, Technical, and Adult Education.

*Section 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?*

Consistent with the statutory changes, as in proposed § 462.12 we have replaced the term ESL with ELA. We have also updated the reference to the *Standards for Educational and Psychological Testing* to reflect the most current edition of these standards.

*Section 462.14 How often and under what circumstances must a test be reviewed by the Secretary?*

Proposed § 462.14(b) provides additional examples of circumstances under which a publisher must resubmit a test for review by the Secretary. These examples illustrate circumstances that could affect the psychometric properties of the test. This list of examples is illustrative and not intended to be exhaustive.

**III. What requirements must States and local eligible providers follow when measuring educational gain?**

*Section 462.40 Must a State have an assessment policy?*

In § 462.40, we propose replacing the term ESL with ELA.

Proposed § 462.40(c)(3) adds one additional element to the information a State must include in its assessment policy. Under the current regulations, students must receive an initial assessment, or a pre-test, of academic skills using assessments that the Secretary has determined to be suitable for use in the NRS. The results of the pre-test must be used to place students into an educational functioning level. A State must further require that each student who meets a threshold of instruction defined in its assessment policy will receive a matched post-test. We propose to require a State to specify in its State assessment policy a target for the percentage of all pre-tested students who both meet that threshold of instruction and take a matched post-test. The post-test score is used to determine whether the student has made academic progress. If a local provider does not post-test a student, the provider must report that the student has not made an educational gain. The purpose of requiring States to establish this standard is to promote the implementation of policies and practices by local providers that maximize the percentage of students who have a matched post-test completed in order to document academic progress, and to encourage continuous improvement over time. States are currently required to specify this standard by the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027). We are proposing to make this a regulatory requirement.

*Section 462.41 How must tests be administered in order to accurately measure educational gain for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?*

We are proposing to revise the title of this section to conform to the proposed joint rule to implement the measurable skill gain indicator by documenting achievement of academic, technical, occupational, or other forms of progress. Test administration will be used to document educational or academic progress under this indicator for purposes of AEFLA.

*Section 462.43 How is educational gain measured for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?*

Proposed § 462.43(a) sets forth the statutory language in section 203(1)(A) of title II regarding how educational gain is measured. We propose adding § 462.43(c) to reflect the fact that several States offer adult high school programs, sanctioned by State law or regulation, that lead to a secondary school diploma or its equivalent. Proposed § 462.43(c) would allow these States to measure and report educational gain through the awarding of credits or Carnegie units. The Carnegie unit is a credit system that bases the awarding of academic credit on how much time students spend in direct contact with a classroom teacher. As with § 462.41, we are proposing to revise the title of this section to conform to the proposed joint rule to implement the measurable skill gain indicator by documenting achievement of academic, technical, occupational, or other forms of progress.

*Section 462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?*

We propose to remove and reserve § 462.44. This section currently describes the descriptors for the educational functioning levels that States and local providers must use to measure and report educational gain in the NRS. Concurrent with the development of regulations and supplementary guidance on the performance indicators, we are revising and updating the descriptors for the NRS educational functioning levels. The revised descriptors were published for public comment in OMB information collection 1830–0027 on January 13, 2015. After reviewing the public comments, we anticipate publishing the final descriptors as part of that information collection. Test publishers will then have an opportunity to revise or develop new assessments that are consistent with the revised descriptors and submit them for review to the Secretary. We anticipate that this process of test revision and development may take several years. The revised descriptors will not be implemented until the Secretary has determined that there is at least one assessment that is both aligned with the revised descriptors and that is suitable for use in the NRS. Until that time, we will continue to use the existing descriptors. Therefore, we propose to remove the descriptors from the regulations; and, in order to facilitate regular revisions and updates necessary to keep the descriptors current, we propose to include them in an information collection. Information collections are approved by OMB for no more than three years, giving the Department and the public periodic opportunities to review the descriptors and recommend revisions that may be appropriate.

**34 CFR Part 463**

**I. Adult Education—General Provisions**

WIOA reauthorizes, retains, and enhances various AEFLA provisions that were previously authorized by WIA. Subpart A of proposed part 463 would clarify the purpose, authorized programs, definitions, and regulations that apply to adult education programs under WIOA.

*Section 463.1 What is the purpose of the Adult Education and Family Literacy Act?*

WIOA retains and expands the purposes of AEFLA. Under WIA, AEFLA aimed to help adults improve their educational and employment outcomes, become self-sufficient, and support the educational development of their children, but under WIOA, AEFLA's purposes have been expanded to include assisting adults to transition to postsecondary education and training, including through career pathway programs. Further, WIOA formalizes the role of adult education in assisting English language learners to acquire the skills needed to succeed in the 21st-century economy. The proposed regulations would clarify the expanded role of adult education programs at the Federal, State, and local levels.

*Section 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?*

Proposed § 463.2 lists the regulations that apply to adult education programs to ensure that recipients of grant funds are aware of where to find the relevant requirements for effectively administering a grant or contract awarded with AEFLA funds.

*Section 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?*

Proposed § 463.3 identifies 31 terms used in WIOA that pertain to the adult education program. In some instances, the terms, which are defined in titles I and II, apply across all core programs authorized under WIOA. In other instances, the terms are specific to title

II. Proposed § 463.3 is intended to assist users by centralizing relevant definitions into one section. Proposed § 463.3 also identifies terms found in EDGAR that apply to State grant programs and that are relevant to AEFLA. Seven additional terms used in WIOA are not explicitly defined. We have listed and defined these terms under ''other definitions'' to clarify their meaning for purposes of the AEFLA program. For example, the proposed definition of ''concurrent enrollment'' or ''co-enrollment'' would clarify its meaning specific to enrollment in two or more of the four core programs in WIOA to provide consistency with how it is used throughout the statute. This definition, developed for the purposes of WIOA, differs from general use of the term which implies enrollment in two or more educational programs. ''Digital literacy,'' for the purposes of title II, would have the same meaning as that term is given in section 202 of the Museum and Library Services Act. This definition is also consistent with how digital literacy is defined in section 101(d) of the Act. Finally, the proposed definition of ''re-entry initiatives and post-release services'' is consistent with the definition that is commonly used in the correctional education field.

*Section 463.20 What is the process that an eligible agency must follow in awarding grants or contracts to eligible providers?*

Proposed § 463.20 describes the process that an eligible agency must follow when awarding grants or contracts to local providers. WIOA retains the WIA requirement that an eligible agency award multiyear grants or contracts on a competitive basis to eligible providers for the purpose of developing, implementing, and improving adult education within the State or outlying area. Proposed § 463.20 restates this statutory requirement.

WIOA also retains the requirement under WIA that an eligible agency ensure that all eligible providers have direct and equitable access to apply for and compete for grants and contracts under AEFLA. Title II of WIOA further requires an eligible agency to use the same grant or contract announcement and application processes for all eligible providers in the State or outlying area. Proposed § 463.20 reiterates this statutory requirement.

Under WIA, when awarding grants under AEFLA, State eligible agencies were required to consider 12 factors. WIOA revises these 12 factors, and adds one additional factor relating to the alignment between proposed activities and services and the strategy and goals of the local plan under section 108, and the activities and services of the one-stop partners. Eligible agencies must also consider under WIOA the coordination of the local education program with available education, training, and other support services in the community. Proposed § 463.20 restates these statutory requirements.

*Section 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan developed under section 108 of WIOA?*

WIOA promotes coordination between the Local Board and adult education providers by requiring in section 107(d)(11) that the Local Board review a provider's application for AEFLA funds before the application is submitted to the eligible agency. The purpose of the Local Board review is to determine whether the application is consistent with the local workforce plan, and to make recommendations to the eligible agency to promote alignment with the local workforce plan.

Proposed § 463.21 requires an eligible agency to establish procedures for Local Board review in its grant or contract application process. This section would also establish the type of documentation that must accompany the application. For example, an applicant would be required to document that the application was submitted to the Local Board and was reviewed within the specified timeframe and that the Local Board made recommendations to promote alignment. The proposed regulations also require the eligible agency to consider the results of the Local Board review in determining the extent to which the application addresses the requirements of the local plan developed in accordance with section 108 of WIOA. The purpose of the proposed regulation is to establish uniform procedures within the State and outlying area for a Local Board to review an application and to ensure that the eligible agency considers the review in its award of grants and contracts for adult education and literacy activities.

*Section 463.22 What must be included in the eligible provider's application for a grant or contract?*

Proposed § 463.22 identifies what an eligible provider must include in its application for a grant or contract under AEFLA. WIOA retains two of the local application requirements from WIA, and adds five new requirements. As under WIA, an eligible provider must provide the information and assurances required by the eligible agency. Under the new application requirements, the eligible provider must also describe how it will: Provide services in alignment with local workforce plans, including promotion of concurrent enrollment with title I services; fulfill one-stop partner responsibilities; meet performance levels based on the newly established primary indicators of performance and collect data to report on performance indicators; and provide services to meet the needs of eligible individuals. Applicants must also provide other information that addresses the 13 considerations outlined in § 463.20.

*Section 463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?*

Proposed § 463.23 lists the organizations that are eligible to apply for a grant or contract to provide adult education and literacy activities under WIOA. WIOA lists 10 organization types that may be eligible providers, two of which are a consortium or coalition of organization types and a partnership between an employer and eligible entities. WIOA further permits other organization types, even if not specifically listed, to apply as eligible providers if they meet the demonstrated effectiveness requirement.

Finally, WIOA further requires an ''eligible provider'' to have ''demonstrated effectiveness'' in providing adult education and literacy services, a requirement that applied only to community-based organizations and volunteer literacy organizations under WIA.

*Section 463.24 How can an eligible provider establish that it has demonstrated effectiveness?*

To ensure that programs are of high quality, proposed § 463.24 would further clarify how an organization previously funded under AEFLA, as well as an organization not previously funded under AEFLA, could demonstrate effectiveness by providing performance data in its application. This clarification would help States conduct fair and equitable grant competitions for all eligible providers. We are particularly interested in receiving public comment on the proposed means of demonstrating effectiveness.

*Section 463.25 What are the requirements related to local administrative costs?*

Proposed § 463.25 restates the statutory language in section 233(b) of WIOA that allows eligible providers to

request to negotiate with the eligible agency the level of funds for non-instructional purposes in the event the statutory cap of 5 percent for local administration is too restrictive.

*Section 463.26 What activities are considered local administrative costs?*

Proposed § 463.26 describes the activities eligible providers may charge to local administrative costs under WIOA. Under WIA, local administrative costs are identified as funds used for planning, administration, personnel development, and interagency coordination. WIOA retains planning, administration, and personnel development as local administrative costs, and replaces interagency coordination with specific activities to promote alignment with local plans, including concurrent enrollment with title I services and the one-stop partner requirements outlined in section 121(b)(1)(A) of WIOA. Proposed § 463.26 would clarify that local administrative costs may include costs associated with fulfilling required one-stop responsibilities, including contributions to the infrastructure costs of the one-stop delivery system.

**II. What are adult education and literacy activities?**

The proposed regulations would further define and clarify the new and revised required activities authorized under WIOA to ensure that eligible providers understand how funds may be spent for adult education and literacy activities.

*Section 463.30 What are adult education and literacy programs, activities, and services?*

WIOA retains, revises, and supplements the adult education and literacy activities under WIA. Specifically, WIOA retains adult education, literacy, workplace adult education and literacy, and family literacy as adult education and literacy activities. WIOA changes the name of the English literacy program under WIA to the ''English language acquisition program.'' Section 203(2) of WIOA further adds three new activities to the definition of ''adult education and literacy activities'': Integrated English literacy and civics education, workforce preparation activities, and integrated education and training. Proposed § 463.30 lists these eight activities and generally restates the statutory language.

*Section 463.31 What is an English language acquisition program?*

Under section 203(6) of WIOA, an English language acquisition program, called an ''English literacy program'' in WIA, is designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. Under WIOA, the program of instruction must also lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education or training or lead to employment. Proposed § 463.31 would restate the statutory requirements for an English language acquisition program under WIOA.

*Section 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?*

Proposed § 463.32 would establish how an English language acquisition program must meet the new requirement that it lead to high school completion and transition to postsecondary opportunities or lead to employment. Section 463.32 would establish that a program satisfies the requirement by using rigorous and challenging adult education standards that meet the requirements in the Unified State Plan, providing supportive services that assist an individual to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or training, or designing the program to be a part of a career pathway. These programs or services have been identified as having a positive impact on the successful transition of adults to postsecondary education and training and employment. We invite public input on these proposals and specifically request suggestions regarding other methods that may be used to meet this requirement.

*Section 463.33 What are integrated English literacy and civics education services?*

WIOA includes among the authorized adult education and literacy activities a set of services that were previously authorized through annual appropriations language (*i.e.,* not WIA). These services are integrated English literacy and civics education services, which WIOA defines as educational services that include both literacy and English language instruction integrated with civics education. Under WIOA, these services may be provided to adults who are English language learners, including those who are professionals with degrees or credentials in their native countries, and may include workforce training. Proposed § 463.33 restates the statutory language of WIOA pertaining to integrated English literacy and civics education services.

*Section 463.34 What are workforce preparation activities?*

Proposed § 463.34 restates statutory language in WIOA that establishes workforce preparation activities as activities, programs, or services that are designed to help an individual acquire a combination of basic academic, critical thinking, digital literacy, and self-management skills. While adult education and literacy instruction has traditionally supported the development of basic academic and critical thinking skills, workforce preparation will also support the development of self-management skills and digital literacy. The statute further states that workforce preparation includes developing competencies in using resources and information, working with others, understanding systems, and obtaining skills necessary to successfully transition to and complete postsecondary education, training, and employment. These competencies are commonly incorporated into definitions of employability skills. Proposed § 463.34 adds employability skills to the list of competencies described in the statute to further clarify the meaning of ''workforce preparation.''

*Section 463.35 What is integrated education and training?*

Proposed § 463.35 restates the statutory definition of integrated education and training activity.

*Section 463.36 What are the required components of an integrated education and training program funded under title II?*

Proposed § 463.36 describes the three components that would be required in an integrated education and training program. These components are adult education and literacy activities, workforce preparation activities, and workforce training. Two of the components, adult education and literacy activities and workforce preparation activities, are discussed in § 463.30 and § 463.34. In proposed § 463.36, we would further clarify the workforce training component by referencing section 134(c)(3)(D) of WIOA, which identifies the activities that constitute training within the employment and training services authorized by title IB.

*Section 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be ''integrated''?*

Proposed § 463.37 would establish how the three components of integrated education and training must be integrated. The proposed regulation would require that an integrated education and training program balance the proportion of instruction across the three components, deliver the components simultaneously, and use occupationally relevant instructional materials. Proposed § 463.37 would also require a program to have a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies. These proposed requirements are intended to facilitate the design of high-quality integrated education and training programs that focus on improving the academic skills of low-skilled adults while advancing their occupational competencies. We seek public input on the proposed requirements and other suggested requirements that may support the provision of integrated education and training services to eligible adults at all skill levels.

*Section 463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be ''for the purpose of educational and career advancement''?*

Under proposed § 463.38, to meet the WIOA requirement that the integrated education and training program be for the purpose of educational and career advancement, the educational component of a program would be required to align with the State's content standards for adult education in the State's Unified or Combined State Plan or the program would be required to be part of a career pathway as that term is defined in section 3 of WIOA (29 U.S.C. 3102(7)). The use of rigorous and challenging academic standards and career pathways that contextualize learning are recognized strategies to promote readiness for postsecondary education and work.

## III. What are programs for corrections education and the education of other institutionalized individuals?

*Section 463.60 What are programs for corrections education and the education of other institutionalized individuals?*

In proposed § 463.60, we describe programs for corrections education and the education of other institutionalized individuals. WIOA expands the educational programs and activities for which funds may be used and changes the WIA terminology. WIOA adds to the list of academic programs five new academic programs and uses the new definition of ''adult education and literacy activities'' described in § 463.30. ''Integrated education and training'' and ''concurrent enrollment'' are defined in § 463.3 and § 463.35, and ''career pathways'' is defined in WIOA section 3. Definitions for ''peer tutoring'' and ''re-entry initiatives and other post-release services'' are in proposed § 463.3.

*Section 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?*

WIOA emphasizes the importance of educational and career advancement for incarcerated individuals by increasing from 10 percent to 20 percent the cap on funds that States may use for programs for corrections education and the education of other institutionalized individuals. Proposed § 463.61 reiterates this new statutory provision and clarifies that any awards made by the eligible agency for programs for corrections education and education programs for other institutionalized individuals must be made in accordance with applicable regulations in subpart C.

*Section 463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?*

Proposed § 463.62 restates the statutory provision in WIOA that gives priority to serving individuals who are likely to leave the corrections programs within five years of participation in the program.

*Section 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?*

Proposed § 463.63 establishes how these funds may support transition to re-entry initiatives and other post-release services under section 225(b)(8) of WIOA. This section would clarify that re-entry initiatives and other post-release services must support the educational needs of the individual. We propose to make this clarification because section 225(b) of the Act specifies that funds may only be used ''for the costs of educational programs.''

## IV. What is the Integrated English Literacy and Civics Education program?

In addition to the new integrated English Literacy and Civics Education services discussed in § 463.34, WIOA creates a new integrated English Literacy and Civics Education program that codifies and replaces the English Literacy and Civics Education program previously authorized through annual appropriations. The inclusion of the program in WIOA makes it an authorized program and eliminates the need for it to be authorized and separately funded annually through the appropriations process. The new program retains the focus on English language proficiency and civics education instruction, but there are new requirements to support stronger ties to employment and the workforce system.

*Section 463.70 What is the Integrated English Literacy and Civics Education program?*

Proposed § 463.70 describes the statutory requirements related to participants for whom funds are intended and the sets of services that are required in the program. This section would also clarify that the educational services must meet the requirements established in § 463.33 pertaining to integrated English literacy and civics education services.

*Section 463.71 How does the Secretary make an award under the integrated English Literacy and Civics Education program?*

Section 463.71 restates the statutory requirements for how the Secretary makes awards under the Integrated English Literacy and Civics Education program. It includes the statutory formula for how funds will be allocated to eligible agencies.

*Section 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?*

Proposed § 463.72 describes the statutory requirements to be used by eligible agencies in awarding funds, including a requirement that States must follow the provisions governing the award of funds established in subpart C.

*Section 463.73 What are the requirements for eligible providers that receive funding through the integrated English Literacy and Civics Education program?*

Proposed § 463.73 reiterates statutory language regarding Integrated English Literacy and Civics Education program services and design, including requirements for the program to facilitate job placement, economic self-sufficiency, and integration with the workforce development system.

*Section 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?*

Proposed § 463.74 specifies two options an eligible provider may use to provide programs combined with integrated education and training in order to meet the requirement for the Integrated English Literacy and Civics Education program. The two options correspond with the requirements for integrated English Literacy and Civics Education services under section 231 of the Act and Integrated English Literacy and Civics Education programs under section 243 of the Act.

*Section 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?*

Proposed § 463.75 describes the statutory requirements for eligibility to receive services under the program.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

*Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these proposed regulations would not impose additional costs to State eligible agencies under title II, local eligible providers of adult education, or the Federal government. We make this determination based upon analysis of the particular requirements proposed in parts 462 and 463.

The proposed regulations in part 462 primarily represent conforming changes and updates to current regulations in order to transition smoothly from WIA to WIOA. For example, we propose updating the language in the regulations in part 462 for consistency with language in the new law in which the term English as a second language (ESL) has been replaced with the term English language acquisition (ELA). A second example of proposed changes in part 462 is one in which States would be provided more flexibility in reporting outcomes for adult learners. Proposed § 462.43(c) would recognize the fact that several States offer adult high school programs, sanctioned by State law or regulation, that lead to a secondary school diploma or its equivalent. This new rule would allow these States to measure and report educational gain through the awarding of credits or Carnegie units, but would not require States to implement changes at an additional cost. Thus, from a cost perspective, the proposed regulations in part 462 would not impose new substantive requirements on State eligible agencies or local eligible providers of adult education. Additionally, the benefits of clarifying the conforming changes from WIA to WIOA and providing States additional

flexibility justify the promulgation of the proposed regulations in part 462.

The proposed regulations in part 462 would also update and revise existing AEFLA regulations established under WIA that determine the suitability of tests for use in the NRS to reflect new WIOA provisions. We expect that the proposed regulations would result in a more uniform test review and approval process. For example, proposed § 462.10 would establish new dates by which tests must be submitted for review each year. The revised submission dates would provide more opportunities for publishers to submit assessments to the Secretary for review and would likely increase the availability of new assessments to providers. As proposed, § 462.11(a)(4) would increase the number of application copies that a publisher must submit to the Secretary from three to four. The additional cost to test publishers of providing another copy of an application is negligible. Accordingly, we conclude that the proposed regulations in part 462 would provide test publishers with greater flexibility in the overall submission process and, as such, anticipate that the benefits of this additional flexibility outweigh any potential minimal costs for test publishers. Moreover, we believe that the benefits of this proposed change outweigh the potential costs as it would strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures while reducing costs to the Federal Government.

The proposed regulations in part 463 would largely clarify administrative and programmatic changes made by WIOA to the provisions regarding general adult education (*e.g.,* applicable definitions, relevant programs, applicable regulations), how States make awards to local eligible providers, new adult education and literacy activities, new requirements for programs for corrections education and the education of other institutionalized individuals, and a new English literacy and civics education program. While WIOA enacts substantive programmatic changes in these areas, WIOA also provides States and outlying areas funding and flexibility to address these challenges.

The proposed regulations in subpart C of part 463 would describe the process and requirements for States and outlying areas to award grants or contracts to eligible local providers as well as the activities allowed for local administrative costs. New application requirements would include those aimed at alignment with local workforce plans and promotion of concurrent enrollment with title I services, fulfillment of one-stop partner responsibilities, performance against the newly established primary indicators of performance, improving services to meet the needs of eligible individuals, and other information that addresses the 13 considerations outlined in proposed § 463.20. The changes and new requirements in subpart C pose no costs to eligible State agencies, eligible local providers, or the Federal Government that are additional to the costs imposed by statutory requirements.

Proposed § 463.21 would require an eligible agency to establish procedures for Local Board review in its grant or contract application process. The regulation would further establish the type of documentation that must accompany the application. For example, an applicant would be required to document that the application was submitted to the board and was reviewed within the specified timeframe and that the Local Board made recommendations to promote alignment. While this is a new requirement under WIOA, we conclude that it does not impose significant additional costs to eligible State agencies, eligible local providers, or the Federal Government as it minimally extends requirements already in place to compete for AEFLA funds.

The proposed regulations in subparts D, F, and G would generally restate statutory definitions of adult education and literacy activities and clarify new allowable uses of funds. As such, we conclude that these proposed new regulations would add no additional costs and would provide the added benefit of clarifying the flexibility that eligible State agencies and local eligible providers have in using funds provided under the Act for adult education and literacy activities as set forth in WIOA. Thus, we have determined that the proposed regulations in part 463 would not impose additional costs to State eligible agencies under title II of WIOA, local eligible providers of adult education, or the Federal government.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

*Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 462.11 What must an application contain?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. The proposed regulations in part 462 would affect test publishers that meet this definition. However, the part 462 regulations would not have a significant economic impact on these entities. Both large and small entities that publish assessments would benefit from proposed § 462.10 because it increases the number of opportunities that they may submit assessments to the Secretary for review and approval, potentially enabling them to market and sell their assessments to eligible local providers earlier than they could under the current regulations. The only new cost that would be imposed on assessment publishers by the proposed part 462 regulations is the nominal cost of providing one additional copy of an application to the Secretary (§ 462.11(a)(4)).

The regulations in part 463 would affect eligible local providers of adult education that are small, including small institutions of higher education, small local educational agencies, small

community-based organizations or faith-based organizations, small volunteer literacy organizations, and other small entities that WIOA makes eligible to compete for adult education and literacy funds. The proposed regulations would benefit these small entities, as well as larger entities that are eligible local providers, by clarifying key statutory requirements. For example, proposed § 463.24 would explain how a provider can establish that it meets that the statutory requirement that a provider have ''demonstrated effectiveness'' in order to be eligible to compete for funds. Similarly, proposed § 463.38 would explain how an eligible provider that administers an integrated education and training program must meet the statutory requirement that the program be ''for the purpose of educational and career advancement.'' By reducing uncertainty and ambiguity about the adult education program's requirements, these clarifications would benefit all eligible providers, both small and large.

*Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Part 462 contains information collection requirements. Under the PRA, the Department has submitted a copy of the sections of part 462 that contain information collection requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

*Determining the Suitability of Tests for Use in the NRS*

Section 462.10 describes when a test publisher may submit an application to the Secretary to have a standardized test evaluated to determine if it is suitable for measuring the educational gains of participants in adult education programs that are required to report under the NRS. Under our current regulations, tests may be submitted annually by October 1 of each year. We are proposing to amend § 462.10 to increase the opportunities for a test publisher to submit an application from once to twice a year during calendar years 2017 and 2018. The intent of this proposal is to accommodate the review of what we expect will be a new generation of tests. The collection of this information has been approved through April 30, 2017, by OMB under the PRA as OMB Control Number 1830–0567. Under our current regulations, we estimated that we would receive five applications from test publishers on each of October 1, 2014, October 1, 2015, and October 1, 2016. The burden associated with each response is 40 hours (30 hours of work by professional employees and 10 hours by clerical employees), making 600 hours the total burden hours approved for OMB Control Number 1830–0567 over the three-year approval period. Our proposed regulations would give test publishers one additional opportunity during the approval period to submit applications (April 1, 2017). We estimate that this change will not modify the number of responses that we will receive annually from test publishers during the approval period. Rather, it will most likely spread out over two time periods the number of submissions we currently receive. Consequently, the total burden hours estimated under OMB Control Number 1830–0567 remains at 600 hours.

Section 462.11 describes the required content of applications submitted by test publishers to the Secretary. We are proposing to amend § 462.11 to increase the number of copies of an application that a test publisher must submit from three to four. This change will not increase the burden hours associated with each response and will have a negligible impact on the costs of responding.

We also are proposing to amend § 462.11, § 462.12, and § 462.14 to provide additional examples of the kinds of revisions to tests that we consider to be ''substantial'' and that thus require a new determination by the Secretary concerning the revised test's suitability for use in the NRS. Specifically, we are proposing to include as examples of ''substantial revisions'' changes in a test's mode of administration, administration procedures, forms, and the number of hours between pre- and post-testing. Under § 462.11 and § 462.14, a test publisher that has substantially revised a test approved for use in the NRS must submit to the Secretary the substantially revised test, an analysis that describes the reasons for the revision, a description of the revision's implications for the comparability of scores on the current test to scores on the previous test, and the results of validity, reliability, and equating or standard-setting studies undertaken subsequent to the revision. Section 462.12 authorizes the Secretary to revoke the approval of a test if the Secretary determines that the test has been substantially revised. We do not expect the proposed changes to have an impact on the burden hours associated with OMB Control Number 1830–0567 because we expect that substantial revisions to standardized tests will be rare.

Section 462.12 also describes the procedures the Secretary uses to review the suitability of tests submitted by test publishers. We are proposing to amend § 462.12 to change the date when test publishers may resubmit applications for tests that the Secretary has determined are not suitable for use in the NRS. Under our current regulations, test publishers may resubmit an application within 30 days after the Secretary notifies the publisher that its test is not suitable for use in the NRS. We are proposing to eliminate this opportunity to request reconsideration and instead propose to give test publishers the opportunity to submit a new application on the next date the Secretary invites new applications from test publishers. Because the opportunity for reconsideration has been rarely used by test publishers, we do not expect that this change will have an impact on the burden hours associated with OMB Control Number 1830–0567.

*Requirements States and Local Eligible Providers Must Follow When Measuring Educational Gain*

Subpart D of part 462 describes the requirements States and local eligible providers must follow when measuring educational gain under the NRS. It contains information collection requirements that have been approved by OMB through August 31, 2017, as OMB Control Number 1830–0027. Section 462.40 currently describes the

required contents of the written assessment policy each State must establish for its local eligible providers. We are proposing to amend § 462.40 to require the State to specify in its written assessment policy a standard for the percentage of students to be pre- and post-tested. Each State is currently required to include this information as part of the Data Quality Checklist that it submits to the Department by the OMB Control Number 1830–0027 information collection. Because each State currently provides this information, this new regulatory requirement will not increase the burden associated with OMB Control Number 1830–0027.

*Collection of Information*

| *Regulatory section* | *Information collection* | *OMB Control Number and estimated burden [change in burden]* |
|---|---|---|
| § 462.10 | The proposed amendment to this regulatory provision would give test publishers one additional opportunity to submit an application to have a standardized test evaluated to determine if it is suitable for use in the NRS. | OMB 1830–0567. There would be no change in burden hours or costs. |
| § 462.11 | One of the proposed amendments would increase the number of copies of an application that must be submitted by a test publisher from three to four. A second proposed amendment would provide additional examples of the kinds of revisions to tests that we consider to be ''substantial'' and that require a test publisher to provide information to the Secretary about the substantially revised test so that the Secretary can evaluate the substantially revised test's suitability for use in the NRS. | OMB 1830–0567. There would be no change in burden hours or costs. |
| § 462.12 | The proposed amendment would eliminate the opportunity for a test publisher to request reconsideration of a test that the Secretary has determined is not suitable for use in the NRS. The test publisher would instead be permitted to submit a new application for consideration when the Secretary next invites applications. | OMB 1830–0567. There would be no change in burden hours or costs. |
| § 462.14 | The proposed amendment would provide additional examples of the kinds of revisions to tests that we consider to be ''substantial'' and that could prompt the Secretary to revoke a determination that a test is suitable for use in the NRS. | OMB 1830–0567. There would be no change in burden hours or costs. |
| § 462.40 | The proposed amendment to this regulatory provision would require a State to include in its written assessment policy a standard for the percentage of students who will have a matched post-test completed. | OMB 1830–0027. There would be no change in burden hours or costs. |

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared Information Collection Requests (ICR) for these collections. In preparing your comments you may want to review the ICR, which is available at *www.reginfo.gov*. Click on Information Collection Review. These proposed collections are 1830–0567 and 1830–0027.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by May 18, 2015. This does not affect the deadline for submitting comments to us on the proposed regulations.

*Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Federalism*

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in parts 462 and 463 may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.002
Adult Education—Basic Grants to States)

**List of Subjects**

*34 CFR Part 461*

Administrative practice and procedure, Adult education, Grant programs-education.

*34 CFR Part 462*

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

*34 CFR Part 463*

Adult education, Grant programs-education.

*34 CFR Part 472*

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

*34 CFR Part 477*

Administrative practice and procedure, Adult education, Grant programs-education.

*34 CFR Part 489*

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

*34 CFR Part 490*

*Adult education, Grant programs—education, Prisoners, Reporting and recordkeeping requirements.*

Dated: March 6, 2015.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in this preamble, under the authority of 29 U.S.C. 3271 *et seq.* and 3343(f), the Secretary proposes to amend title 34 of the Code of Federal Regulations as follows:

## PART 461 [REMOVED AND RESERVED]

■ 1. Remove and reserve part 461.

## PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

■ 2. The authority citation for part 462 is revised to read as follows:

**Authority:** 29 U.S.C. 3292, *et seq.,* unless otherwise noted.

■ 3. The authority citation at the end of § 462.1 is revised to read as follows:

### § 462.1 What is the scope of this part?

* * * * *

(Authority: 29 U.S.C. 3292)

■ 4. Section 462.2 is revised to read as follows:

### § 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 29 U.S.C. 3292)

■ 5. Section 462.3 is amended by:

■ a. Revising the introductory text of paragraph (a).

■ b. Revising the definition of ''Adult basic education (ABE)'' in paragraph (b).

■ c. Revising paragraphs (1), (3)(i), and (3)(iii) of the definition of ''Adult education population'' in paragraph (b).

■ d. Revising the definitions of ''Adult secondary education (ASE)'', ''Content domains, content specifications, or NRS skill areas'', and ''Educational functioning levels'' in paragraph (b).

■ e. Removing the definition of ''English-as-a-second language (ESL)'' from paragraph (b).

■ f. Adding a definition of ''English language acquisition (ELA)'' to paragraph (b) in alphabetical order.

■ g. Revising the definition of ''Guidelines'' in paragraph (b).

The additions and revisions read as follows:

### § 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 29 U.S.C. 3272 (Act):

* * * * *

(b) * * *

*Adult basic education (ABE)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in the Guidelines.

*Adult education population* means individuals—

(1) Who have attained 16 years of age;

* * * * *

(3) * * *

(i) Are basic skills deficient;

(ii) * * *

(iii) Are English language learners.

*Adult secondary education (ASE)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in the Guidelines.

*Content domains, content specifications, or NRS skill areas* mean, for the purpose of the NRS, reading, writing, and speaking the English language, mathematics, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

*Educational functioning levels* mean the ABE, ASE, and ELA literacy levels, as provided in the Guidelines, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

*English language acquisition (ELA)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ELA literacy level listed in the NRS educational functioning level table in the Guidelines.

*Guidelines* means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (also known as NRS Implementation Guidelines) posted on the Internet at: *www.nrsweb.org.*

* * * * *

(Authority: 29 U.S.C. 3292, *et seq.,* unless otherwise noted)

■ 6. Section 462.4 is revised to read as follows:

**§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?**

A State or a local eligible provider may continue to measure educational gain for the NRS using tests that the Secretary has identified in the most recent notice published in the **Federal Register** until the Secretary announces through a notice published in the **Federal Register** a date by which such tests may no longer be used.

(Authority: 29 U.S.C. 3292)

■ 7. Section 462.10 is amended by revising paragraph (b) and the authority citation to read as follows:

**§ 462.10 How does the Secretary review tests?**

* * * * *

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by October 1, 2016, April 1, 2017, October 1, 2017, April 1, 2018, October 1, 2018, and by October 1 of each year thereafter.

(Authority: 29 U.S.C. 3292)

■ 8. Section 462.11 is amended by revising paragraphs (a)(4), (b)(1), (e) introductory text, (f) introductory text, and (j)(4) and the authority citation to read as follows:

**§ 462.11 What must an application contain?**

(a) * * *

(4) Submit to the Secretary four copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in the Guidelines.

* * * * *

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in the Guidelines, including—-

* * * * *

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in the Guidelines, including—

* * * * *

(j) * * *

(4) If a test has been substantially revised—for example by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing—from the most recent edition reviewed by the Secretary under this part, the test publisher must provide an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 29 U.S.C. 3292)

■ 9. Section 462.12 is amended by revising paragraphs (a)(2)(i)(iv), (c)(2), (d)(2), (e)(1)(ii), (e)(2) introductory text, and (e)(5), and the authority citation to read as follows:

**§ 462.12 What procedures does the Secretary use to review the suitability of tests?**

(a) * * *

(2) * * *

(i) * * *

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ELA, or ASE with sufficient numbers of questions to represent adequately the domain or domains; and

* * * * *

(c) * * *

(2) Annually publishes in the **Federal Register** and posts on the Internet at *www.nrsweb.org* a list of the names of tests and test forms and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(d) * * *

(2) The test publisher may resubmit an application to have the suitability of its test determined by the Secretary under this part on October 1 in the year immediately following the year in which the Secretary notifies the publisher.

(e) * * *

(1) * * *

(ii) A test has been substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms or sub-tests, or number of hours between pre- and post-testing.

(2) The Secretary notifies the test publisher of the—

* * * * *

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary will publish in the **Federal Register**, and post on the Internet at *www.nrsweb.org*, a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test. A copy of the notice of revocation will also be available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 29 U.S.C. 3292)

■ 10. Section 462.13 is amended by revising paragraph (b) to read as follows:

**§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?**

* * * * *

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ELA, or ASE with sufficient numbers of questions to adequately represent the domain or domains.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 11. Section 462.14 is amended by revising paragraph (b) and the authority citation to read as follows:

**§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?**

* * * * *

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 29 U.S.C. 3292)

■ 12. Section 462.40 is amended by revising paragraph (c)(3) and the authority citation to read as follows:

**§ 462.40 Must a State have an assessment policy?**

* * * * *

(c) * * *

(3)(i) Indicate when, in calendar days or instructional hours, local eligible providers must administer pre- and post-tests to students;

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational gains according to the test publisher's guidelines; and

(iii) Specify a standard for the percentage of students who will have a matched post-test completed.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 13. Section 462.41 is amended by revising paragraphs (b)(2) and (3), (c)(3), and the authority citation to read as follows:

**§ 462.41 How must tests be administered in order to accurately measure educational gain for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?**

* * * * *

(b) * * *

(2) Administer the pre-test to students at a uniform time, according to the State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in the State's assessment policy.

(c) * * *

(2) Administer the post-test to students at a uniform time, according to the State's assessment policy;

* * * * *

(Authority: 29 U.S.C. 3292)

■ 14. The authority citation at the end of § 462.42 is revised to read as follows:

**§ 462.42 How are tests used to place students at an NRS educational functioning level?**

* * * * *

(Authority: 29 U.S.C. 3292)

■ 15. Section 462.43 is amended by:

■ a. Revising the section heading and paragraphs (a)(1) and (b).

■ b. Adding paragraph (c).

■ c. Revising the authority citation.

The revisions and addition read as follows:

**§ 462.43 How is educational gain measured for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?**

(a)(1) Educational gain is measured by comparing the student's initial educational functioning level, as measured by the pre-test described in § 462.41(b), with the student's educational functioning level as measured by the post-test described in § 462.41(c).

*Example:* A State's assessment policy requires its local eligible providers to test students in reading and mathematics. The student scores lower in reading than in mathematics. As described in § 462.42(d)(1), the local eligible provider would use the student's reading score to place the student in an educational functioning level. To measure the student's educational gain, the local eligible provider would compare the reading score on the pre-test with the reading score on the post-test.

* * * * *

(b) Except as specified in paragraph (c) of this section, if a student is not post-tested, then no educational gain can be measured for that student and the local eligible provider must report the student in the same educational functioning level as initially placed for NRS reporting purposes.

(c) States that offer adult high school programs, sanctioned by State law, code, or regulation, that lead to a secondary school diploma or its equivalent may measure and report educational gain through the awarding of credits or Carnegie units.

(Authority: 29 U.S.C. 3292)

**§ 462.44 [Removed]**

■ 16. Remove § 462.44.

■ 17. Add part 463 to read as follows:

## PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

### Subpart A—Adult Education General Provisions

Sec.

463.1 What is the purpose of the Adult Education and Family Literacy Act?
463.2 What regulations apply to the Adult Education and Family Literacy Act programs?
463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

**Subpart B [RESERVED]**

**Subpart C —How does a State Make an Award to Eligible Local Providers?**

463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?
463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108?
463.22 What must be included in the eligible provider's application for a grant or contract?
463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?
463.24 How can an eligible provider establish that it has demonstrated effectiveness?
463.25 What are the requirements related to local administrative cost limits?
463.26 What activities are considered local administrative costs?

**Subpart D—What are Adult Education and Literacy Activities?**

463.30 What are adult education and literacy programs, activities, and services?
463.31 What is an English language acquisition program?
463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?
463.33 What are integrated English literacy and civics education services?

463.34 What are workforce preparation activities?
463.35 What is integrated education and training?
463.36 What are the required components of an integrated education and training program funded under title II?
463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be ''integrated''?
463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be ''for the purpose of educational and career advancement''?

**Subpart E [RESERVED]**

**Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?**

463.60 What are programs for corrections education and the education of other institutionalized individuals?
463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?
463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?
463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

**Subpart G—What Is the Integrated English Literacy and Civics Education Program?**

463.70 What is the Integrated English Literacy and Civics Education program?
463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?
463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?
463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?
463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?
463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

**Subparts H–K [RESERVED]**

**Authority:** 29 U.S.C. 3271, *et seq.,* unless otherwise noted.

## Subpart A—Adult Education General Provisions

### § 463.1 What is the purpose of the Adult Education and Family Literacy Act?

The purpose of the Adult Education and Family Literacy Act (AEFLA) is to create a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy activities, in order to—

(a) Assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency;

(b) Assist adults who are parents or family members to obtain the education and skills that—

(1) Are necessary to becoming full partners in the educational development of their children; and

(2) Lead to sustainable improvements in the economic opportunities for their family;

(c) Assist adults in attaining a secondary school diploma and in the transition to postsecondary education and training, through career pathways; and

(d) Assist immigrants and other individuals who are English language learners in—

(1) Improving their—

(i) Reading, writing, speaking, and comprehension skills in English; and

(ii) Mathematics skills; and

(2) Acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(Authority: 29 U.S.C. 3271)

### § 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

The following regulations apply to the Adult Education and Family Literacy Act programs:

(a) The following Education Department General Administrative Regulations (EDGAR):

(1) 34 CFR part 75 (Direct Grant Programs), except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.

(2) 34 CFR part 76 (State-Administered Programs), except that 34 CFR 76.101 (the general State application) does not apply.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 86 (Drug and Alcohol Prevention).

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in 34 CFR part 462.

(c) The regulations in 34 CFR part 463.

### § 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

(a) *Definitions in the Workforce Innovation and Opportunity Act.* The following terms are defined in Sections 3, 134, 203, and 225 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102, 3174, 3272, and 3305):

Adult Education
Adult Education and Literacy Activities
Basic Skills Deficient
Career Pathway
Core Program
Core Program Provision
Correctional Institution
Criminal Offender
Customized Training
Eligible Agency
Eligible Individual
Eligible Provider
English Language Acquisition Program
English Language Learner
Essential Components of Reading
Family Literacy Activities
Governor
Individual with a Barrier to Employment
Individual with a Disability
Institution of Higher Education
Integrated Education and Training
Integrated English Literacy and Civics Education
Literacy
Local Educational Agency
On-the-Job Training
Outlying Area
Postsecondary Educational Institution
State
Training Services
Workplace Adult Education and Literacy Activities
Workforce Preparation Activities

(b) *Definitions in EDGAR.* The following terms are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Contract
Department
ED
EDGAR
Fiscal Year
Grant

Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary
Subgrant
Subgrantee

(c) *Other definitions.* The following definitions also apply:

*Act* means the Workforce Innovation and Opportunity Act, Public Law 113—128.

*Concurrent enrollment* or *co-enrollment,* for the purpose of this subpart F, refers to enrollment by an individual in two or more of the programs administered under the four core programs.

*Digital literacy* means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

*Peer tutoring* means an instructional model that utilizes one institutionalized individual to assist in providing or enhancing learning opportunities for other institutionalized individuals. A peer tutoring program must be structured and overseen by educators who assist with training and supervising tutors, setting educational goals, establishing an individualized plan of instruction, and monitoring progress.

*Re-entry* initiatives and *post-release services* means services provided to a formerly incarcerated individual upon or shortly after release from prison that are designed to promote successful adjustment to the community and prevent recidivism. Examples include education, employment services, substance abuse treatment, housing support, mental and physical health care, and family reunification services.

*Title* means title II of the Act.

## Subpart B [RESERVED]

## Subpart C—How Does a State Make an Award to Eligible Local Providers?

### § 463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

(a) From grant funds made available under section 222(a)(1) of the Act, each eligible agency must award competitive multiyear grants or contracts to eligible providers within the State or outlying area to enable the eligible providers to develop, implement, and improve adult education and literacy activities within the State or outlying area.

(b) The eligible agency must require that each eligible provider receiving a grant or contract use the funding to establish or operate programs that provide adult education and literacy activities, including programs that provide such activities concurrently.

(c) In conducting the competitive grant process, the eligible agency must ensure that—

(1) All eligible providers have direct and equitable access to apply and compete for grants or contracts;

(2) The same grant or contract announcement and application processes are used for all eligible providers in the State or outlying area; and

(3) In awarding grants or contracts to eligible local providers for adult education and literacy activities, funds are not used for the purpose of supporting or providing programs, services, or activities for individuals who are not eligible individuals as defined in the Act, except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy activities. Prior to providing family literacy activities for individuals who are not eligible individuals, an eligible provider must attempt to coordinate with programs and services that do not receive funding under this title.

(d) In awarding grants or contracts for adult education and literacy activities to eligible providers, the eligible agency must consider the following:

(1) The degree to which the eligible provider would be responsive to—

(i) Regional needs as identified in the local workforce development plan; and

(ii) Serving individuals in the community who were identified in such plan as most in need of adult education and literacy activities, including individuals who—

(A) Have low levels of literacy skills; or

(B) Are English language learners;

(2) The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;

(3) The past effectiveness of the eligible provider in improving the literacy of eligible individuals, especially those individuals who have low levels of literacy, and the degree to which those improvements contribute to the eligible agency meeting its State-adjusted levels of performance for the primary indicators of performance described in § 677.155;

(4) The extent to which the eligible provider demonstrates alignment between proposed activities and services and the strategy and goals of the local plan under section 108 of the Act, as well as the activities and services of the one-stop partners;

(5) Whether the eligible provider's program—

(i) Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and

(ii) Uses instructional practices that include the essential components of reading instruction;

(6) Whether the eligible provider's activities, including whether reading, writing, speaking, mathematics, and English language acquisition instruction delivered by the eligible provider, are based on the best practices derived from the most rigorous research available, including scientifically valid research and effective educational practice;

(7) Whether the eligible provider's activities effectively use technology, services and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of learning, and how such technology, services, and systems lead to improved performance;

(8) Whether the eligible provider's activities provide learning in context, including through integrated education and training, so that an individual acquires the skills needed to transition to and complete postsecondary education and training programs, obtain and advance in employment leading to economic self-sufficiency, and to exercise the rights and responsibilities of citizenship;

(9) Whether the eligible provider's activities are delivered by instructors, counselors, and administrators who meet any minimum qualifications established by the State, where applicable, and who have access to high-quality professional development, including through electronic means;

(10) Whether the eligible provider coordinates with other available education, training, and social service resources in the community, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, local workforce investment boards, one-stop centers, job training programs, and social service agencies, business, industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries, in the development of career pathways;

(11) Whether the eligible provider's activities offer the flexible schedules and coordination with Federal, State, and local support services (such as child care, transportation, mental health services, and career planning) that are necessary to enable individuals, including individuals with disabilities

or other special needs, to attend and complete programs;

(12) Whether the eligible provider maintains a high-quality information management system that has the capacity to report measurable participant outcomes (consistent with section § 677.155) and to monitor program performance; and

(13) Whether the local area in which the eligible provider is located has a demonstrated need for additional English language acquisition programs and civics education programs.

(Authority: 29 U.S.C. 3321)

**§ 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108?**

(a) An eligible agency must establish, within its grant or contract competition, a process that requires an eligible provider applying for funds under AEFLA to submit its application to its Local Board prior to submission to the eligible agency.

(b) The process must require eligible providers to—

(1) Submit the application to the Local Board for its review for consistency with the local plan within the appropriate timeframe; and

(2) Provide an opportunity for the Local Board to make recommendations to the eligible agency to promote alignment with the local plan.

(c) The eligible agency must consider the results of the review by the Local Board in determining the extent to which the application addresses the required considerations in § 463.20.

(Authority: 29 U.S.C. 3122(d)(11), 3321(e), 3322)

**§ 463.22 What must be included in the eligible provider's application for a grant or contract?**

(a) Each eligible provider seeking a grant or contract must submit an application to the eligible agency containing the following information and assurances:

(1) A description of how funds awarded under this title will be spent consistent with the requirements of title II of AEFLA;

(2) A description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities;

(3) A description of how the eligible provider will provide services in alignment with the local workforce development plan, including how such provider will promote concurrent enrollment in programs and activities under title I, as appropriate;

(4) A description of how the eligible provider will meet the State-adjusted levels of performance for the primary indicators of performance identified in the State's Unified or Combined State Plan, including how such provider will collect data to report on such performance indicators;

(5) A description of how the eligible provider will fulfill, as appropriate, required one-stop partner responsibilities to—

(i) Provide access through the one-stop delivery system to adult education and literacy activities;

(ii) Use a portion of the funds made available under the Act to maintain the one-stop delivery system, including payment of the infrastructure costs of the one-stop centers, in accordance with the methods agreed upon by the Local Board and described in the memorandum of understanding or the determination of the Governor regarding State one-stop infrastructure funding;

(iii) Enter into a local memorandum of understanding with the Local Board, relating to the operations of the one-stop system;

(iv) Participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding and the requirements of the Act; and

(v) Provide representation on the State board;

(6) A description of how the eligible provider will provide services in a manner that meets the needs of eligible individuals;

(7) Information that addresses the 13 considerations listed in § 463.20;

(8) Documentation of the activities required by § 463.21(b);

(9) Information, as required under § 463.24, establishing that the eligible provider has demonstrated effectiveness; and

(10) Any other information required by the eligible agency.

(b) [Reserved]

(Authority: 29 U.S.C. 3322)

**§ 463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?**

An organization that has demonstrated effectiveness in providing adult education and literacy activities is eligible to apply for a grant or contract. These organizations may include, but are not limited to:

(a) A local educational agency;

(b) A community-based organization or faith-based organization;

(c) A volunteer literacy organization;

(d) An institution of higher education;

(e) A public or private nonprofit agency;

(f) A library;

(g) A public housing authority;

(h) A nonprofit institution that is not described in any of paragraphs (a) through (g) of this section, and has the ability to provide adult education and literacy activities to eligible individuals;

(i) A consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of paragraphs (a) through (h) of this section; and

(j) A partnership between an employer and an entity described in any of paragraphs (a) through (i) of this section.

(Authority: 29 U.S.C. 3272(5))

**§ 463.24 How must an eligible provider establish that it has demonstrated effectiveness?**

(a) For the purposes of this section, an eligible provider must demonstrate past effectiveness by providing performance data on its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of English language arts, mathematics, English language acquisition, and other subject areas relevant to the proposed services described in the eligible provider's application submitted under § 463.22. An eligible provider must also provide information regarding its outcomes for participants related to employment, high school completion, and transition to postsecondary education and training.

(b) An eligible provider that has been previously funded under AEFLA must provide performance data required under its accountability provisions to demonstrate effectiveness.

(c) An eligible provider that has not been previously funded under AEFLA must provide performance data to demonstrate its effectiveness in serving basic skill-deficient eligible individuals, including evidence of its success in achieving the outcomes listed in paragraph (a) of this section.

(Authority: 29 U.S.C. 3272(5))

**§ 463.25 What are the requirements related to local administrative cost limits?**

Not more than 5 percent of a local grant to an eligible provider can be expended to administer a grant or contract under title II. In cases where 5 percent is too restrictive to allow for administrative activities, the eligible provider must negotiate with the eligible agency to determine an adequate level of funds to be used for non-instructional purposes.

(Authority: 29 U.S.C. 3323)

**§ 463.26 What activities are considered local administrative costs?**

An eligible provider receiving a grant or contract under this part may consider costs incurred in connection with the following activities to be administrative costs:

(a) Planning;

(b) Administration, including carrying out performance accountability requirements;

(c) Professional development;

(d) Providing adult education and literacy services in alignment with local workforce plans, including promoting co-enrollment in programs and activities under title I, as appropriate; and

(e) Carrying out the one-stop partner responsibilities described in § 678.420, including contributing to the infrastructure costs of the one-stop delivery system.

(Authority: 29 U.S.C. 3323, 3322, 3151)

## Subpart D—What Are Adult Education and Literacy Activities?

**§ 463.30 What are adult education and literacy programs, activities, and services?**

The term ''adult education and literacy activities'' means programs, activities, and services that include:

(a) Adult education,

(b) Literacy,

(c) Workplace adult education and literacy activities,

(d) Family literacy activities,

(e) English language acquisition activities,

(f) Integrated English literacy and civics education,

(g) Workforce preparation activities, or

(h) Integrated education and training.

(Authority: 29 U.S.C. 3272(2))

**§ 463.31 What is an English language acquisition program?**

The term ''English language acquisition program'' means a program of instruction—

(a) That is designed to help eligible individuals who are English language learners achieve competence in reading, writing, speaking, and comprehension of the English language; and

(b) That leads to—

(1)(i) Attainment of a secondary school diploma or its recognized equivalent; and

(ii) Transition to postsecondary education and training; or

(2) Employment.

(Authority: 29 U.S.C. 3272(6))

**§ 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?**

To meet the requirement in § 463.31(b), a program of instruction must:

(a) Have implemented State adult education content standards that are aligned with the State adopted standards under ESEA as described in the State's Unified or Combined State Plan and as evidenced by the use of a curriculum that is aligned with the State adult education content standards; or

(b) Offer supportive services that assist an eligible individual to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or employment; or

(c) Be part of a career pathway.

(Authority: 29 U.S.C. 3112(b)(2)(D)(ii), 3272)

**§ 463.33 What are integrated English literacy and civics education services?**

(a) Integrated English literacy and civics education services are education services provided to English language learners who are adults, including professionals with degrees or credentials in their native countries, that enable such adults to achieve competency in the English language and acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States.

(b) Integrated English literacy and civics education services must include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation and may include workforce training.

(Authority: 29 U.S.C. 3272(12))

**§ 463.34 What are workforce preparation activities?**

Workforce preparation activities include activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in:

(a) Utilizing resources;

(b) Using information;

(c) Working with others;

(d) Understanding systems;

(e) Skills necessary for successful transition into and completion of postsecondary education or training, or employment; and

(f) Other employability skills that increase an individual's preparation for the workforce.

(Authority: 29 U.S.C. 3272(17))

**§ 463.35 What is integrated education and training?**

The term ''integrated education and training'' refers to a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement.

(Authority: 29 U.S.C. 3272(11))

**§ 463.36 What are the required components of an integrated education and training program funded under title II?**

An integrated education and training program must include three components:

(a) Adult education and literacy activities as described in § 463.30.

(b) Workforce preparation activities as described in § 463.34.

(c) Workforce training for a specific occupation or occupational cluster which can be any one of the training services defined in section 134(c)(3)(D) of the Act.

(Authority: 29 U.S.C. 3272, 3174)

**§ 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be ''integrated''?**

In order to meet the requirement that the adult education and literacy activities, workforce preparation activities, and workforce training be integrated, services must be provided concurrently and contextually such that—

(a) Within the overall scope of a particular integrated education and training program, the adult education and literacy activities, workforce preparation activities, and workforce training:

(1) Are instructionally balanced proportionally across the three components, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals;

(2) Occur simultaneously; and

(3) Use occupationally relevant instructional materials.

(b) The integrated education and training program has a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies, and the program activities are organized to function cooperatively.

(Authority: 29 U.S.C. 3272)

**§ 463.38 How does a program providing integrated education and training under title II meet the requirement that the integrated education and training program be "for the purpose of educational and career advancement"?**

A provider meets the requirement that the integrated education and training program provided is for the purpose of educational and career advancement if:

(a) The adult education component of the program is aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan; and

(b) The integrated education and training program is part of a career pathway.

(Authority: 29 U.S.C. 3272, 3112)

## Subpart E [RESERVED]

## Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?

**§ 463.60 What are programs for corrections education and the education of other institutionalized individuals?**

(a) Authorized under section 225 of the Act, programs for corrections education and the education of other institutionalized individuals require each eligible agency to carry out corrections education and education for other institutionalized individuals using funds provided under section 222(a)(1) of the Act.

(b) The funds described in subsection (a) must be used for the cost of educational programs for criminal offenders in correctional institutions and other institutionalized individuals, including academic programs for—

(1) Adult education and literacy activities;

(2) Special education, as determined by the eligible agency;

(3) Secondary school credit;

(4) Integrated education and training;

(5) Career pathways;

(6) Concurrent enrollment;

(7) Peer tutoring; and

(8) Transition to re-entry initiatives and other post-release-services with the goal of reducing recidivism.

(Authority: 29 U.S.C. 3302, 3305)

**§ 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?**

(a) States may award up to 20 percent of the 82.5 percent of the funds made available by the Secretary for local grants and contracts under section 231 of the Act for programs for corrections education and the education of other institutionalized individuals.

(b) The State must make awards to eligible providers in accordance with subpart C of this part.

(Authority: 29 U.S.C. 3302, 3321)

**§ 463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?**

Each eligible agency using funds provided under programs for corrections education and the education of other institutionalized individuals to carry out a program for criminal offenders within a correctional institution must give priority to programs serving individuals who are likely to leave the correctional institution within five years of participation in the program.

(Authority: 29 U.S.C. 3305)

**§ 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?**

Funds under programs for corrections education and the education of other institutionalized individuals may be used to support educational programs for transition to re-entry initiatives and other post-release services with the goal of reducing recidivism. Such use of funds may include educational counseling or case work to support incarcerated individuals' transition to re-entry initiatives and other post-release services. Examples of allowable uses of funds include assisting incarcerated individuals to develop plans for post-release education program participation, assisting students in identifying and applying for participation in post-release programs, and performing direct outreach to community-based program providers on behalf of re-entering students. Such funds may not be used for costs for participation in post-release programs or services.

(Authority: 29 U.S.C. 3305)

## Subpart G—What Is the Integrated English Literacy and Civics Education Program?

**§ 463.70 What is the Integrated English Literacy and Civics Education program?**

(a) The Integrated English Literacy and Civics Education program refers to the use of funds provided under section 243 of the Act for education services for English language learners who are adults, including professionals with degrees and credentials in their native countries.

(b) The Integrated English Literacy and Civics Education program delivers educational services as described in § 463.33.

(c) Such educational services must be delivered in combination with integrated education and training services as described in § 463.36.

(Authority: 29 U.S.C. 3272, 3333)

**§ 463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?**

(a) The Secretary awards grants under the Integrated English Literacy and Civics Education program to States in accordance with this section.

(b) The Secretary allocates funds to States following the formula described in section 243(b) of the Act:

(1) Sixty-five percent is allocated on the basis of a State's need for integrated English literacy and civics education, as determined by calculating each State's share of a 10-year average of the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence for the 10 most recent years; and

(2) Thirty-five percent is allocated on the basis of whether the State experienced growth, as measured by the average of the three most recent years for which the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence are available.

(3) No State will receive an allotment less than $60,000.

(Authority: 29 U.S.C. 3333)

**§ 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?**

States must award funds for the Integrated English Literacy and Civics Education program to eligible providers in accordance with subpart C of this part.

(Authority: 29 U.S.C. 3321)

**§ 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?**

Eligible providers receiving funds through the Integrated English Literacy and Civics Education program must provide services that—

(a) Include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation.

(b) Are in combination with integrated education and training.

(c) Are designed to:

(1) Prepare adults who are English language learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency; and

(2) Integrate with the local workforce development system and its functions to carry out the activities of the program.

(Authority: 29 U.S.C. 3272, 3333)

**§ 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?**

An eligible provider that receives funds through the Integrated English Literacy and Civics Education program can meet the requirement to provide services in combination with integrated education and training by providing:

(a) Integrated English literacy and civics education activities as described in subpart D and integrated education and training as described in subpart D to eligible individuals as defined in this subpart; or

(b) Integrated English literacy and civics education activities as described in subpart D to eligible individuals as described in this subpart and co-enrolling participants in integrated education and training programs provided within the local or regional workforce development area.

(Authority: 29 U.S.C. 3333, 3121, 3122, 3123)

**§ 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?**

Individuals who otherwise meet the definition of ''eligible individual'' and are English language learners, including professionals with degrees and credentials obtained in their native countries, may receive Integrated English Literacy and Civics Education services.

(Authority: 29 U.S.C. 3272)

## Subparts H–K—[RESERVED]

## PART 472—[REMOVED AND RESERVED]

■ 18. Remove and reserve part 472.

## PART 477—[REMOVED AND RESERVED]

■ 19. Remove and reserve part 477.

## PART 489—[REMOVED AND RESERVED]

■ 20. Remove and reserve part 489.

## PART 490—[REMOVED AND RESERVED]

■ 21. Remove and reserve part 490.

[FR Doc. 2015–05540 Filed 4–2–15; 4:15 pm]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 367, 369, 370, 371, 373, 376, 377, 379, 381, 385, 386, 387, 388, 389, 390, and 396

**RIN 1820–AB71**

**[Docket No. 2015–ED–OSERS–0002]**

## Workforce Innovation and Opportunity Act, Miscellaneous Program Changes

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act, enacted on July 22, 2014.

The Secretary also proposes to implement changes to the Act made by the Workforce Investment Act, enacted on August 7, 1998, that have not previously been implemented in regulations, and to otherwise update, clarify, and improve RSA's current regulations.

**DATES:** We must receive your comments on or before June 15, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 Potomac Center Plaza (PCP), Washington, DC 20202–2800.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 PCP, Washington, DC 20202–2800.

Telephone: (202) 245–7488, or by email: *Janet.LaBreck@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in Room 5093, Potomac Center Plaza, 550 12th Street SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Secretary proposes to amend the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act (WIOA), enacted on July 22, 2014 (Pub. L. 113–128). These programs and their corresponding regulations are:

- The Independent Living Services for Older Individuals Who Are Blind (OIB) program, 34 CFR part 367;
- The Client Assistance Program (CAP), 34 CFR part 370;
- The American Indian Vocational Rehabilitation Services (AIVRS) program, 34 CFR part 371 (formerly known as ''Vocational Rehabilitation Service Projects for American Indians with Disabilities'');
- The Rehabilitation National Activities program, 34 CFR part 373 (formerly known as ''Special Demonstration Projects'');
- The Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381;
- The Rehabilitation Training program, 34 CFR part 385;
- The Rehabilitation Long-Term Training program, 34 CFR part 386;
- The Innovative Rehabilitation Training Program, 34 CFR part 387 (formerly known as the ''Experimental and Innovative Training'');
- The Rehabilitation Short-Term Training Program, 34 CFR part 390; and
- The Training of Interpreters for Individuals Who are Deaf or Hard of Hearing and Individuals who are Deaf-Blind program, 34 CFR part 396 (formerly known as the ''Training of Interpreters for Individuals Who are Deaf and Individuals who are Deaf-Blind program'').

WIOA also repealed the statutory authority for four programs, and the Secretary, therefore, proposes to remove their corresponding regulations. These programs and regulations are:

- Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities (Migrant Workers) program, portions of 34 CFR part 369;
- Projects for Initiating Special Recreation Programs for Individuals with Disabilities (Recreational programs), portions of 34 CFR part 369;
- Projects with Industry, 34 CFR part 379 and portions of part 369; and
- The State Vocational Rehabilitation Unit In-Service Training program, 34 CFR part 388.

In addition, the Secretary proposes to implement changes to the Act made by

the Workforce Investment Act (WIA), enacted August 7, 1998 (Pub. L. 105–220). These changes were not previously implemented in the applicable regulations. The Secretary proposes these changes to the OIB, CAP, AIVRS, and PAIR program regulations.

Separate and apart from amendments to the Act made by WIOA and WIA, the Secretary proposes to update and clarify the regulations governing the various rehabilitation training programs—34 CFR parts 373, 385, 386, 387, and 396—and 34 CFR part 390, which governs the Rehabilitation Short-Term Training program. These regulations have not been updated in some time, and updating them now is intended to improve how these programs function.

Finally, as part of this update, the Secretary proposes to remove regulations that are superseded or obsolete and to consolidate regulations, where appropriate. The Secretary proposes to remove the balance of 34 CFR part 369 that does not apply to the Migrant Workers program, the Recreational Programs, the Projects With Industry program, and parts 376, 377, and 389.

**Proposed Regulations**

Because the amendments we propose in this document are so many and varied, we discuss first those programs whose regulations we propose to amend and not remove. We discuss them in the order in which their parts appear in the Code of Federal Regulations (CFR). For each part, we provide a short background of the program, a summary of the changes we propose, and a detailed discussion of the significant proposed regulations. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

**Independent Living Services for Older Individuals Who Are Blind (OIB), 34 CFR Part 367**

*Background*

The program makes grants to designated State agencies (DSAs) that provide vocational rehabilitation services to individuals who are blind. DSAs provide to older individuals who are blind or visually impaired independent living services designed to increase or maintain their ability to live independently. The Department last published regulations for this program in 1994 (59 FR 41909 (August 15, 1994)).

*Summary of Proposed Changes*

These proposed regulations would implement the changes WIOA made to title VII, Chapter 2, of the Act. We would require that not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind.

In addition, the Secretary proposes to incorporate into part 367 the text of relevant provisions of parts 364 and 365 regarding general independent living and State independent living services that were previously incorporated only by reference. This change is necessary because WIOA transferred the Independent Living Services and Centers for Independent Living programs to the Administration for Community Living of the Department of Health and Human Services. Due to this transfer, parts 364 and 365 will no longer be applicable to programs administered by the Department of Education and will eventually be removed.

*Significant Proposed Regulations*

Because we propose to make a number of structural and numbering revisions to part 367, we discuss the proposed changes by subpart and, within each subpart, by subject or section.

*Subpart A—General*

*Statute:* WIOA added a new subparagraph (E) in section 7(17) of the Act. This new subparagraph specifies that services to facilitate the transition of individuals from nursing homes and other institutions to home and community based residences with the requisite supports and services are core IL services and, as such, may be provided by the OIB program. Grantees may also provide assistance and services to older individuals who are blind and who are at risk of entering institutions so that they may remain in the community.

*Current Regulations:* Current § 367.3(b)(7) does not list this service specifically. It lists a broad array of independent living services that may be provided to older individuals who are blind, but does not reference the specific service added by WIOA.

*Proposed Regulations:* Current § 367.3(b)(7) would be expanded to include the specific IL service authorized by WIOA in the new subparagraph (E) in section 7(17) of the Act as an allowable service under the OIB program.

*Reasons:* The inclusion of the IL service in the proposed regulations is consistent with changes in the IL core services defined in WIOA and allows for the provision of these services by the OIB program.

*Transfer of Title VII, Chapter 1 IL Programs*

*Statute:* Title VII, Chapter 1, Section 701A of the Act (29 U.S.C. 796), as amended by WIOA, establishes within the Administration for Community Living (ACL) of the Department of Health and Human Services an Independent Living Administration that will be the principal agency to carry out the Independent Living Services and Centers for Independent Living programs. WIOA transfers these programs to ACL from RSA. The Department of Education continues to administer title VII, Chapter 2 of the Act, which authorizes OIB.

*Current Regulations:* Current § 367.4(c) refers to certain sections of parts 364 and 365 rather than restating the same text in full. The relevant sections in part 364 address definitions; the use and obligation of Federal funds and program income; notice of the Client Assistance Program (CAP); access to records; and special requirements for the protection, use, and release of personal information. The sections in part 365 set out requirements and conditions for cash or in-kind contributions as they apply to a State's non-Federal share, awards, subawards, or contractors.

*Proposed Regulations:* We propose to remove these cross references from current § 367.4 and amend current part 367 to provide the full text of the relevant sections in parts 364 and 365 to which current § 367.4 now only cross references.

*Reasons:* With the transfer of the Independent Living Services and Centers for Independent Living programs from RSA to ACL, parts 364 and 365 will no longer be applicable to programs administered by the Department of Education and will eventually be removed. We propose to move language into part 367 that is relevant to the functioning of the OIB program.

*Proposed New Subpart B—Training and Technical Assistance (Replaces Current Subpart B)*

*Statute:* WIOA added to title VII, chapter 2 of the Act section 751A, which requires that, beginning in FY 2015, not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind that

are funded under the OIB program; that the Secretary conduct a survey of DSAs that are OIB program grantees to determine funding priorities for the training and technical assistance; and that the Secretary shall provide for peer review of applications to provide training and technical assistance from eligible entities by panels that include persons who are not government employees and who have experience in the provision of services to older individuals who are blind.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a new subpart B to part 367, consisting of §§ 367.20 through 367.24, to govern how the Department would assess the grantees' training and technical assistance needs and how it would provide training and technical assistance under OIB.

Proposed § 367.20 would provide that the Secretary reserve not less than 1.8 percent and not more than 2 percent of the funds appropriated to carry out the OIB program to provide training and technical assistance in any fiscal year, beginning in FY 2015, to DSAs or other providers of independent living services for older individuals who are blind during such fiscal year.

Proposed § 367.21 would explain how the Secretary uses the funds specified in § 367.20 to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements to entities that have the capacity to provide such training and technical assistance. Any selected entity receiving funding would provide training and technical assistance to DSAs or other service providers, assisting them to improve the operation and performance of the program leading to enhanced independence and self-sufficiency for older individuals who are blind.

Proposed § 367.22 would describe how the Secretary makes an award under subpart B for training and technical assistance. It would require an applicant to submit an application to the Secretary containing a proposal for the provision of training and technical assistance to DSAs and other providers of services under the OIB program. Proposed § 367.22 would also require applications to be peer reviewed by panels that include individuals who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

Proposed § 367.23 would provide that the Secretary conduct a survey of DSAs that receive OIB grants to assess their training and technical assistance needs and to inform decisions about funding priorities.

Proposed § 367.24(a) and (b) would provide that the Secretary evaluate applications for a grant, cooperative agreement, or contract under subpart B on the basis of selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210. If a contract is awarded, it would be made in accordance with regulations at 34 CFR part 75.

*Reasons:* The proposed new subpart B gives effect to the new training and technical assistance requirements and the manner in which these requirements are implemented, including a survey of needs and the funding of activities either directly or through a peer reviewed competitive process consistent with the Department's practices.

*Proposed New Subpart C—What Are the Application Requirements Under This Part? (Current Subpart B)*

*Statute:* None.

*Current Regulations:* Current subpart B consists of §§ 367.10 and 367.11, which set out the manner in which a DSA applies for an award or a reallotment grant and the required assurances that a DSA must include in an application.

*Proposed Regulations:* We propose to redesignate current subpart B as subpart C and to change its title to ''What Are the Application Requirements Under this Part?'' We propose as well to renumber the sections in the new subpart §§ 367.30 and 367.31.

*Reason:* We propose to redesignate current subpart B as subpart C to make room for a new subpart that addresses WIOA's requirement to provide training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind.

*Removal of State Plan for Independent Living OIB Requirements*

*Statute:* WIOA deletes the requirement in section 752(h) of the Act (29 U.S.C. 796k(h)) for the State to seek to incorporate into the State Plan for Independent Living any new methods and approaches relating to independent living services for older individuals who are blind.

*Current Regulations:* Current § 367.11(c) requires the DSA to seek to incorporate into and describe in the State plan for independent living (SPIL) any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded by OIB and that the DSA determines to be effective.

Current § 367.11(f) requires that applications be consistent with the SPIL for providing required independent living services under section 704 of the Act.

*Proposed Regulations:* We propose to remove current § 367.11(c) and (f).

*Reason:* Removing current § 367.11(c) and (f) would implement WIOA's removal of these requirements from the OIB program and eliminate the connection of OIB to the State Plan for Independent Living, required by title VII, chapter 1, now administered by ACL.

*Proposed New Subpart D—How does the Secretary award discretionary grants? (Current Subpart C)*

*Statute:* None.

*Current Regulations:* The current subpart C consists of §§ 367.20 through 367.23 and is entitled ''How Does the Secretary Award Discretionary Grants on a Competitive Basis?''

Current § 367.22 provides specific selection criteria used by the Secretary in awarding discretionary grants.

Current § 367.23 provides for the consideration of geographical distribution of projects in making an award.

Current § 367.42(a) and (b) provide the basis for noncompetitive continuation grants.

*Proposed Regulations:* We propose to redesignate and retitle subpart C as ''Subpart D—How Does the Secretary Award Discretionary Grants?'' We propose to renumber the sections within subpart D to begin with § 367.40.

Proposed § 367.40(b) would insert the basis for the award of noncompetitive continuation grants by the Secretary for a multi-year project. This is in current regulations at § 367.42(a) and (b).

We propose to eliminate the specific selection criteria included in current § 367.22. In its place, proposed § 367.41(a) would provide for the evaluation of applications based on the selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210.

Proposed § 367.41(b) would allow for consideration of geographical distribution of projects in making an award, replacing the current regulation at § 367.23.

*Reasons:* Though the Department currently does not make discretionary grants under OIB, we are nonetheless proposing to update the relevant regulations to ensure that we have appropriate flexibility in designing competitions and awarding grants should the appropriation ever fall below $13 million.

*Proposed New Subpart E—How does the Secretary award formula grants? (Current Subpart D)*

Formula Grant Awards—Reallotment

*Statute:* Section 752(i)(4) of the Act, as amended by WIOA, provides for the disposition of certain amounts under formula grants.

*Current Regulations:* Current Subpart D consists of § 367.30 through § 367.32.

Current § 367.32 sets out the procedures for how the Secretary reallots funds under the formula grants program.

*Proposed Regulations:* We propose to redesignate current subpart D as ''Subpart E—''How Does the Secretary Award Formula Grants?'' We propose to renumber the sections in this subpart to begin with § 367.50.

Proposed § 367.52(e) would require that an OIB grantee inform the Secretary 45 days prior to the end of the fiscal year that funds would be available for reallotment.

*Reasons:* This proposed change would bring the OIB program reallotment requirements into alignment with other formula grants administered by RSA. This timeline would ensure that RSA receives timely notice of relinquished funds and is able to award realloted funds to grantees prior to the end of the Federal fiscal year. This proposed change is consistent with RSA's current practices.

*Proposed New Subpart F—What conditions must be met after an award? (Current Subpart E)*

*Statute:* Section 701A of the Act (29 U.S.C. 796 *et seq.*), as amended by WIOA, establishes within the Administration for Community Living in the Department of Health and Human Services a new Independent Living Administration that will administer the independent living programs under chapter 1 of title VII of the Act. Consequently, the independent living regulations in parts 364 and 365, which are referenced in part 367, will no longer be administered by the Department of Education. Therefore, the relevant sections of parts 364 and 365 are being incorporated into part 367.

*Current Regulations:* Current subpart E consists of §§ 367.40 through 367.42, which provide the conditions that must be met after an award is made, including matching requirements, when a DSA may award grants or contracts, and when continuation awards may be made.

*Proposed Regulations:* We propose to redesignate current subpart E as subpart F, to remove the provisions in current subpart E, and to replace them with new sections beginning with § 367.60.

Proposed § 367.60 would provide guidance on when a DSA may make subawards or contracts under the OIB program.

Proposed § 367.61 would provide the regulatory requirements to meet the non-Federal contribution required by § 367.31(b).

Proposed § 367.62 would address the requirements that apply if a State's non-Federal share is in cash.

Proposed § 367.63 would provide the requirements that apply if a State's non-Federal share is in kind.

Proposed § 367.64 would provide for a prohibition against a State conditioning a subaward or contract based on a cash or in-kind contribution.

Proposed § 367.65 would provide the definition of program income and how it may be used.

Proposed § 367.66 would provide the requirements that apply to the obligation of Federal funds and program income.

Proposed § 367.67 would describe the notice that must be given about the Client Assistance Program.

Proposed § 367.68 would provide the specific requirements pertaining to the protection, use, and release of personal information belonging to applicants or recipients of services.

Proposed § 367.69 would provide the requirements related to the provision of access to records.

Proposed § 367.70 would provide requirements regarding the maintenance of records by DSAs and other providers.

*Reasons:* OIB grantees have always been required to comply with these proposed provisions because current § 367.4 incorporates them by reference from parts 364 and 365. Because the IL programs implementing parts 364 and 365 will no longer be administered by the Department of Education, and because those parts will be removed in the future, we propose to move the text of the applicable provisions to part 367 so that the OIB program can continue to function appropriately.

**Client Assistance Program (CAP), 34 CFR Part 370**

*Background*

CAP is authorized under section 112 of the Act (29 U.S.C. 732). CAP grantees provide information to individuals with disabilities about the services and benefits available under the Act and their rights under title I of the Americans with Disabilities Act. In addition, CAP grantees are authorized to provide advocacy and legal representation to individuals seeking or receiving services under the Act in order to resolve disputes with programs providing those services, including vocational rehabilitation services.

The Department last updated the regulations at 34 CFR part 370, which govern the CAP, on November 2, 1995 (60 FR 55766).

*Summary of Proposed Changes*

Both WIOA and WIA made significant changes to section 112 of the Act. To implement those changes made by WIA, the Secretary proposes to amend the regulations governing the redesignation of a designated CAP agency to require the Governor to redesignate the designated CAP agency if it is internal to the designated State agency (DSA) for the Vocational Rehabilitation program and that DSA undergoes a significant reorganization that meets certain statutory criteria.

The Secretary proposes three substantive changes to incorporate statutory changes made to section 112 by WIOA. First, we would add the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a CAP grant. Second, we would require the Secretary to reserve funds from the CAP appropriation, once it reaches a specified level, to award a grant for the provision of training and technical assistance to designated CAP agencies. Finally, we would clarify that authorized activities under the CAP include assisting client and client-applicants who are receiving services under sections 113 and 511 of the Act.

In addition to substantive changes required by statutory amendments, the Secretary also proposes other changes to update part 370 so that it, among other things, conforms with RSA practice (*i.e.,* with regard to submission of application and assurances) or reflects current CAP grantee practice (*i.e.,* with regard to contracts with centers for independent living).

*Significant Proposed Regulations*

We organize our discussion of proposed changes by subject and section.

*Clients and Client-Applicants (§ 370.1)*

*Statute:* Section 112(a) of the Act, as amended by WIOA (29 U.S.C. 732(a)), clarifies that CAP grantees may provide information, advocacy, and representation to clients and client-applicants to facilitate their access to services available under the Act, including pre-employment transition services provided under section 113 and the services provided pursuant to

section 511 regarding limitations on the use of subminimum wages.

In addition, the Act, as amended by WIOA, includes new definitions for a ''student with a disability'' and a ''youth with a disability,'' at section (7)(37) and (42), respectively, for the purpose of receiving pre-employment transition services and/or other transition services through the vocational rehabilitation program.

*Current Regulations:* The current § 370.1(a) states that CAP grantees are authorized to inform and assist client and client-applicants about services available through programs authorized under the Act. Current § 370.1(a) does not mention the services provided under sections 113 and 511, nor does current § 370.4 specifically refer to students and youth with disabilities since these are new statutory requirements.

*Proposed Regulations:* We propose to amend current § 370.1(a) to clarify that the CAP may assist individuals who are receiving or applying to receive services under sections 113 and 511 of the Act.

We propose to amend current § 370.4(a)(3)(ii) to clarify that students and youth with disabilities applying for and receiving services under the Act are considered clients and client-applicants for the purpose of receiving CAP services.

Finally, we propose to amend current § 370.4(b) to clarify that in all instances, references to services provided under the Act in the context of this paragraph are those provided under title I of the Act.

*Reasons:* While WIOA does not expand the scope of authorized activities or those individuals with disabilities who may be served by CAP grantees, the amendments to section 112 make specific reference to individuals receiving services under sections 113 and 511 of the Act. The proposed regulations incorporate these same references for the purpose of clarification. For clarification purposes, the proposed regulations also incorporate references to students and youth with disabilities.

*Centers for Independent Living (§ 370.2)*

*Statute:* None.

*Current Regulations:* Current § 370.2(f) permits a designated CAP agency that, at the time of its initial designation prior to February 22, 1984, was contracting for CAP services with centers for independent living, to continue those contracts. This was promulgated as an exception to the general prohibition in current § 370.2(e) against contracting with entities that provide treatment and services under the Act.

*Proposed Regulations:* We propose to amend paragraphs (e) through (g) of current § 370.2 to eliminate the CAP's authority to contract with centers for independent living. We also propose to amend current § 370.41 by deleting all references to the authority to contract with centers for independent living.

*Reasons:* According to information available to the Secretary, no CAP agency that had contracted with centers for independent living for the provision of CAP services at the time of its initial designation still does so, thus making the need for the exception and the reference to contracting with centers for independent living obsolete.

*The Definition of ''State'' (§ 370.6)*

*Statute:* Section 7(32) of the Act, as amended by WIA (29 U.S.C. 705(32)), deleted the Republic of Palau from the definition of the term ''State.'' As a result, ''State'' includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Section 7(32) of the Act was renumbered as section 7(34) by WIOA.

*Current Regulations:* Current § 370.6 includes Palau in the definition of ''State'' because the statutory definition changed after part 370 was last updated. Current § 370.30(b), last updated in 1995, provides for the funding of the territories, including the Republic of Palau.

*Proposed Regulations:* We propose to delete the Republic of Palau from the definition of ''State'' at current § 370.6. We also propose to amend current § 370.30(b) to delete reference to the Republic of Palau.

*Reasons:* This change is necessary to implement the new statutory definition of ''State,'' which forms the basis for determining eligibility for grants under the Act.

*Definition of ''Systemic Advocacy'' (§ 370.6)*

*Statute:* Section 112(d) of the Act (29 U.S.C. 732(d)) prohibits CAP grantees from engaging in class action litigation as a form of systemic advocacy. This statutory prohibition remains unchanged.

*Current Regulations:* The definition of ''systemic advocacy'' in current § 370.6 includes reference to class action lawsuits.

*Proposed Regulations:* We propose to amend the definition of ''systemic advocacy'' by removing reference to class action lawsuits.

*Reasons:* Although the Act specifically prohibits a CAP agency from engaging in class actions, CAP grantees are permitted to engage in systemic advocacy, which could be carried out without the initiation of a class action lawsuit. We believe that the proposed definition of ''systemic advocacy'' is broad enough to encompass all allowable systemic advocacy activities, while also eliminating the potential for misinterpreting § 370.6 as allowing CAP grantees to engage in class action lawsuits.

*Requirements for Redesignation (§ 370.10)*

*Statute:* Section 112(c)(1)(B)(ii) of the Act, as amended by WIA (29 U.S.C. 732(c)(1)) requires the Governor to redesignate a CAP agency housed in a DSA for the vocational rehabilitation program, if the DSA is reorganized to create one or more agencies or is merged into another agency.

*Current Regulations:* Current § 370.10 describes when a Governor must redesignate a CAP agency, but does not include this particular requirement because part 370 was last updated in 1995, prior to the amendments to the Act made by WIA.

*Proposed Regulations:* We propose to amend current § 370.10 by adding a new paragraph (a) that would require the Governor to redesignate an internal CAP—*e.g.,* a CAP that is housed within the DSA for the vocational rehabilitation program—when the DSA undergoes a significant reorganization that meets the criteria stated in the statute.

We also propose to amend this section by adding references to 34 CFR 361.5(c)(12) to clarify the meaning of designated State agency in this context in order to eliminate any potential confusion, given the similarities of the terms ''designated agency'' for the CAP grantees and ''designated State agency'' for the vocational rehabilitation program.

*Reasons:* These proposed changes would implement the 1998 amendments to the Act contained in WIA.

*Submission of Application (§ 370.20)*

*Statute:* Section 112(f) of the Act (29 U.S.C. 732(f)) requires CAP grantees to submit an application at the time and in the manner prescribed by the Secretary as a condition for receiving funding. The statutory requirement remains unchanged.

*Current Regulations:* Current § 370.20(a) requires CAP grantees to

submit an application annually as a condition for receiving funding.

*Proposed Regulations:* We propose to amend current § 370.20(a) by deleting the requirement for annual submission and, instead, mirroring statutory language that gives the Secretary flexibility for the timing of these submissions.

*Reasons:* Proposed § 370.20(a) would be consistent with the statutory requirements at section 112(f) of the Act, thereby giving the Secretary the flexibility to determine when submission of an application, including assurances, is necessary for efficient program administration. Since 2005, the Department has required Governors to submit the application, including assurances, only at the time of an initial designation or redesignation of a CAP grantee.

*American Indian Consortium (§ 370.30)*

*Statute:* Section 112(e)(1)(E) of the Act, as amended by WIOA (29 U.S.C. 732(e)), requires the Secretary to reserve funds from the CAP appropriation to make a grant to the protection and advocacy system serving the American Indian Consortium in an amount equal to that allotted to the territories.

*Current Regulations:* Current § 370.30 describes allotments to CAP grantees, but does not mention the protection and advocacy system serving the American Indian Consortium since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 370.30 by adding a new paragraph (c) that would require the Secretary to reserve funds to award a CAP grant to the protection and advocacy system serving the American Indian Consortium. This grant would be made at the level of funding authorized for a territory. We also propose to make conforming amendments to the following related regulations.

We propose to amend current § 370.2(a) to add the protection and advocacy system serving the American Indian Consortium as eligible to receive a CAP grant.

We propose to amend current § 370.6 to: (a) Incorporate references to tribal governmental agencies in the definition of ''advocacy''; (b) add new definitions for the terms ''American Indian Consortium'' and ''protection and advocacy system''; and (c) amend the definition of ''designated agency'' to include the protection and advocacy system serving the American Indian Consortium.

We propose to amend current § 370.20, which governs applications for CAP grants, by adding references to the protection and advocacy system serving the American Indian Consortium, to clarify that this entity is responsible for submitting the application and assurances for a CAP grant. For all other CAP grantees, the Governor would submit the application and assurances on behalf of the grantees.

We propose to amend current § 370.40(c) to clarify that the protection and advocacy system serving the American Indian Consortium is responsible and accountable for the CAP to the Secretary, and the Secretary may seek recovery of funds from that entity, if determined necessary.

*Reasons:* The proposed changes are necessary to implement new statutory requirements that add the protection and advocacy system serving the American Indian Consortium as eligible to receive a CAP grant. The protection and advocacy system serving the American Indian Consortium is established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. Until the enactment of WIOA, this particular protection and advocacy system was authorized to provide services under other components of the protection and advocacy system, including the Protection and Advocacy of Persons with Developmental Disabilities, the Protection and Advocacy of Individuals with Mental Illness, and the Protection and Advocacy of Individual Rights programs, but not CAP. In addition, the Secretary believes it is critical to clarify through the regulations that the CAP administered by the protection and advocacy system serving the American Indian Consortium, as a new grantee, has the ability to engage in advocacy on behalf of clients and client-applicants with tribal governmental agencies since those agencies likely would be most relevant to the issues raised by clients and client-applicants of that particular CAP. Therefore, we propose to clarify that advocacy includes acting on behalf of the clients or client-applicants with tribal governmental agencies. Finally, we believe it is important to clarify that the protection and advocacy system serving the American Indian consortium is specifically established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000; therefore, this CAP agency is not one that is designated by the Governor as are all other CAP grantees.

*Training and Technical Assistance (§ 370.30)*

*Statute:* Section 112(e)(1)(F) of the Act, as amended by WIOA (29 U.S.C. 732(e)(1)(F)), requires the Secretary to reserve a portion of the total CAP appropriation, once it equals or exceeds $14 million, to award a grant for the purpose of providing training and technical assistance to CAP grantees.

*Current Regulations:* Current § 370.30 describes the allotment process, but does not address this particular reservation of funds since it is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 370.30 by adding a new paragraph (d) that requires the Secretary to reserve funds from the CAP appropriation, once it equals or exceeds $14 million, to fund training and technical assistance to designated CAP agencies. The training and technical assistance provided under this section, as proposed, must be carried out in coordination with the training and technical assistance activities provided under the Protection and Advocacy of Individual Rights program at 34 CFR part 381.

We also propose to revise current § 370.5(a)(1) to clarify that part 75 of EDGAR applies to the grant made in accordance with § 370.30(d)(1).

*Reasons:* The changes are necessary to implement amendments to section 112 of the Act made by WIOA that require the Secretary to award a grant for the purpose of providing training and technical assistance to CAP grantees once the CAP appropriation reaches a certain level and are intended to help designated CAP agencies improve their operations and service delivery.

*Reallotment (§ 370.31)*

*Statute:* Section 112(e)(2) of the Act (29 U.S.C. 732(e)(2)) sets forth the process by which the Secretary reallots funds when a CAP grantee cannot use all funds awarded to it. This statutory provision remains unchanged.

*Current Regulations:* Current § 370.31(a) requires a CAP grantee to notify the Secretary 90 days prior to the end of the fiscal year of funds awarded for that year that are available for reallotment.

*Proposed Regulations:* We propose to amend current § 370.31(a) to reduce to 45 days the period a designated CAP agency has to inform the Secretary if funds will be available for reallotment.

*Reasons:* This change is necessary to bring the CAP requirements into alignment with current practices for other formula grants administered by the Rehabilitation Services Administration. The Secretary believes this proposed change would benefit CAP grantees because each would have 45 more days to determine whether it would be unable to use the awarded funds and, thus, would need to relinquish those funds for reallotment. In practice, CAP grantees rarely

relinquish funds since those funds are available for use in the succeeding fiscal year.

*Carryover (§ 370.47)*

*Statute:* Section 19 of the Act permits CAP grantees to carry over funds received under section 112 of the Act to the succeeding fiscal year. This statutory provision remains unchanged.

*Current Regulations:* Current § 370.47(b) requires CAP grantees to notify the Secretary if they are carrying over funds into the fiscal year succeeding that in which the funds were awarded.

*Proposed Regulations:* We propose to delete paragraph (b) of current § 370.47 to align the regulations with section 19 of the Act and current Department practice, neither of which requires grantees to inform the Department of an intent to carry over funds.

We propose to renumber current § 370.47 as § 370.48 and include language clarifying reallotment funds that are not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year, may be carried over to the succeeding fiscal year and remain available for obligation and expenditure in that succeeding fiscal year.

*Reasons:* Neither section 19 of the Act nor the Department's current practice require designated agencies to inform the Secretary that funds, including any reallotment funds, are being carried over into the succeeding fiscal year.

*Program Income (§ 370.47)*

*Statute:* Section 19 of the Act governs the use of program income received by various programs, including the CAP. This statutory provision remains unchanged.

*Current Regulations:* None.

*Proposed Regulations:* We propose to rename § 370.47 as ''What is program income and how may it be used?'' Proposed § 370.47 would define program income, identify its uses, and permit it to be treated as either an addition or deduction to the CAP award.

In addition, we propose amending renumbered § 370.48 to permit program income to be carried over into the succeeding fiscal year.

*Reasons:* These regulations are necessary to govern the use and treatment of program income, consistent with section 19 of the Act. Additionally, designated CAP agencies that earn program income, or receive transferred Social Security Administration payments from the vocational rehabilitation program, have historically been permitted to spend the program income as an addition to their Federal award.

**American Indian Vocational Rehabilitation Services Program (AIVRS), 34 CFR Part 371**

*Background*

The program makes grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of those governing bodies). Grantees provide vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near these reservations, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that these individuals may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency. The Department last made a comprehensive revision of the regulations for this program on February 18, 1994 (59 FR 8338).

*Summary of Proposed Changes*

These proposed regulations would implement the changes WIOA made to section 121 of title I of the Act. WIOA expanded the definition of ''Indian'' to include natives and descendants of natives under the Alaska Native Claims Settlement Act. WIOA amended the definition of ''Indian tribe'' to include a ''tribal organization.'' Proposed subpart B would amend the AIVRS regulations to implement the WIOA requirement that not less than 1.8 percent and not more than 2 percent of the funds for the AIVRS program be reserved to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies eligible for a grant under this program.

The proposed amendments also implement changes made by WIA in 1998 that have not previously been incorporated, such as the expansion of services to American Indians with disabilities living ''near'' a reservation, as well as ''on'' a reservation and the change of the project period from up to three to up to five years. Additionally, we propose to incorporate relevant sections of part 369, which the Department proposes to repeal, and relevant sections of part 361, particularly definitions found in each of those parts.

*Significant Proposed Regulations*

Because we propose to make a number of structural and numbering revisions to part 371, we discuss the proposed changes by subpart and, within each subpart, by subject or section.

*Subpart A—General*

*Statute:* The statutory title of this program is ''American Indian Vocational Rehabilitation Services.''

*Current Regulations:* The current title for the program in the regulation is ''Vocational Rehabilitation Service Projects for American Indians with Disabilities.''

*Proposed Regulations:* We propose to change the title of part 371 to ''American Indian Vocational Rehabilitation Services.''

*Reasons:* The change would make the title of the regulations consistent with the statutory title of the program, eliminating any confusion.

*Statute:* WIOA clarified the purpose of the AIVRS program. It added language to section 121(a) of the Act describing that services would be provided to American Indians with disabilities consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

WIA amendments in 1998 added the ability of AIVRS projects to serve American Indians with disabilities who live ''near'' the reservation in addition to ''on'' the reservation. Additionally, section 121(b)(B) of the Act authorizes projects funded under this program to include ''services traditionally used by Indian tribes.''

*Current Regulations:* Current § 371.1 does not include the ability of projects to serve individuals ''near'' a reservation, nor does it make clear that projects may provide culturally appropriate services (*i.e.,* services traditionally used by Indian tribes). While it includes some of the language regarding the purpose of the program, it does not include all of the new language added by WIOA.

*Proposed Regulations:* We propose to amend § 371.1 to restate the purpose of the program and include the new language added to section 121 of the Act by WIOA. Current § 371.1 would also be updated to include the expanded eligibility of beneficiaries in the WIA 1998 amendments to section 121.

*Reasons:* The regulations would properly reflect the purpose of the program restated by WIOA and the expansion of services to American Indians with disabilities who live ''near'' the reservation made by WIA in 1998.

*Statute:* WIOA affects eligibility for the AIVRS program by including a ''tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))'' in the definition of ''Indian tribe'' under section 7(19) of the Act. By adding the authority to make awards of grants, contracts, or cooperative agreements for training and technical assistance under this program, WIOA also expands the eligibility of entities able to apply for funding under this program.

*Current Regulations:* Section 371.2 does not reflect the expanded eligibility of tribal organizations for AIVRS projects or of other entities for the new training and technical assistance funds, providing only that applications may be made by the governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations.

*Proposed Regulations:* Proposed § 371.2 would explain how a governing body of an Indian tribe, a consortium, and a tribal organization may each be an applicant for a grant under the AIVRS program. In order to ensure that a tribal organization is capable of carrying out the purposes of the AIVRS program, proposed § 371.2(a)(2) would require that the tribal organization has, as one of its functions, the vocational rehabilitation of American Indians with disabilities. Proposed § 371.2(a)(3) would require that a grant to an applicant serving more than one tribe must have the approval of each tribe it proposes to serve. This section would also identify those entities eligible to be applicants for a training and technical assistance award under the AIVRS program.

*Reasons:* The proposed amendments would incorporate the WIOA changes to eligibility for awards under the AIVRS program for both AIVRS projects and the training and technical assistance funds. The amendments would also clarify certain requirements the applicant for an AIVRS award must meet in order to fulfill the purposes of the program.

*Statute:* Section 121(a) of the Act describes the type of projects that are authorized to be funded under the AIVRS program.

*Current Regulations:* Current § 371.10 describes the types of projects that are authorized under the AIVRS program but does not include the 1998 amendments made by WIA that expanded the individuals that could be served to those who live ''near,'' as well as ''on,'' the reservation.

*Proposed Regulations:* We propose to renumber current § 371.10 to § 371.3 and to add the authority for AIVRS projects to serve individuals who reside ''near'' a reservation as well as ''on'' a reservation. We also propose to change the language of this section to reflect the change in the title of this part to be consistent with the statutory title of the program.

*Reason:* We propose to move and renumber § 371.10 to § 371.3 in order to move that provision to accompany the other general provisions in subpart A. We propose to update the language in order to be consistent with the statutory changes made by WIA in 1998 and the change made to the title of the regulations in this part.

*Statute:* Section 121(b)(3) of the Act was amended by WIA in 1998 to provide that projects funded under the AIVRS program are effective for a period up to 60 months.

*Current Regulations:* Current § 371.5 provides that a project is effective for up to three years and includes authorization for an extension up to two additional years if certain conditions are met.

*Proposed Regulations:* We propose to renumber current § 371.5 to § 371.4 and to update the regulation to provide for a project period of up to 60 months.

*Reason:* We propose this change in order to move this general section before the sections addressing applicable regulations and definitions at the end of subpart A. We propose to update the language in order to be consistent with the statutory changes made by WIA in 1998.

*Statute:* WIOA amended section 7 of the Act, changing several definitions relevant to the AIVRS program.

*Current Regulations:* Section 371.4 provides that the definitions in part 369 apply to the AIVRS program and also defines five additional words and phrases applicable to the AIVRS program.

*Proposed Regulations:* Proposed § 371.4 would be moved and renumbered to § 371.6 and revised to be a comprehensive definitions section. It would include the definitions in current § 371.4 and referenced by current § 371.3, some of which we would revise; definitions from part 369, which the Department proposes to repeal; relevant definitions from sections 7 and 121 of the Act added by WIOA; relevant definitions from part 361; and other definitions of terms commonly used in this part that are needed to provide clarity.

The definitions that we would add from Section 361 are: ''Assessment for determining eligibility and vocational needs''; ''Comparable services and benefits''; ''Eligible Individual''; ''Employment outcome''; ''Family member''; ''Maintenance''; ''Physical and mental restoration services''; ''Physical or mental impairment''; ''Post-employment services''; ''Substantial impediment to employment''; ''Supported employment''; ''Supported employment services''; ''Transition services''; and ''Transportation.''

The definitions that we would add from part 369 are: ''Act''; ''Community rehabilitation program''; ''Individual with a disability''; ''Individual with a significant disability''; and ''Vocational Rehabilitation Services.''

The new definitions required by WIOA are: ''Competitive integrated employment''; ''Customized Employment''; Representative of the tribal vocational rehabilitation program; ''Tribal organization;'' and ''Tribal Vocational Rehabilitation Program''.

The definitions of common terms we would add for clarity are: ''Representative of the Tribal Vocational Rehabilitation program'' and ''Subsistence.''

The current definitions that we would change are ''Consortium''; and ''Indian''; ''American Indian''; ''Indian American''; and ''Indian tribe.'' ''Reservation'' was amended, following public notice and comment, by a final regulation issued on February 5, 2015 (80 FR 6452). Proposed substantive changes to individual definitions will be discussed throughout this NPRM in conjunction with relevant topical discussions.

*Reasons:* We propose to include relevant definitions from part 369, which we propose to repeal, in proposed § 371.6 so that these definitions still apply to the AIVRS program.

We propose to add definitions of terms as they are defined in sections 7 and 121 of the Act, as amended by WIOA, in order to be consistent with the statute.

We propose to include definitions from part 361 as the same terms are used in the AIVRS program, and adding definition of these terms to part 371 will make this part easier to use.

We propose to add definitions of ''Representative of the Tribal Vocational Rehabilitation program'' and ''Subsistence.'' We propose to include ''Representative of the Tribal Vocational Rehabilitation program'', as used in § 371.21 *pertaining to the special application requirements for projects funded under part 371,* because we believe the definition would help the AIVRS grantees to more effectively implement the program and fiscal requirements and to improve employment outcomes for American

Indians with disabilities. We propose to define ''subsistence'' to make clear that it is a form of self-employment and that it continues to be an allowable employment outcome under the AIVRS program.

Finally, we propose to revise the definitions of ''American Indian,'' ''Consortium'' and ''Indian tribe'' to implement WIOA changes and to clarify eligibility under the program.

*Proposed New Subpart B—Training and Technical Assistance (Replaces Current Subpart B)*

*Statute:* WIOA added to section 121 of the Act, a new subsection (c), which requires that, beginning in FY 2015, not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program. Section 121(c) also provides that the Secretary must conduct a survey of such governing bodies to determine funding priorities for the training and technical assistance; and that the Secretary shall provide for peer review of applications to provide training and technical assistance from eligible entities by panels that include persons who are not government employees and who have experience in the operation of AIVRS programs.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a new subpart B to part 371, consisting of §§ 371.10 through 371.14, to govern how the Department would assess the need for, and provide training and technical assistance to, grantees under the AIVRS program.

Proposed § 371.10 would provide that the Secretary reserve not less than 1.8 percent and not more than 2 percent of the funds appropriated to carry out the AIVRS program to provide training and technical assistance in any fiscal year, beginning in FY 2015, to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

Proposed § 371.11 would explain how the Secretary uses the funds specified in § 371.10 to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements to entities that have the capacity to provide such training and technical assistance. Any selected entity receiving funding would provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

Proposed § 371.12 would describe how the Secretary makes an award under subpart B for training and technical assistance, requiring an applicant to submit an application to the Secretary containing a proposal for the provision of training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program. Section 371.12 would also require applications to be peer reviewed by panels that include individuals who are not Federal or State government employees and who have experience in the operation of AIVRS programs.

Proposed § 371.13 would provide that the Secretary determines funding priorities for training and technical assistance by conducting a survey of the governing bodies of Indian tribes funded under this part to assess training and technical assistance needs.

Proposed § 371.14(a) would provide that the Secretary evaluates applications for a grant, cooperative agreement, or contract under subpart B on the basis of selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210. Proposed § 371.14(b) would allow for a competitive preference to be given to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part. Proposed § 371.14(c) would provide that, if a contract is awarded, it will be made in accordance with regulations at 34 CFR part 75.

*Reasons:* The proposed new subpart B gives effect to the new WIOA training and technical assistance requirements and the manner in which these requirements are implemented, including a survey of needs and the funding of activities either directly or through a peer reviewed competitive process consistent with the Department's practices.

*Subpart C—How does one apply for a grant?*

*Statute:* None.

*Current Regulations:* Section 371.20 requires the applicant to consult with the DSU for the State Vocational Rehabilitation program in the State or States in which the AIVRS program is providing services.

*Proposed Regulations:* We propose to update current § 371.20 to include the language from current § 369.20 that references the specific provisions of EDGAR in 34 CFR 75.155–75.159 that the AIVRS projects should use when consulting with the DSU in the State or States in which the AIVRS program is providing services.

*Reason:* Incorporating the specific provisions from current § 369.20 would clarify the procedures that the AIVRS projects should use when consulting with the DSU or DSUs in the State or States in which it is providing services.

*Statute:* WIOA added to section 121(b)(1)(D) of the Act that applicants for a AIVRS grant provide assurances that (i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will, consistent with title I, be made by a representative of the tribal vocational rehabilitation program funded through the grant; and (ii) such decisions will not be delegated to another agency or individual.

In addition, the WIA 1998 amendments made certain amendments to the Act reflected throughout, such as changing ''severely disabled'' to ''significantly disabled;'' ''similar benefits'' to ''comparable benefits;'' and changing the ''individualized written rehabilitation program'' to the ''individualized plan for employment.'' These amendments also authorized AIVRS projects to provide services to American Indians with disabilities living ''near'' as well as ''on'' a reservation in section 121(a).

Finally, the 1998 amendments made changes relevant to the AIVRS program to subsection (6) of section 101(a) of the Act that address standards for facilities and providers of services and deleted the requirement in subsection (7) to make maximum use of public or other vocational or technical training facilities or other appropriate community resources.

*Current Regulations:* Section 371.21 lists the special application requirements for projects funded under the AIVRS program. The requirements have not, however, been updated to reflect the statutory changes made by the WIA 1998 amendments and the WIOA amendments.

*Proposed Regulations:* Current § 371.21(b) already includes the requirement that all decisions affecting eligibility and the nature, scope and provision of vocational rehabilitation services will be made by a tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual. However, we propose to update the language

consistent with the inclusion of the term ''representative of the tribal vocational rehabilitation program'' in the statute by the WIOA amendments. We also propose to update other paragraphs of current § 371.21 to reflect changes made by the WIA 1998 amendments to the Act. Additionally, we would revise § 371.21(j) to reflect the statutory requirement for the accessibility of facilities, and we would add § 371.21(k) to require service providers to communicate with applicants in language or modes of communication they understand. Finally, we propose to delete current § 371.21(k) since the provision in the statute on which it was based has been removed.

*Reason:* We are proposing these changes so that § 371.21 is consistent with statutory provisions in the Act, which have changed since the last time these regulations were amended, and to provide for a more culturally sensitive and efficient administration of the program.

*Subpart D—How does the Secretary make a grant?*

*Statute:* Section 121(b)(1)(A) of the Act provides that an application must be made at such time, in such manner, and contain such information as the Commissioner may require.

*Current Regulations:* Section 369.32(b) provides that the Secretary considers other factors in addition to the selection criteria in making awards, such as past performance of the applicant in carrying out similar activities under previously awarded grants. Specifically, the Secretary considers such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

*Proposed Regulations:* We propose to move current § 369.32(b) into part 371 as proposed § 371.32.

*Reasons:* Because the Department is repealing part 369, we are proposing these changes to provide continuity of practice in how the Department makes the awards under this program.

*Subpart E—What conditions apply to a grantee under this program?*

*Statute:* None.

*Current Regulations:* Current §§ 371.40 and 371.41 describe the requirements for matching and allowable costs, but they do not include the authority to serve American Indians with disabilities located ''near,'' as well as ''on,'' the reservation in section 121(a) added by the WIA amendments in 1998 or any reference to the OMB Uniform Guidance adopted by the Department.

*Proposed Regulations:* We propose to add to § 371.40 regarding matching and § 371.41 regarding allowable costs the references to the sections in 2 CFR 200 that address these subjects. In addition, we propose to update the language in § 371.41 regarding the ability of AIVRS projects to serve American Indians with disabilities located ''near,'' as well as ''on,'' a reservation.

*Reasons:* These proposed changes would make §§ 371.40 and 371.41 consistent with the changes made to section 121(a) of the Act in 1998 by the WIA amendments and would clarify that the Department has adopted the OMB Uniform Guidance in 2 CFR part 200 and will apply that guidance going forward instead of the EDGAR provisions it replaces.

*Statute:* Section 121(b)(1)(B) of the Act requires that applicants for an award under the AIVRS program provide an assurance that the vocational rehabilitation services provided to American Indians with disabilities residing on or near a reservation in a State shall be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program to other individuals with disabilities residing in the State.

*Current Regulations:* Current § 371.43 describes the special conditions that apply to the AIVRS program.

*Proposed Regulations:* We propose to add two additional paragraphs to § 371.43. Proposed paragraph (d) would describe the nature of the written policies that the AIVRS project would have to develop in order to ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in the individual's IPE and is consistent with the individual's informed choice. Proposed paragraph (e) would describe the necessary elements of an AIVRS project's policies and procedures developed to ensure each individual who is an applicant for, or eligible to receive, vocational rehabilitation services is afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process.

*Reasons:* We propose to add paragraphs (d) and (e) to § 371.43 in order to ensure that the AIVRS projects provide vocational rehabilitation services that are comparable to those services provided by the State and to ensure efficient administration of the projects funded under the AIVRS program. The nature and scope of the vocational rehabilitation services provided by the AIVRS projects, and respect for the informed choice of the consumers who utilize those services, are central tenets of vocational rehabilitation. While AIVRS projects would have been implementing these central requirements of the vocational rehabilitation program, we believe it is essential to require the AIVRS projects funded under this program to develop and maintain written policies and procedures that address these issues.

*Statute:* Section 121(b)(1)(B) of the Act requires that applicants for an award under the AIVRS program provide an assurance that the vocational rehabilitation services provided to American Indians with disabilities residing on or near a reservation in a State shall be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program to other individuals with disabilities residing in the State.

*Current Regulations:* Current § 369.46 describes the special requirements pertaining to the protection, use, and release of personal information.

*Proposed Regulations:* We propose to add a new § 371.44 that describes the special requirements pertaining to the protection, use, and release of personal information.

*Reasons:* Because the Department is proposing to remove part 369, which currently applies to the AIVRS program, we propose to incorporate the provisions related to the protection, use, and release of personal information into part 371. However, because vocational rehabilitation services provided under the AIVRS program are required to be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program, we believe that the section in part 361 that describes the special requirements pertaining to the protection, use, and release of personal information would provide better guidance to the AIVRS projects.

*Statute:* Section 20 of the Act requires all programs that provide services to individuals with disabilities under the Act to advise them or their representatives of the availability and purposes of the client assistance program under section 112, including information on means of seeking assistance under that program.

*Current Regulations:* Current § 369.42(b) requires the AIVRS projects to advise applicants or recipients of services or, as appropriate, their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the State's Client Assistance Program, including

information on seeking assistance from that program.

*Proposed Regulations:* We propose to move current § 369.42(b) into a new section of part 371, proposed § 371.45.

*Reasons:* Because the Department is proposing to remove part 369, which currently applies to the AIVRS program, we propose to incorporate into part 371 the provisions related to the requirement to advise consumers about the existence and purpose of CAP and how to contact CAP, which now includes as a grantee the protection and advocacy system serving the American Indian Consortium.

**Rehabilitation National Activities Program, 34 CFR Part 373**

*Background*

The purpose of this program is to provide competitive grants (including cooperative agreements) to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Act, or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services, including related research and evaluation activities. The Department last published regulations for this program, on December 11, 2000 (65 FR 77433).

*Summary of Proposed Changes*

These proposed regulations would implement the changes WIOA made to section 303(b) of the Act. We are proposing a new name for the program—the Rehabilitation National Activities Program—that better describes the broad nature of the types of activities that may be funded under this authority. As appropriate, we propose to add a definition of ''vocational rehabilitation services'' and to replace the term ''rehabilitation services'' with ''vocational rehabilitation services.'' We will retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services. The change would clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not limited to vocational rehabilitation services as they are defined in title I of the Act but rather may address the broader range of services encompassed by the term ''rehabilitation services.''

Further, we propose to add two new statutory priorities pertaining to transition from education to employment and competitive integrated employment and add four additional priorities to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel.

*Significant Proposed Regulations*

We arrange our discussion of proposed changes to this part by subject.

*Title*

*Statute:* None.

*Current Regulations:* The current part 373 is called ''Special Demonstration Programs.''

*Proposed Regulations:* We propose to change the name of the part to ''Rehabilitation National Activities Program.''

*Reasons:* The new name would better describe the activities funded under this program.

*Cooperative Agreements*

*Statute:* None.

*Current Regulations:* Although authorizing the awarding of grants, the current part 373 does not specifically state that the Department may also award cooperative agreements.

*Proposed Regulations:* We propose to amend § 373.1 to state that grants and cooperative agreements may be awarded to serve the purpose of the Rehabilitation National Activities Program authorized under the Act.

*Reasons:* The proposed change would clarify that the Secretary may make cooperative agreements, which are one type of grant, to pay all or part of the costs of the activities covered under this program.

*Competitive Integrated Employment*

*Statute:* Section 303 of the Act, as amended by WIOA, mandates that, in announcing competitions for the special demonstration programs, the Commissioner shall give priority consideration to initiatives focused on improving transition from education to employment, particularly in competitive integrated employment, for youth who are individuals with significant disabilities and to increasing competitive integrated employment for individuals with significant disabilities. Section 7 of the Act now defines the term ''competitive integrated employment.''

*Current Regulations:* The current part 373 does not address competitive integrated employment.

*Proposed Regulations:* We propose to include a provision in § 373.7 stating that the Commissioner will give priority consideration to activities on improving transition from education to employment, including competitive integrated employment. We also propose to add a definition of ''competitive integrated employment'' in § 373.4.

*Reasons:* The proposed change is necessary to conform part 373 to the changes to the Act made by WIOA.

*Vocational Rehabilitation Services*

*Statute:* The Act refers to the provision of ''vocational rehabilitation services'' throughout title I, and section 7 defines the term ''vocational rehabilitation services.'' Section 303 of the Act, however, does not refer to the term ''vocational rehabilitation services'' but rather authorizes special demonstration programs to expand and improve the provision of rehabilitation and other services under the Act.

*Current Regulations:* There is no reference to the term ''vocational rehabilitation services'' in part 373. Also, part 373 includes a definition of ''rehabilitation services'' that is virtually identical to section 103(a) of the Act, which details vocational rehabilitation services for individuals.

*Proposed Regulations:* We propose to amend part 373 by replacing, when appropriate, the term ''rehabilitation services'' with the term ''vocational rehabilitation services.'' In addition, we propose adding a definition for the term ''vocational rehabilitation services'' that is identical to the current definition for the term ''rehabilitation services.'' Finally, we propose to change the definition of the term ''rehabilitation services'' in a manner that is broader than the proposed definition for the term ''vocational rehabilitation services.''

*Reasons:* These proposed changes are necessary to conform part 373 to titles I and III of the Act and to differentiate between rehabilitation services and vocational rehabilitation services. These proposed changes would clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not limited to vocational rehabilitation services but rather may address the broader range of services encompassed by the term ''rehabilitation services'' authorized by title III of the Act.

*Supported Employment*

*Statute:* Section 303 of the Act mandates that, in announcing competitions under this program, the Commissioner shall give priority consideration to supported employment programs. Section 7 of the Act defines the term ''supported employment.''

*Current Regulations:* The current part 373 does not include a definition of the term ''supported employment.''

*Proposed Regulations:* We propose to amend § 373.4 to include a definition of ''supported employment'' that is currently contained in § 361.5(b)(53).

*Reasons:* The proposed change would better assist eligible entities in determining how to comply with any requirement to address supported employment. Specifically, in implementing the priority listed in proposed § 373.7(a)(2), in which the term ''supported employment'' is used, we are proposing that the same definition of this term that is used in 34 CFR part 361 be used here.

*Projects That May Be Funded*

*Statute:* Under section 303 of the Act, projects funded under the special demonstration programs may include special projects and demonstrations of service delivery, model demonstration projects, technical assistance projects, systems change projects, special studies and evaluations, and dissemination and utilization activities.

*Current Regulations:* Part 373 lists these types of projects along with potential project priorities in § 373.6, which is entitled ''What are the priorities and other factors and requirements for competitions?''

*Proposed Regulations:* We propose to amend current § 373.6 to change the section title to ''What types of projects may be funded?'' and to include only the six types of projects authorized by the statute under this section.

*Reasons:* The proposed change is necessary to conform part 373 to the Act and to clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not priorities for funding.

*Priorities for Competitions*

*Statute:* Section 303(b)(5) of the Act, as amended by WIOA, adds transition from education to employment and competitive integrated employment to supported employment as priorities for competitions.

*Current Regulations:* Section 373.6 lists three statutory priorities, two of which have been deleted by WIOA, and the third, pertaining to supported employment, does not contain the full statutory language.

*Proposed Regulations:* We propose to amend part 373 by adding a new § 373.7 entitled ''What are the priorities and other factors and requirements for competitions?'' This proposed section contains the full statutory language for the two new statutory priorities pertaining to transition from education to employment and competitive integrated employment and for the preexisting statutory priority for supported employment.

*Reasons:* The proposed change is necessary to conform part 373 to the new statutory priorities contained in WIOA.

*Priorities and Other Factors and Requirements for Competitions*

*Statute:* Section 303 of the Act mandates that, in announcing competitions for grants and contracts under the special demonstration programs, the Commissioner shall give priority consideration to ''priority for competitions'' under section 303(b)(5)(A), and may require applicants to address one or more ''additional competitions'' under section 303(b)(5)(B).

*Current Regulations:* Part 373 addresses priority projects in § 373.6 but does not specify or differentiate among ''priority for competitions'' and ''additional competitions.''

*Proposed Regulations:* We propose to move the content of priorities from the current § 373.6 into a new § 373.7. In addition to the statutory priorities that are listed in the current § 373.6, we propose that § 373.7 include the following four additional priorities for competitions under this program to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel:

§ 373.7(b)(6) Technical assistance to designated State units and their personnel in working with employers to identify competitive integrated employment opportunities and career exploration opportunities in order to facilitate the provision of vocational rehabilitation services and transition services for youth with disabilities and students with disabilities.

§ 373.7(b)(7) Consultation, training and technical assistance to businesses that have hired or are interested in hiring individuals with disabilities.

§ 373.7(b)(8) Technical assistance and training to designated State units and their personnel on establishment and maintenance of education and experience requirements, to ensure that the personnel have an understanding of the evolving labor force and the needs of individuals with disabilities. This would align with the work of the current Job Development Training and Technical Assistance Center.

§ 373.7(b)(9) Technical assistance to State vocational rehabilitation agencies and their partners to improve their performance to meet the requirements of WIOA designed to improve the numbers and quality of employment outcomes.

Finally, the proposed § 373.7 would also clarify that the Secretary may limit the priorities listed in paragraphs (a) and (b) of § 373.7 to address one or more of the factors in § 373.7(c).

*Reasons:* The proposed changes are necessary to conform part 373 to the changes to the Act made by WIOA and to clarify the additional competition priorities and factors that the Secretary may apply to any competitions under this program. We expect that these proposed changes would expand and improve the Rehabilitation National Activities Program and further the purpose of the Act.

**Protection and Advocacy of Individual Rights Program (PAIR), 34 CFR Part 381**

*Background*

The PAIR program is authorized under section 509 of the Act (29 U.S.C. 794e). The purpose of the PAIR program is to support the protection and advocacy system in each State to protect the legal and human rights of individuals with disabilities who need services that are beyond the scope of the CAP, and who are not eligible for services under the Protection and Advocacy for Persons with Developmental Disabilities and the Protection and Advocacy of Individuals with Mental Illness programs.

The Department last updated the regulations at 34 CFR part 381, which govern the PAIR program, on March 6, 1997 (62 FR 10404).

*Summary of Proposed Changes*

Both WIA and WIOA made a few significant changes to section 509 of the Act. With regard to the statutory changes made to section 509 by WIA, we propose to add the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a PAIR grant.

With regard to statutory changes made to section 509 by WIOA, we propose to clarify that PAIR grantees have the same general authorities, including to access records and program income, as the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

We propose to clarify that the Secretary may award funds for the provision of training and technical assistance for PAIR grantees through a grant, contract, or cooperative agreement.

*Significant Proposed Regulations*

We organize our discussion of proposed changes by subject and section.

*The Definition of ''State'' (§ 381.2)*

*Statute:* Section 7(32) of the Act, as amended by WIA (29 U.S.C. 705(32)), deleted the Republic of Palau from the definition of the term ''State.'' As a result, ''State'' includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Section 7(32) of the Act was renumbered as section 7(34) by WIOA.

*Current Regulations:* Current part 381 makes several references to the Republic of Palau (*i.e.,* current § 381.2 regarding eligibility for a PAIR grant and current § 381.5 regarding definition of ''State'').

*Proposed Regulations:* We propose to delete all references to the Republic of Palau in part 381.

*Reasons:* This change is necessary to implement the current statutory definition of ''State,'' which forms the basis for determining eligibility for grants under the Act.

*Public School Programs (§ 381.3)*

*Statute:* None.

*Current Regulations:* The current § 381.3(a)(3) permits PAIR grantees to provide information on, and make referrals to, programs and services that address the needs of individuals with disabilities, including those individuals with disabilities who are exiting public school programs. Current § 381.10(a)(4) requires PAIR grantees to make an assurance to provide information on and make referrals to programs and services that address the needs of individuals with disabilities, including those individuals with disabilities who are exiting public school programs.

*Proposed Regulations:* We propose to make two changes in this part. First, we propose to amend current § 381.3(a)(3) to clarify that PAIR grantees are authorized to provide information and referral services to individuals with disabilities exiting any school program. Second, we propose to amend § 381.10(a)(4) to require PAIR grantees to assure that they will provide information and referral services to individuals with disabilities exiting any school program.

*Reasons:* In proposing to use the term ''school,'' rather than ''public school,'' we recognize that many more individuals with disabilities are being educated in both public and private schools and that they may need information and referral services by PAIR grantees to enable them to participate in the programming offered in these settings.

*Access to Records (§ 381.10)*

*Statute:* Section 509(f)(2) of the Act, as amended by WIOA (29 U.S.C. 794e(f)), requires that PAIR grantees have the same general authorities, including the authority to access records and program income, as given to the Protection and Advocacy for Persons with Developmental Disabilities program established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

*Current Regulations:* Current § 381.10(a)(2) gives that PAIR grantees the same general authorities, including to access records and program income, as in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

*Proposed Regulations:* We propose to amend § 381.10(a)(2) to add specific reference to ''title I'' of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

*Reasons:* The proposed change is necessary to conform to the language of section 509, as amended by WIOA. This proposed change is primarily technical in nature as this authority existed prior to enactment of WIOA.

*Training and Technical Assistance (§ 381.22)*

*Statute:* Section 509(c)(1)(A) of the Act, as amended by WIOA (29 U.S.C. 794e(f)), clarifies that the training and technical assistance to PAIR grantees may be provided by the Secretary through a grant, cooperative agreement, or contract.

*Current Regulations:* Current § 381.22(a)(1) establishes the set aside for training and technical assistance to eligible systems, but does not specify the allowable mechanisms for funding the training and technical assistance since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend § 381.22(a)(1) to clarify the funds for training and technical assistance may be awarded as a grant, contract, or cooperative agreement.

*Reasons:* The proposed changes are necessary to conform to the changes in the Act made by WIOA. The changes are primarily technical, as the Secretary always could use these mechanisms for awarding funds to provide training and technical assistance to PAIR grantees.

*The American Indian Consortium (§ 381.22)*

*Statute:* Section 509(c)(1)(B) of the Act, as amended by WIA (29 U.S.C. 794e(c)), requires the Secretary to reserve $50,000 to make a grant to the protection and advocacy system serving the American Indian Consortium, established under section 102 of the Developmental Disabilities Assistance and Bill of rights Act of 2000, for any fiscal year in which appropriations for the PAIR program is at least $10.5 million.

*Current Regulations:* Current § 381.22 does not address the funding of the protection and advocacy system serving the American Indian Consortium because part 381 was last updated prior to the 1998 amendments to the Act.

*Proposed Regulations:* We propose to amend § 381.22 by adding a new paragraph (a)(2) to require a minimum grant of $50,000 to the protection and advocacy system serving the American Indian Consortium when the total PAIR appropriation equals or exceeds $10.5 million. We also propose to make related changes to four other sections in this part.

Current § 381.2 would be amended to include the American Indian Consortium as an eligible entity for a PAIR grant.

Current § 381.3 would be amended to clarify that the protection and advocacy system serving the American Indian Consortium has the authority to provide information, provide advocacy and legal representation, and make referrals for individuals with disabilities within the American Indian Consortium when describing the authorized activities of PAIR grantees.

Current § 381.5 would be amended to incorporate references to tribal governmental agencies in the definition of ''advocacy.''

Current § 381.10 would be amended to require the protection and advocacy system serving the American Indian Consortium to submit assurances as a PAIR grantee when applying for funding as part of the application requirements.

*Reasons:* The proposed changes are necessary to implement the amendments to the Act made by WIA in 1998. Previously, this protection and advocacy system was eligible for funding under other components of the protection and advocacy system, including the Protection and Advocacy of Persons with Developmental Disabilities and the Protection and Advocacy of Individuals with Mental Illness programs, but not under the PAIR program.

*Reallotment (§ 381.22)*

*Statute:* Section 509(e) of the Act (29 U.S.C. 794e(e)) sets forth the process by which the Secretary reallots PAIR funds when a grantee cannot use all funds allotted to it. This statutory provision remains unchanged.

*Current Regulations:* Current § 381.22 addresses how the Secretary allocates funds but does not cover the reallotment requirements.

*Proposed Regulations:* We propose to add a new paragraph (d) to § 381.22 to clarify that the Secretary may reallot funds to other eligible systems when an existing eligible system within the State is not able to expend its funds in that fiscal year or the subsequent fiscal year.

*Reasons:* While the reallotment of PAIR funds has been permitted under section 509 of the Act, PAIR grantees have not returned funds to the Department for this purpose. However, we believe it is important to describe the reallotment requirements in this part in the event reallotment funds become available.

*Program Income (§ 381.33)*

*Statute:* Section 19 of the Act governs the use of program income received by grantees, including PAIR grantees, under the Act. This statutory provision remains unchanged.

*Current Regulations:* Current § 381.33 describes how a grantee may use or carry over funds but it does not address how a grantee may spend program income

*Proposed Regulations:* We propose to add a new paragraph (e) to § 381.33 that defines program income, identifies its uses, permits it to be treated as either an addition or deduction to the PAIR award, and permits program income to be carried over into the fiscal year succeeding that in which it was earned.

*Reasons:* These proposed regulations are necessary to govern the use and treatment of program income, consistent with sections 19 and 509 of the Act. Although this is not a new statutory requirement, we believe it is important to include these regulations into part 381 since PAIR grantees frequently receive large sums of program income.

**Rehabilitation Training Program, 34 CFR Part 385**

*Background*

The Rehabilitation Training program is designed to: (1) ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through independent living services programs, and through client assistance programs; (2) maintain and upgrade basic skills and knowledge of personnel trained to deliver rehabilitation services; and (3) provide training and information to individuals with disabilities, and their parents, families, guardians, advocates, and authorized representatives, to develop the skills necessary to access the rehabilitation system and to become active decision makers in the vocational rehabilitation process. The Department last published regulations for this program, on March 6, 1997 (62 FR 10398).

*Summary of Proposed Changes*

We propose to add supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities.

We propose to emphasize the importance of maintaining and upgrading the skills of personnel who provide supported employment services and customized employment services to individuals with the most significant disabilities, as well as personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

We propose to add a definition of ''vocational rehabilitation services'' and to replace the term ''rehabilitation services'' with ''vocational rehabilitation services'' as appropriate. We will retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services. Finally, we would add definitions of ''supported employment'' and ''assistive technology'' consistent with definitions in title I of the Act.

*Significant Proposed Regulations*

We organize our discussion by subject.

*Purpose*

*Statute:* Section 301(a) of the Act states the purpose of the programs authorized under Title III of the Act and describes the types of programs whose personnel may benefit from rehabilitation training. Section 301(a)(1) authorizes the Commissioner to make grants and contracts to train personnel who work in economic and business development programs. WIOA added language to section 302(a)(1)(E) specifically highlighting the need to train personnel in programs that provide supported employment and customized employment for individuals with the most significant disabilities. Section 302(a)(1)(F) describes personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

*Current Regulations:* The current part 385 does not specifically address training personnel who deliver supported employment services and customized employment services to individuals with the most significant disabilities, nor is training personnel who assist individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting specifically mentioned.

*Proposed Regulations:* We propose to amend current § 385.1(a)(1) by adding supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities. We also propose to amend current § 385.1(a)(2) to emphasize the importance of maintaining and upgrading the skills both of personnel who provide supported employment services and customized employment services to individuals with the most significant disabilities and personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

*Reasons:* The proposed changes in the regulations are necessary to conform the regulations to current sections 301(a) and 302(a) of the Act.

*Assistive Technology Terms*

*Statute:* Section 302(a)(1)(H) of the Act, as amended by WIOA, authorizes the Rehabilitation Training program to assist eligible entities to provide rehabilitation personnel training in providing assistive technology services.

*Current Regulations:* The current part 385 does not address ''assistive technology services'' although the term ''rehabilitation technology'' is used in § 385.1(a)(2), and § 385.4 includes definitions of ''assistive technology device'' and ''assistive technology services.''

*Proposed Regulations:* We propose to add a definition of ''assistive technology'' to the definitions ''assistive technology device'' and ''assistive technology services'' already in current § 385.4. Specifically we define ''assistive technology'' to mean ''technology designed to be utilized in an assistive technology device or assistive technology service.'' In addition, we propose to add to the definition of ''assistive technology services'' services that would expand the availability of access to technology, including electronic and information technology, to individuals with disabilities.

*Reasons:* The proposed changes are necessary to conform part 385 to the changes to the Act made by WIOA.

*Definition of State*

*Statute:* The Workforce Investment Act of 1998 deleted the Republic of Palau from the definition of the term ''State'' in section 7(32). As a result, ''State'' includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, but it has excluded the Republic of Palau.

*Current Regulations:* The current § 385.4 includes the Republic of Palau in the definition of ''State.''

*Proposed Regulations:* We propose to delete the Republic of Palau from the areas included in the definition of ''State.''

*Reasons:* The change conforms the definition of ''State'' to the current statutory definition.

*Vocational Rehabilitation Services*

*Statute:* The Act refers to ''vocational rehabilitation services'' throughout title I, and section 7 defines the term ''vocational rehabilitation services.''

*Current Regulations:* The current part 385 does not include a definition of ''vocational rehabilitation services.''

*Proposed Regulations:* We propose to amend part 385 by adding a definition of ''vocational rehabilitation services.'' The proposed definition mirrors the definition provided in section 7 of the Act. We also propose to replace the term ''rehabilitation services'' with ''vocational rehabilitation services'' in part 385 as appropriate. We would retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services.

*Reasons:* The proposed changes are necessary to conform part 385 to titles I and III of the Act.

*Supported Employment*

*Statute:* The changes to section 302 of the Act made by WIOA include a new authority in 302(a)(1) to train rehabilitation personnel to deliver supported employment services and customized employment services to individuals with the most significant disabilities. In addition, section 7(38) of the Act, as amended by WIOA, includes a definition of ''supported employment.''

*Current Regulations:* The current part 385 does not address the provision of training for rehabilitation personnel to deliver supported employment services and customized employment services to individuals with the most significant disabilities.

*Proposed Regulations:* We propose to amend the definitions of ''supported employment'' and ''supported employment services'' in current § 385.4 to address the amendments made to the Act by WIOA.

*Reasons:* The proposed changes are necessary to conform part 385 to changes to section 7(38) of the Act made by WIOA. The fact that supported employment services now include ''customized employment'' and the fact that supported employment services may be provided for up to 24 months are changes that need to be reflected in the regulations.

**Rehabilitation Long-Term Training Program, 34 CFR Part 386**

*Background*

The purpose of the Rehabilitation Long-Term Training program is to provide financial assistance for projects that provide basic or advanced training leading to an academic degree or certificate in one of 30 fields of study and for projects that provide support for medical residents enrolled in training programs in physical medicine and rehabilitation. The program is designed to provide academic training that leads to an academic degree or academic certificate in areas of personnel shortages. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

*Summary of Changes*

We propose to add two areas to the training areas supported by this program: (1) Assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting, and (2) supported employment services and customized employment services to individuals with the most significant disabilities.

We are also proposing to reduce from 75 percent to 65 percent the required percentage of the total award that grantees must spend on financial assistance to scholars.

We propose to prohibit scholars from concurrently receiving financial assistance from multiple grants.

We propose that the grantee must document that the scholar will seek employment in the field of study in which the scholar was trained or where the field of study is directly relevant to the job functions being performed.

We are proposing a number of changes to the exit processes that will help scholars be more aware of the requirements of their service obligation.

We propose to set out the consequences for a grantee that has failed to request or maintain the required documentation for a scholar who does not meet the service obligation.

We propose to allow some scholars to start satisfying the service obligation before completion of the program of study but to prohibit other scholars who do not complete the program of study from performing the service obligation.

We propose to disallow internships, practicums, or any other work-related requirement necessary to complete the educational program as qualifying employment for the service obligation.

Finally, we propose some changes regarding deferrals and exceptions. For an exception based on disability, the scholar must have a disability either that did not exist at the time the scholar entered the program or that has worsened since the scholar entered the program. We are proposing that documentation of disability be less than three months old. With regard to deferrals, we propose to allow for up to four years deferral for a member on active duty in the Armed Forces, an increase from the three years in current regulations. We are proposing to restrict a deferral based on a scholar's pursuing higher education only to advanced education that is in the rehabilitation field.

*Significant Proposed Regulations*

We organize our discussion by section number and subject.

*Section 386.1 (Purpose)*

*Statute:* Section 302(a)(1) of the Act provides examples of the types of personnel who can be trained with funds under the long-term training program. Specifically, section 302(a)(1)(F) references the need to train personnel assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting. In addition, section 302(a)(1)(E) lists the need for personnel specifically trained to deliver supported employment services and customized employment services to individuals with the most significant disabilities.

*Current Regulations:* Current § 386.1(b) lists the categories of personnel who may receive training through the Rehabilitation Long-Term Training Program but does not include the categories in sections 302(a)(1)(E) and (F).

*Proposed Regulations:* In the list of personnel who may receive training through the Rehabilitation Long-Term Training Program in current § 386.1(b), we propose to add paragraph (1) listing personnel assisting and supporting individuals with disabilities pursuing self-employment, business ownership,

and telecommuting. In paragraph (3) of proposed § 386.1(b), we would combine paragraphs (2) and (30) in current § 386.1(b) into one item on rehabilitation technology. In paragraph (14) of proposed § 386.1(b), we would combine paragraphs (13) and (29) in current § 386.1(b) into one item on therapeutic recreation. In paragraph (17) of current § 386.1(b), we would clarify the meaning of the specialty of ''rehabilitation of individuals who are blind or visually impaired'' by providing two examples of the types of personnel in this specialty area. Finally, in paragraph (28) of proposed § 386.1(b), we would include customized employment in addition to supported employment.

*Reasons:* We are proposing these changes in § 386.1(b) to better align the regulations with the Act and to clarify language in current regulations.

*Section 386.4 (Definitions)*

*Statute:* None.

*Current Regulations:* Current § 386.4(b) defines terms that apply to the Rehabilitation Long-Term Training Program.

*Proposed Regulations:* We proposed to clarify two terms appearing in the list in current § 386.4(b), Other definitions. First, we would clarify that a ''scholarship'' may cover the costs of books and supplies, in addition to student stipends, tuition and fees, and student travel in conjunction with training assignments. We would also clarify that the ''State vocational rehabilitation agency'' is the same as the designated State agency referenced in current § 361.5(b)(13).

*Reasons:* With regard to the definition of ''scholarship,'' our policy has been to consider ''books and supplies'' as allowable expenses to be covered with scholarship funds under this program; we are simply incorporating this policy into the regulations. The proposed changes to the definition of ''State vocational rehabilitation agency'' would clarify the meaning of the current definition.

*Section 386.21 (Applications)*

*Statute:* Section 302(b)(2) of the Act describes application requirements for grantees receiving support under the Rehabilitation Training program.

*Current Regulations:* These application requirements are not contained in current regulations.

*Proposed Regulations:* We propose to incorporate the application requirements in section 302(b)(2) into a new § 386.21.

*Reasons:* Including these application requirements in the regulations will help to make grantees aware of the statutory requirement.

*Section 386.30 (Matching requirements)*

*Statute:* Section 302(a)(1) states that grants under this program pay part of the costs of the projects.

*Current Regulations:* Current § 386.30 states that the Federal share cannot be greater than 90 percent of the total project cost.

*Proposed Regulations:* Current § 386.30 has been reworded to state that the grantee is required to contribute at least ten percent of the total cost of the project.

*Reasons:* Although having the same meaning, the proposed language more clearly states the requirement in terms of the amount of the cost the grantee must cover. We believe this affirmative language would lead to less confusion and greater compliance with the match requirement.

*Section 386.31 (Funding Requirements)*

*Statute:* None.

*Current Regulations:* In § 386.31(a), grantees are required to expend 75 percent of their award on financial assistance to scholars.

*Proposed Regulations:* We would reduce this 75 percent requirement and are instead proposing in § 386.31(a) that a minimum of 65 percent of the total project cost (including both the Federal grant and the cost share) must be expended on financial assistance for scholars. In addition, in § 386.31(c), we are proposing a new provision to clarify that scholars may not receive concurrent scholarships from more than one project under this program.

*Reasons:* Many grantees have had problems meeting the current regulatory provision in § 386.31(a). Specifically, we have found that requiring grantees to dedicate 75 percent of their Federal award and their non-Federal share to scholarships leaves very little flexibility in their budgets and makes administering these grants problematic. Therefore, we are proposing to reduce the percentage that the grantee is required to expend on financial assistance for scholars. This proposed change is also consistent with the threshold used by the Office of Special Education Programs in their personnel preparation grants under the Individuals with Disabilities Education Act (IDEA).

The additional provision in proposed § 386.31(c) is necessary because some grantees have funded scholars from multiple grants under this program. While it can be difficult to ensure that scholarships are not duplicative, we are also concerned that scholars who receive simultaneous scholarships under multiple grants under this program would be responsible for service obligations for each scholarship received, which could, at a minimum, double the scholar's service obligation. This proposed provision would make the grantee's reporting on scholars clear and would also avoid confusion on the part of the scholar regarding the service obligation.

*Section 386.32 (Allowable Costs)*

*Statute:* Section 302(b)(4) allows grants to provide scholarships and necessary stipends and allowances.

*Current Regulations:* In addition to allowable costs described in the statute as well as in the Education Department General Administrative Regulations, other allowable costs under the Rehabilitation Long-Term Training Program are described in § 386.32. In current regulations, these costs include student stipends, tuition and fees, and student travel in conjunction with training assignments.

*Proposed Regulations:* We have clarified that allowable costs, which grantees may cover as part of the financial assistance they provide to scholars, may include the costs of books and supplies.

*Reasons:* Our policy has been to consider ''books and supplies'' as allowable expenses to be covered with scholarship funds under this program; we are simply proposing to incorporate this policy into the regulations.

*Section 386.33 (Disbursing Scholarships)*

*Statute:* None.

*Current Regulations:* Current § 386.33 allows permanent residents of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands to be eligible for scholarships.

*Proposed Regulations:* In § 386.33(a)(1)(ii), we have deleted references to the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau (referred to as the Freely Associated States (FAS)) as areas from which permanent residents can qualify for scholarships. We have also added Puerto Rico, the United States Virgin Islands, Guam, and American Samoa as areas from which permanent residents can qualify for scholarships.

*Reasons:* Because only States are eligible to receive grants under title I of the Act, the FAS are no longer eligible to receive title I grants to carry out Rehabilitation Act programs within their jurisdictions. Additionally, section 302(b)(2) of the Act requires each

applicant for a long-term training grant to include a description how the State rehabilitation agency designated under title I will participate in the project and to identify potential employers that would satisfy the service obligation requirements for scholars. According to § 386.40(a)(6), these employers must be the State rehabilitation agency or have an arrangement with that agency to provide rehabilitation services. Given that the FAS are no longer eligible to receive grants to carry out programs under title I of the Act, there are no State agencies designated under title I or other potential employers for the service obligation available in the FAS. Thus, there is no authority in the Act to allow permanent residents of the FAS to continue to be eligible for scholarships. FAS permanent residents, however, would still be eligible for scholarships, in the same manner as citizens or permanent residents of any other country, as long as they demonstrate that they are eligible under the remaining provisions in § 386.33(a), *i.e.* being a lawful permanent resident of the United States or being in the United States with the intention of becoming a citizen or permanent resident.

We also amend this section to include Puerto Rico, the United States Virgin Islands, Guam, and American Samoa as areas from which permanent residents may be identified as eligible for scholarships. These areas are considered ''States'' as that term is defined in section 7 of the Act and, as a result, are eligible to receive grant funds under the title I of the Act to carry out vocational rehabilitation and other programs authorized by the Act.

*Statute:* None.

*Proposed Regulations:* We propose to renumber and reorganize current § 386.33. Also, in proposed § 386.33(c), we would clarify that the grantee must document that the scholar will seek employment in the field of study in which the scholar was provided training or employment where it can be demonstrated that the field of study is directly relevant to the job functions being performed.

*Reasons:* The proposed requirements that employment must be in the field of study in which the training was received and where the job functions must be directly relevant to the field of study in which the training was received merely reflect current policy. We believe it is advisable to clarify this practice through regulations to ensure a consistent approach among all grantees as they inform scholars about the requirements to carry out the service obligation for the financial assistance they receive. Without these requirements, it is not clear whether scholars may obtain employment that does not directly use the skills they learned while pursuing a degree or certificate under the Rehabilitation Long-Term Training Program.

*Section 386.34 (Assurances)*

*Statute:* Section 302(b)(5) of the Act requires that grantees assure that each scholar will enter into an agreement with the grantee to perform the service obligation or repay the costs of the scholarship.

*Current Regulations:* Current § 386.34 lists the assurances that a grantee wishing to provide scholarships must provide.

*Proposed Regulations:* We are proposing the following:

- In § 386.34(a) that, for each year after the initial payback agreement has been signed, the grantee and scholar must have a signed executed agreement containing the terms and conditions outlined in the section.
- In § 386.34(c) that the scholar be informed annually of the total indebtedness.
- In § 386.34(c) incorporating by reference the provisions of current § 386.40 rather than repeating them here as in the current regulations.
- In § 386.34(f) clarifying that the grantee must provide the scholar with certain information related to the scholar's payback obligation upon the scholar's exiting the program and the scholar must then sign a certificate acknowledging the receipt of such information.
- In § 386.34(g)(1) that the grantee obtain the name of the scholar's supervisor, the duties the scholar will perform, and whether the position is full- or part-time.
- In § 386.34(j) that records be maintained not less than one year beyond the date that all scholars provided financial assistance under the grant have completed their service obligation or otherwise entered into repayment status.

*Reasons:* We are proposing these revisions for the following reasons:

- Proposed § 386.34(a) and (c) would bring this information to the forefront for scholars. Requiring that such information be provided only once, at the beginning of the scholarship support, has resulted in misunderstandings and disagreements about the nature of the obligations.
- Proposed § 386.34(c) would be streamlined rather than repeating provisions in § 386.40 for the sake of efficiency.
- Proposed § 386.34(f) would be more specific about the need for grantees to provide scholars with certain information upon their exit from the program and would emphasize the need for grantees to ask scholars to sign the certification acknowledging receipt of the information. We believe that the more that can be done to help scholars understand their obligations, the fewer instances of misunderstanding will occur and the more likely it will be that scholars will complete their service obligations.
- Proposed § 386.34(g)(1) would assist the grantee in determining whether or not a scholar's employment qualifies to repay the scholarship.
- Proposed § 386.34(i) would ensure that the Department has sufficient information to properly monitor and administer the grant as contemplated by 34 CFR 75.730–75.732, and it would ensure that sufficient time would be available to resolve any disputes about whether a scholar's service obligation has been met or whether repayment must be initiated.

*Section 386.36 (Incomplete or Inaccurate Information)*

*Statute:* None.

*Current Regulations:* The current regulations do not plainly describe the grantee's liability for failing to provide accurate and complete scholar information to the Department.

*Proposed Regulations:* We propose to add a new paragraph in § 386.36 describing the consequences for a grantee that has failed to request or maintain the documentation required in current § 386.34 for a scholar who does not meet the service obligation. Specifically, the Department would be able to recover, in whole or in part, from the grantee the debt amount and any collection costs described in current §§ 386.40 and 386.43, if the Department: (a) Is unable to collect, or improperly collected, some or all of these amounts or costs from a scholar, and (b) determines that the grantee failed to provide to the Department accurate and complete documentation described in current §§ 386.34 and 386.40.

*Reasons:* We propose to add this section to clarify the grantee's responsibilities to report complete and accurate information on scholars and their payback obligations and to clarify the consequences associated with noncompliance. The authority of the Department to recover collection costs is new and may be necessary to fully reimburse a scholar who is eligible for a refund for any debt that has already been referred to the U.S. Treasury for collection. While the Department has always had the authority in EDGAR to recover the debt amount, we propose

this language to ensure that grantees are more aware of this authority.

*Section 386.40 (Requirements for Scholars)*

*Statute:* Section 302(b)(5) of the Act requires a scholar to perform a service obligation or repay the cost of the scholarship.

*Current Regulations:* Current § 386.40 outlines the requirements for scholars, although some of the payback requirements are described in current § 386.34(c).

*Proposed Regulations:* We have proposed to add the following:

- § 386.40(a)(6) describing the payback obligations in current § 386.34(c) and clarifying that the service obligation must be in the field of study the scholar pursued or where the field of study is directly relevant to the job functions performed.
- § 386.40(b)(1) allowing scholars who are in multi-year programs of study and who are currently employed or are seeking employment to start satisfying the service obligation after completion of at least one year of study. This provision would also prohibit scholars who do not complete the program of study from performing the service obligation, except for scholars who complete at least one year of a multi-year program. We request specific comments on this proposal.
- § 386.40(b)(2) making it clear that an internship, practicum, or any other work-related requirement necessary to complete the educational program would not be considered qualifying employment.
- § 386.40(c) clarifying that, if the scholar is pursuing coursework on a part-time basis, the service obligation for these part-time courses would be based on the full-time equivalent total of actual academic years of training received.
- § 386.40(a)(9) requiring the scholar to provide all information necessary to monitor the service obligation.
- § 386.40(d) making a scholar in repayment status responsible for any costs assessed in the collection process if the scholar does not provide information on his or her employment status or if the scholar fails to provide other information that the grantee requests, even if the information is subsequently provided.

*Reasons:* We are proposing these revisions for the following reasons:

- Proposed § 386.40(a)(6)(i) would reflect current policy. We believe it is advisable to clarify this practice through regulations to assure a consistent approach among all grantees as they inform scholars about the requirements to repay the financial assistance they receive.
- Proposed § 386.40(b)(1) would implement RSA's policy that, for multi-year courses of study, scholars who have completed at least one year are likely to have made substantial gains in their knowledge and skills such that they would be able to provide improved vocational rehabilitation services. RSA believes that these scholars should be given the opportunity to start satisfying the service obligation even before they have completed the program of study. Except for scholars who complete at least one year of a multi-year program, this provision would also prohibit all scholars who do not complete the program of study from being eligible to perform the service obligation. These scholars would be responsible for repayment of the scholarship under § 386.43. This provision reflects the longstanding policy of the Office of Special Education Programs in its personnel preparation program.
- Proposed § 386.40(b)(2) would clearly make ineligible for the service obligation any employment required in order to complete the course of study.
- Proposed § 386.40(c) would ensure consistency among all grantees. We believe this is a fair interpretation of the payback requirement, which states that a scholar must repay two years of service for every one year of financial assistance received. This would clarify, for example, that a half-time scholar, who may require four years rather than the traditional two years to complete a master's degree program, would not have to complete eight years of service for the same program that a full-time scholar would only have to complete four years of service. This accommodation is appropriate, particularly in light of the fact that many more scholars are part-time, and they are often non-traditional students who have been in the workforce for a number of years and cannot afford to drop out of employment to pursue full-time study.
- Proposed §§ 386.40(a)(9) and 386.40(d) would require scholars to remain in contact with the grantee and to provide the necessary information about their repayment status. It is our hope that having such requirements in regulations would reinforce the importance of these scholar responsibilities. In particular, we are concerned that a scholar may be placed in repayment status only because the scholar failed to provide complete and accurate information. If accurate information is later submitted that allows the scholar to receive a refund of debt payments made, that scholar potentially would not receive a full refund if collection costs have been incurred by the Federal government. Making scholars who receive a refund aware that collection costs could be their responsibility would help achieve better compliance by scholars in providing complete and accurate information.

*Section 386.41 (Granting Deferrals and Exceptions)*

*Statute:* Section 302(b)(5)(A)(ii) of the Act states that RSA may by regulation provide for repayment exceptions and deferrals.

*Current Regulations:* In current § 386.41, the provisions for obtaining an exception or deferral of the payback obligation are described.

*Proposed Regulations:* In proposed § 386.41(a), we clarify the basis for an exception based on disability. The scholar would have to have a disability that either (1) was not diagnosed at the time the scholar entered the program, or (2) has worsened since the scholar entered the program.

We are also proposing some changes to current § 386.41(b), which are the provisions applying to deferrals to the service obligation. In proposed § 386.41(b)(1), we would restrict a deferral for a scholar engaging in a full-time course of study at an institution of higher education to scholars who are pursuing degrees or certificates in the field of rehabilitation. In proposed § 386.41(b)(2), we would allow for a deferral of up to four years for a scholar who is on active duty with the Armed Forces rather than the three years in the current regulations. We also propose to add a new § 386.41(c) to address exceptional circumstances when a deferral might reasonably be granted. We give as examples the care of a disabled spouse, partner, or child or the circumstance when a scholar would have to accompany a spouse or partner who is on active duty in the Armed Forces.

*Reasons:* We do not believe exceptions should be granted simply because scholars have a disability. When individuals with a disability enter a program of study, there needs to be an expectation on their part that they will complete the service obligation. Therefore, granting an exception purely on the basis of an existing disability would not be warranted. However, if scholars are diagnosed with a disability after enrolling in the program or if a disability worsens, then an exception on the basis of these circumstances might be warranted.

With regard to the reasons for deferral, we believe restricting a deferral

on the basis of full-time study in the field of rehabilitation is more appropriate than the current basis for a deferral, which is that the scholar is pursuing full-time study at an institution of higher education. If the scholar is pursuing a course of study unrelated to rehabilitation, it is less likely that he or she will then seek qualifying employment in the field of rehabilitation; therefore, it would make more sense for the scholar to begin the financial repayment process. Increasing the possible deferral period for a scholar who is on active duty from three to four years, as we propose in § 386.41(b)(2), seems reasonable for a scholar who has two two-year tours of duty. We also recognize that we cannot anticipate all of the exceptional circumstances that may warrant a deferral. Therefore, in § 386.41(c), we have added a broader authority to grant deferrals and we propose a few examples of circumstances that might warrant such a deferral. These are illustrative and are not meant to be all-inclusive. Each request for a deferral will be considered on a case-by-case basis.

*Section 386.42 (Applying for Deferrals and Exceptions)*

*Statute:* None.

*Current Regulations:* Current § 386.42 describes the documentation that a scholar must provide to substantiate a deferral or exception.

*Proposed Regulations:* In § 386.42(b)(1) and (3), we are proposing more specific requirements for the documentation to substantiate a deferral or an exception based on disability. This documentation would apply to a scholar who has a permanent or temporary disability or to the disability of a spouse, partner, or child for whom the scholar is providing care, which would require the scholar to seek a deferral. In all of these cases, the scholar would have to provide a letter from a physician or other medical professional on official stationery that describes the diagnosis and prognosis for the disability and, in the case of a request for an exception, explains that the scholar cannot work with accommodations. The documentation would have to be less than three months old.

*Reasons:* It is important that any deferral or exception be carefully documented so that the Department's decisions regarding these matters are well-founded. We have encountered numerous instances in which the documentation provided by scholars was ambiguous or insufficient. To that end, we propose to include greater specificity, particularly around a deferral or exception based on a disability.

**Innovative Rehabilitation Training Program, 34 CFR Part 387**

*Background*

This program is designed to develop new and improved methods of training for rehabilitation personnel so that State vocational rehabilitation agencies may more effectively deliver rehabilitation services. The Department last published regulations for this program, codified in part 387, on March 6, 1997 (62 FR 10398).

*Summary of Proposed Changes*

We are proposing a new name for this program—Innovative Rehabilitation Training—that better describes the nature of activities to be funded under this authority.

We are proposing changes to incorporate new statutory language in sections 301 and 302 of WIOA and to better describe the broad authority available to the Department in these regulations.

We propose to clarify that the Secretary may award grants to develop new and improved methods of training not only for the rehabilitation personnel of State vocational rehabilitation agencies but also for rehabilitation personnel of other public or non-profit rehabilitation service agencies or organizations.

Finally, we propose to address new statutory language in section 101(a)(7) of the Act related to rehabilitation personnel having a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

*Significant Proposed Regulations*

We organize our discussion by subject.

*Title*

*Statute:* None.

*Current Regulations:* The current part 387 is called ''Experimental and Innovative Training.''

*Proposed Regulations:* We propose to change the name of the part to ''Innovative Rehabilitation Training.''

*Reason:* The new title would better describe the activities funded under this program.

*Training for Personnel of Public or Non-Profit Rehabilitation Service Agencies or Organizations*

*Statute:* Section 302 of the Act authorizes the Commissioner to provide grants and contracts to assist in training rehabilitation personnel who provide vocational, medical, social, and psychological rehabilitation services, and who provide other services to individuals with disabilities under the Act.

*Current Regulations:* The current § 387.1(b) states that this program is designed to develop new and improved methods of training for rehabilitation personnel so that State vocational rehabilitation agencies may more effectively deliver rehabilitation services. Current regulations do not address whether personnel from other public or non-profit rehabilitation service agencies or organizations may also receive the training.

*Proposed Regulations:* We propose to amend § 387.1(b) to include personnel of other public or non-profit rehabilitation service agencies or organizations as recipients of the training.

*Reasons:* The change is necessary for the regulation to be consistent with the statute, which authorizes the development of new and improved methods of training for rehabilitation personnel including personnel from State vocational rehabilitation agencies as well as from other public or non-profit rehabilitation service agencies or organizations.

*21st Century Understanding*

*Statute:* Section 101(a)(7) of the Act, as amended by WIOA, requires that the State vocational rehabilitation agencies ensure that their personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities.

*Current Regulations:* Although the current § 387.1 states that this program is designed to develop new types of training programs and new and improved methods of training for State rehabilitation agencies, it does not specifically address these new statutory requirements.

*Proposed Regulations:* We propose to amend § 387.1 to state that the program is designed to develop new innovative training programs for vocational rehabilitation professionals and paraprofessionals to have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

*Reasons:* The proposed change would align innovative rehabilitation training projects awarded under 34 CFR part 387 with the needs of the field as described in WIOA. We anticipate that this change will have a positive effect on the Comprehensive System of Personnel

Development among State vocational rehabilitation agencies.

**Rehabilitation Short-Term Training Program, 34 CFR Part 390**

*Background*

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

*Summary of Proposed Changes*

We are proposing to add an additional selection criterion for grant competitions under this program—evidence of training needs as identified through training needs assessment.

*Significant Proposed Regulations*

*Statute:* Section 302(b) authorizes the Commissioner to provide grants and contracts to eligible entities to train rehabilitation personnel who provide rehabilitation services to individuals with disabilities. Section 12(a)(2) specifically authorizes the Commissioner to provide short-term training and technical instructions to rehabilitation personnel. Section 12(c) authorizes the Secretary to promulgate such regulations as are considered appropriate to carry out the Commissioner's duties under the Act.

*Current Regulations:* Current § 390.30(b) sets out selection criteria that may be used by the Secretary to evaluate application but it does not specifically state that the Secretary will review each application for evidence of the training needs of rehabilitation personnel.

*Proposed Regulations:* We propose to add a new paragraph (b) to current § 390.30 to state that the Secretary would review each application for evidence of training needs as identified through training needs assessment conducted by the applicant, designated State agencies, designated State units, or any other public or private nonprofit rehabilitation service agencies or organizations that provide rehabilitation services and other services authorized under the Act and whose personnel will receive the training.

*Reasons:* The proposed change is necessary to ensure that the proposed short-term training projects address the training needs of the rehabilitation personnel of designated State agencies or designated State units or any other public and private nonprofit rehabilitation service agencies or organizations whose personnel will receive the training. This proposed criterion would expand and improve the Rehabilitation Short-Term Training program and further the purpose of the Act.

**Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind, 34 CFR Part 396**

*Background*

This program is designed to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified interpreters to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

*Summary of Proposed Changes*

We are proposing changes to conform to section 302 of the Act, which adds individuals who are hard of hearing to the individuals served by this program. We are also proposing changes to ensure that the program accurately reflects the training needs of qualified interpreters in order to effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

We propose to amend the definition of a qualified professional in order to ensure that the highest level of competency is incorporated into the training of interpreters.

We propose to add selection criteria for the program to encourage evidence-based and promising practices.

We propose to add priorities for increasing the skill level of interpreters in unserved or underserved geographic areas, existing programs that have demonstrated their ability to raise the skill level of interpreters to meet the highest standards approved by certifying associations, and specialized topical training.

*Significant Proposed Regulations*

We organize our discussion by subject and section.

*Changes That Affect Part 396 in Its Entirety*

*Hard of Hearing*

*Statute:* Section 302(f) of the Act authorizes the training of qualified interpreters to meet the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

*Current Regulations:* 34 CFR part 396 does not address the training of interpreters for individuals who are hard of hearing.

*Proposed Regulations:* We propose to address the training of interpreters for individuals who are hard of hearing, as relevant, throughout part 396.

*Reasons:* This would conform part 396 to the Act.

*Skilled Interpreters*

*Statute:* Section 302(f) of the Act uses the term ''qualified interpreters.''

*Current Regulations:* 34 CFR part 396 uses the term ''skilled interpreters.''

*Proposed Regulations:* Proposed § 396.1 would replace the term ''skilled interpreters'' with the term ''qualified interpreters.''

*Reasons:* Although this change in terminology from ''skilled interpreters'' to ''qualified interpreters'' does not convey a substantive change in meaning, this change would conform 34 CFR part 396 to section 302(f) of the Act.

*An Individual Who Is Deaf or Hard of Hearing*

*Statute:* Section 302(f) of the Act authorizes training of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing, and individuals who are deaf-blind.

*Current Regulations:* 34 CFR part 396 does not contain a definition for an ''individual who is hard of hearing.''

*Proposed Regulations:* We propose to add the following definition in § 396.4(c): ''an individual who has a hearing impairment such that, in order to facilitate communication, the individual depends upon visual modes, such as sign language, speech reading, and gestures, or reading and writing, in addition to any other auditory information.''

*Reasons:* This program is to serve individuals who are hard of hearing in addition to individuals who are deaf and individuals who are deaf-blind. We believe it is important to propose a definition of ''individual who is hard of hearing'' to clarify for grantees what population is meant by this term. We used the definition of ''individual who is deaf'' as a starting point and made some modifications to this definition as appropriate. We emphasized the communication needs of this population, as this program is specifically meant to address the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. We particularly encourage the

public to comment on the appropriateness of this definition in the context of this program.

*Other Definitions*

*Statute:* None.

*Current Regulations:* Current § 396.4(c) defines the term ''Existing program that has demonstrated its capacity for providing interpreter training service.''

*Proposed Regulations:* We propose to expand this definition to include evidence-based practices in the training of interpreters and promising practices when evidence-based practices are not available.

*Reasons:* The Department believes that providing further context for the expectations regarding the curricula of interpreter training programs will provide greater guidance to grantees and the public. We also recognize that there are a number of promising practices available, several of which were developed through grants funded by this program and therefore should be utilized when evidence-based practices are not available.

*Statute:* None.

*Current Regulations:* Current § 396.4(c) defines the term ''Qualified professional''.

*Proposed Regulations:* We propose to amend the definition consistent with the final priority published in the **Federal Register** on September 1, 1999 (64 FR 48068) as follows: ''to mean an individual who has (1) met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; or (2) successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.''

*Reasons:* We want to ensure that the highest level of competency is incorporated into the training of interpreters in interpreter training programs funded by RSA. Since 2000, the Department has funded national and regional interpreter education centers that train qualified interpreters to meet the competencies equivalent to the highest standards approved by certifying associations. Thus, this standard has been in effect for 15 years, and we propose to change the definition to reflect this reality.

*Statute:* None.

*Current Regulations:* Current § 396.4(c) does not contain a definition for the term ''related agency.''

*Proposed Regulations:* We propose to add the definition of ''related agency'' from § 386.4. That section defines the term as an American Indian rehabilitation program or any Federal, State, or local agency; non-profit organization; or professional corporation or practice group that provides services to individuals with disabilities on behalf of a designated State agency.

*Reasons:* This is the current definition used in part 386 and would clarify what the Department means when it refers to the term ''related agency.'' Adopting this definition of ''related agency'' would assure consistency between the Rehabilitation Long-Term Training Program and the program for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind.

*Subpart A—General § 396.1*

*Statute:* None.

*Current Regulations:* Current § 396.1(a) states that grantees will receive grant funds, in part, to train manual, tactile, oral, and cued speech interpreters.

*Proposed Regulations:* We propose to expand this description to read ''training interpreters to effectively interpret and transliterate between spoken language and sign language, and to transliterate between spoken language and oral or tactile modes of communication.''

*Reasons:* This would clarify the type of training offered by this program and ensure the training of interpreters accurately reflects the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

*Selection Criteria, § 396.31*

*Statute:* None.

*Current Regulations:* Current § 396.31(a) provides additional selection criteria to evaluate an application based upon demonstrated relationships with service providers and consumers.

*Proposed Regulations:* We propose to amend this section to refer to an additional factor: The curriculum for the training of interpreters includes evidence-based practices, and promising practices when evidence-based practices are not available.

*Reasons:* The new factor would ensure consistency with the changes to definitions we have proposed in § 396.4(c)(2) to encourage and support the use of evidence-based and promising practices.

*Statute:* None.

*Current Regulations:* Current § 396.31 discusses additional selection criteria the Secretary uses to evaluate an application. Current § 396.31(a) provides a selection criterion for demonstrated relationships with service providers and consumers.

*Proposed Regulations:* We propose to amend § 396.31(a) to cover demonstrated relationships with State Vocational Rehabilitation agencies and their related agencies and consumers.

*Reasons:* This would clarify the goal and expectation of the program, which is to meet the needs of deaf consumers of the State Vocational Rehabilitation agency and their related agencies.

*Priorities, § 396.33*

*Statute:* Section 302(f) of the Act requires the Department, in making awards under this part, to give priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

*Current Regulations:* Current § 396.33(a) contains the statutory priority in section 302(f).

*Proposed Regulations:* We propose adding § 396.33(b), which would allow the Secretary to give priority consideration when announcing competitions for awards in the following three areas: (1) Increasing the skill level of interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind in unserved or underserved geographic areas; (2) Existing programs that have demonstrated their capacity for providing interpreter training services that raise the skill level of interpreters in order to meet the highest standards approved by certifying associations; and (3) Specialized topical training based on the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

*Reasons:* These priorities reflect the types of projects that the Department intends to focus on in the future, and we propose them here for future use.

*Matching Requirements, § 396.34*

*Statute:* Section 302(f) of the Act requires the Department to pay only part of the costs for projects under this program.

*Current Regulations:* Part 396 does not contain a match requirement.

*Proposed Regulations:* We propose to add a new § 396.34 that would include a requirement that a grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee would be determined by the Secretary at the time of the grant award.

*Reasons:* This would conform part 396 to the statutory provision that this program have a matching requirement.

*Proposed Changes, Regulations To Be Removed*

We next discuss those regulations that we propose to remove. We discuss first the regulations for programs WIOA deauthorized, then regulations that are superseded or unnecessary.

**Removal of Regulations Required by WIOA**

*Statute:* WIOA eliminated the following programs: The Projects with Industry program (title VI, part A of WIOA), The State Vocational Rehabilitation Unit In-Service Training program (section 441(b) of WIOA), the Migrants and Seasonal Farmworkers program, (section 441(a) of WIOA) and the Recreation Programs for Individuals with Disabilities program (section 441(a) of WIOA).

*Current Regulations:* The regulations governing the Projects with Industry program are found at part 379. The regulations governing the State Vocational Rehabilitation Unit In-Service Training program are found at part 388. The regulations governing the Migrants and Seasonal Farmworkers program are found at § 369.1(b)(3) and § 369.2(c). The regulations governing the Recreation Programs for Individuals with Disabilities program are found at § 369.1(b)(5) and § 369.2(d).

*Proposed Regulations:* We propose to remove parts 379, 388, and 369.

*Reasons:* The removal of the regulations at parts 379, 388, and 369 is required by the Act as amended by WIOA. We propose to delay the effective date for the removal of parts 388 and 369 so that the Department can complete administration of the last grants under these programs.

**The Balance of Part 369**

*Statute:* None.

*Current Regulations:* All of part 369 other than §§ 369.1(b)(3), (5), and (6), 369.2(c), (d), and (e).

*Proposed regulations:* The Secretary proposes to remove the balance of part 369.

*Reasons:* Beyond the Migrants and Seasonal Farmworkers Program, Recreation Programs for Individuals with Disabilities, and the Projects With Industry Program, part 369 implements three other kinds of vocational rehabilitation (VR) service projects: VR service projects for American Indians with disabilities, special projects and demonstrations for providing VR services to individuals with disabilities, and special projects and demonstrations for providing transitional rehabilitation services to youth with disabilities.

We propose to incorporate into part 371 those regulations in part 369 that apply to the American Indian Vocational Rehabilitation Services program, under which the governing bodies of Indian tribes, and consortia of those governing bodies, provide VR services for American Indians with disabilities. Keeping these regulations in part 369 is unnecessarily duplicative.

As for the special projects for VR services and transition services, the Department has not used the regulations in part 369 for these projects in some time. The regulations were superseded by the more specific regulations in part 373, which the Department adopted on December 11, 2000, after the 1998 amendments to the Act.

However, we also propose to make this removal effective on September 30, 2016, the last day of fiscal year (FY) 2016, when the Department's administration of the last grants under the Migrants and Seasonal Farmworkers Program will be complete.

**Removal of Regulations Not Required by WIOA**

*Statute:* None.

*Current Regulations:* 34 CFR part 376 governs the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities program. 34 CFR part 377 governs the Demonstration Projects to Increase Client Choice program.

*Proposed Regulations:* The Secretary proposes to remove parts 376 and 377.

*Reasons:* Parts 376 and 377 are outdated. The Department has not used these parts for more than 15 years. They have been superseded by the more specific regulations in part 373, which the Department adopted on December 11, 2000, after the 1998 amendments to the Act.

**Rehabilitation Continuing Education Programs, 34 CFR Part 389**

*Statute:* None.

*Current Regulations:* 34 CFR part 389 govern the Rehabilitation Continuing Education programs.

*Proposed Regulations:* The Secretary proposes to remove part 389.

*Reasons:* Part 389 is duplicative and outdated. The Department adopted this short part on December 30, 1980 (45 FR 86385) and amended it on September 23, 1985 (50 FR 38631), May 13, 1988 (53 FR 17147), and March 6, 1997 (62 FR 10405). As drafted, part 389 is very prescriptive. It allows the Department only to create and support regional training centers to provide continuing education and technical assistance to currently employed VR professionals throughout the country.

Over time, however, the RSA's focus has shifted away from providing continuing education to concentrating on technical assistance and training. In January 2014, for example, President Obama issued a memorandum to the Secretaries of Labor, Commerce, and Education directing them to take action to address job-driven training for the nation's workers.

The memorandum instructed the Secretaries to make Federal workforce and training programs and policies more focused on imparting skills with job-market value, more easily accessed by employers and job seekers, and more accountable for producing positive employment and earnings outcomes for the people they serve. The memorandum also set out training principles for the Departments to follow and incorporate, such as promoting engagement with industry, employers, employer associations, and worker representatives to identify the skills and supports workers need.

As a result, in FY 2014, RSA ran a competition to establish a job-driven vocational rehabilitation technical assistance center that would provide training and technical assistance to State VR agencies to upgrade the knowledge and skills of the personnel and providers so that they are better able to build effective partnerships with employers and assist VR consumers in obtaining the skills needed in today's labor market.

To the extent that RSA does want to fund continuing-education projects, part 389 is not necessary. RSA can do so through a number of other regulations, such as part 387 (innovative rehabilitation training programs) or part 390 (rehabilitation short-term training programs), and it can do so more flexibly, *i.e.* without the requirement of establishing regional centers.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

**Part 367—Independent Living Services for Older Individuals Who Are Blind**

In general, unless expressly noted below, we do not estimate that changes to this part will result in any additional costs to grantees.

*Subpart B—Training and Technical Assistance*

New Subpart B of Part 367 implements the WIOA amendments requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While these set-asides will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and individuals with disabilities.

To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we would provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. Prior to this proposed regulation, grantees have been largely responsible for meeting the training needs of their program staff. This may have contributed to duplicative training and technical assistance efforts across grantees that could have easily been coordinated nationally. The coordination of these efforts by RSA would generate efficiencies across the entire program, thus providing more benefits to grantees than they would have realized if the funds had been directly provided to them.

Based on the FY 2015 authorized appropriation of $33,317,000 for the OIB program under WIOA, the estimated set-aside would be $599,706, based upon the minimum percentage established by the Act. Therefore, if grantees were to receive no benefit from the training and technical assistance supported by the Department, grantees would experience a loss in benefits of $599,706. However, since the Department will sponsor training and technical assistance services directly for this group in the amount of $599,706, we expect there to be no net loss of benefits. Additionally, as noted above, the efficiencies realized by this centralization of training and technical assistance efforts may actually result in a net increase in benefits for grantees.

*Subpart C—What are the application requirements under this part?*

Under this Subpart, we have removed the requirement for States to seek to incorporate into the State Plan for Independent Living (SPIL) any new methods and approaches relating to independent living services for older individuals who are blind. Incorporating this information into the SPIL required minimal time (approximately 15 minutes) every three years upon submission of the SPIL; therefore, any savings realized from this change would be negligible.

*Subpart E—How does the Secretary award formula grants?*

Under Subpart E, we have clarified that OIB grantees are to inform the Secretary 45 days prior to the end of the fiscal year that funds would be available for reallotment. We do not believe that this requirement will generate additional costs to grantees, as the change only provides a timeline for an action that is already occurring and does not, therefore, generate any new burden on grantees.

**Part 370—Client Assistance Program**

WIOA requires that the proposed set-aside for training and technical assistance for CAP take effect in any fiscal year in which the appropriation equals or exceeds $14,000,000. To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we would provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. In FY 2015, the appropriation for CAP was $13,000,000, requiring a 7.7 percent increase in the overall appropriation before the 1.8 percent set aside becomes effective. Because the set-aside is not triggered under the statute until grantees realize a substantial increase in benefits under this program, the set-aside will not have a substantial impact on the activities of grantees, a $1,000,000 increase in the overall appropriation

will result in a set-aside of $252,000 which would be used to provide support to grantees. Additionally, as noted above in the discussion of costs and benefits associated with Part 367, we believe that the consolidation of training and technical assistance activities at the national level will ultimately yield net benefits to grantees greater than if those activities were coordinated locally.

**Part 371—American Indian Vocational Rehabilitation Services Program**

New Subpart B of Part 371 implements the WIOA amendments requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While these set-asides will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and individuals with disabilities.

Based on the FY 2014 amount set aside by the Department for the AIVRS program (approximately $37,201,000), the estimated set-aside would have been $669,618. As noted above, since these funds are being used to provide services and support to grantees, we do not anticipate any net loss of benefit. However, if efficiencies are realized due to centralized coordination of these activities, grantees may experience a net gain in benefits.

**Part 373—Rehabilitation National Activities Program**

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

**Part 381—Protection and Advocacy for Individual Rights Program**

A proposed amendment to § 381.20 (current § 381.22) clarifies in paragraph (a)(1) that when the PAIR appropriation equals or exceeds $5,500,000, requiring the Secretary to set aside between 1.8 and 2.2 percent of funds for the provision of training and technical assistance, the funding mechanism for the provision of training and technical assistance may include a grant, contract, or cooperative agreement. Previously, while the Department had authority to provide training and technical assistance to grantees, we historically opted to ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, by funding training and technical assistance at the minimum allowable level of 1.8 percent. This revision would have no impact on PAIR grantees since previous amendments to the Act have allowed for the provision of training and technical assistance.

Additionally, the PAIR appropriation has been equal to, or greater than, $5,500,000 for at least 15 fiscal years (in FY 2015, the appropriation was $17,650,000). This proposed amendment simply provides the Secretary with additional flexibility in the funding mechanism through which training and technical assistance is provided.

**Part 385—Rehabilitation Training**

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

**Part 386—Rehabilitation Long-Term Training**

Except as detailed below, we do not anticipate changes to this section to result in increased burden or costs for grantees.

*Section 386.31 (Funding Requirement)*

In § 386.31 we are proposing that program grantees dedicate 65 percent to scholarships rather than 75 percent as required by current regulations. This requirement would apply to both the federal award and the non-federal share. This change acknowledges the fact that grantees incur costs in administering these programs, particularly in terms of staff time needed to track scholar progress in completing their program of study and their service obligation. This decrease in the cost to grantees brought about by proposed changes in § 386.31 balances some of the increased costs created by proposed changes made in other sections of the regulations. In FY 2014, the Department made approximately $17,075,000 in new or continuation awards under the Rehabilitation Long-Term Training program. Assuming all grantees made the minimum match of 10% of the project cost, the reduction in the scholarship requirement would free up approximately $1,897,000 in project funding to be used for activities other than scholarship support. While this does not represent any additional funding for grantees, it does represent additional flexibility provided by the regulation.

*Section 386.33 (Disbursing Scholarships)*

Changes to this section require grantees to document that scholars will seek employment in the field of study in which the scholar was provided training or employment where it can be demonstrated that the field of study is directly relevant to the job functions being performed. Currently, grantees obtain sufficient documentation of other requirements that we do not believe this new requirement will represent a substantial burden on grantees. However, if we assume that obtaining this additional documentation would take, on average, 10 minutes per scholar, and using a wage rate of $17.69 (the mean hourly wage for office and administrative support staff at colleges, universities, and professional schools) and the 1,367 scholars receiving support in FY 2014, we estimate this provision would cost $4,030.37.

*Section 386.34 (Assurances)*

Changes to this section require grantees to annually obtain signed executed agreements with scholars containing the terms and conditions outlined in this section. It has been the Department's policy to encourage annual updating of scholar information; these regulations simply formalize this policy. As such, we estimate that these changes to the regulation will have little actual impact on grantees or scholars. However, if grantees were previously only collecting these agreements once per scholar rather than every year that support is received, there would be additional costs. Of all scholars reported in qualifying employment in FY 2014, 88.4% received support for more than one year. If we assumed that this change required an additional half hour of time each year beyond the first year of support to update their information with their program, and using an average wage rate of $17.69, we estimate an additional cost of $10,641 (given that we estimate that 1,203 of the 1,367 scholars receiving support in FY 2014 were multi-year scholars). We emphasize that this is an overestimate, as this change simply conforms the regulations to current practice.

*Section 386.40 (Requirements for Scholars)*

In § 386.40(a)(6), we are proposing language that clarifies the type of employment a scholar must obtain to complete the service obligation in order to ensure that the funds used for scholarships will benefit individuals with disabilities served through the state vocational rehabilitation program and related agencies. This change largely reflects current policy and should not result in an increased burden on grantees or scholars. Changes to § 386.40(b) provides clarification around when scholars may begin qualifying employment while § 386.40(c) clarifies that scholars who pursued coursework on a part-time basis should have their service obligations calculated on a full-

time equivalent basis. As noted above, 88.4% of the scholars completing their service obligations in FY 2014 received support for more than one year and would have been, therefore, eligible to benefit from these changes. We estimate that this provision, had it been in effect when those scholars received support, would have reduced the net service obligations by 9,049 years. Given the average annual scholarship value for this group of $4,287, we estimate a potential savings of $38,792,902. Finally, changes in § 386.40(d) make a scholar in repayment status responsible for any collection costs if they do not provide appropriate information to the grantee in a timely manner. In FY 2014, the Department referred 44 scholars for repayment totaling $486,471. Assuming that collection costs total 3% of the balance of the repayment, we estimate total collection costs of $14,594. If 5% of these scholars were inappropriately referred to repayment, this additional requirement could save scholars $24,324 by avoiding such inappropriate referrals.

*Sections 386.41 (Granting Deferrals and Exceptions) and 386.42 (Applying for Deferrals and Exceptions)*

In 386.41 and 386.42, we are proposing stricter regulations around exceptions and deferrals, particularly for individuals with disabilities, in order to assure that individuals who benefit from scholarships funded by this program are more likely to complete their service obligation. While these changes may have impacts on the specific decisions made by scholars, they will not have a financial impact on the costs or benefits for grantees, and will likely increase the benefits to individuals with disabilities served by State VR agencies and related agencies by ensuring that training is aligned with practice and that a greater percentage of scholars complete their service obligations rather than just repaying the cost of their scholarships.

**Part 387—Innovative Rehabilitation Training Program**

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

**Part 390—Rehabilitation Short-Term Training Program**

Changes to § 390.30 adds a selection criterion that the Secretary would review each application for evidence of training needs as identified through training needs assessments. While conducting a training needs assessment prior to application may result in increased costs for applicants, because the regulation simply adds this as one selection criterion among several and allows applicants to use needs assessments conducted by other entities, we do not anticipate that applicants will realize any actual increased costs associated with this provision.

**Part 396—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind**

Changes to § 396.34 require grantees to provide matching funds to support projects in an amount determined by the Secretary at the time of the grant award. While this matching requirement did not previously exist in the regulations, it was a statutory requirement and, while the Department did not require grantees to document the match, we do not believe that any prior grantees did not contribute any funds to the project, either in cash or in kind. As such, we do not believe this provision will result in any increased costs for grantees.

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 370.1 What is the Client Assistance Program (CAP)?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

**Independent Living for Older Individuals Who Are Blind**

There are 56 OIB grantees funded under section 752 of the Act, all of which are State agencies. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act. Furthermore, the proposed regulations would not have a significant economic impact on these State or State agencies because the proposed regulations would not impose any additional substantive regulatory burdens or require additional Federal supervision.

**Client Assistance Program**

Due to the revisions to the Act pursuant to WIOA, there are 57 designated CAP agencies funded under section 112 of the Act, of which 19 are configured within a State agency and all but one remaining designated CAP agencies are predominantly private, nonprofit organizations. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act. The remaining designated CAP agencies are ''small entities'' that would be affected by these proposed regulations. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under current regulations.

**Protection and Advocacy of Individual Rights Program**

Due to the revisions to the Act pursuant to WIA, there are 57 PAIR grantees funded under section 509 of the Act, of which a majority are private, nonprofit organizations that are considered ''small entities'' under the Regulatory Flexibility Act. The proposed regulations would not have a significant economic impact on these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under current regulations.

**American Indian Vocational Rehabilitation Services Program**

Eligible applicants under this program are the governing bodies of Indian tribes, consortia of such governing bodies, or tribal organizations established and controlled by the

governing bodies of Indian tribes, all located on Federal and State reservations. These entities are not considered ''small entities'' under the Regulatory Flexibility Act.

**Special Demonstration Programs**

Eligible entities are State vocational rehabilitation agencies, community rehabilitation programs, Indian tribes or tribal organizations, public or non-profit agencies and organizations, institutions of higher education, and certain for-profit organizations. States, State agencies, Indian tribes, and tribal organizations are not ''small entities'' under the Regulatory Flexibility Act. The community rehabilitation programs, public or non-profit agencies and organizations, institutions of higher education, and certain for-profit organizations are considered ''small entities.'' The proposed regulations would not have a significant economic impact on a significant number of these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under the current regulations.

**Vocational Rehabilitation Training Programs**

For all rehabilitation programs other than training of interpreters for individuals who are deaf, hard of hearing, and deaf-blind, eligible entities are States, public or nonprofit agencies, Indian tribes, and institutions of higher education. For this latter program, eligible entities are public and private non-profit agencies and organizations and institutions of higher education.

States and Indian tribes are not ''small entities'' under the Regulatory Flexibility Act. The public or nonprofit agencies and institutions of higher education are considered ''small entities.'' The proposed regulations would not have a significant economic impact on a significant number of these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under the current regulations.

**Paperwork Reduction Act of 1995**

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The following sections contain information collection requirements:

- Sections 367.23, 367.30, and 367.31 of the Independent Living Services for Older Individuals Who Are Blind (OIB) program;
- Sections 370.20 and 370.44 of the Client Assistance Program (CAP);
- Section 373.21 of the Rehabilitation National Activities program;
- Sections 381.10 and 381.32 of the Protection and Advocacy of Individual Rights (PAIR) program;
- Sections 385.20 and 385.45 of the Rehabilitation Training program;
- Sections 386.21 and 386.36 of the Rehabilitation Long-Term Training program;
- Section 387.3 of the Innovative Rehabilitation Training program;
- Section 390.3 of the Rehabilitation Short-Term Training program; and
- Section 396.20 of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program.

These sections do not cause substantive changes to the information collection requirements listed below. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the OMB control numbers (1820–0608 and 1820–0660 (OIB), 1820–0520 and 1820–0528 (CAP), 1820–0625 and 1820–0627 (PAIR), 1820–0018 (all other programs) and 1820–0617 (Rehabilitation Long-Term Training)) assigned by OMB to any information collection requirement in this NPRM and adopted in the final regulations.

*Sections 367.23, 367.30 and 367.31, OIB*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collection under 1820–0608. These proposed requirements do not change the current OMB-approved annual burden of 336 annual burden hours with 56 respondents and annual costs of $4,256.00.

*Sections 370.20 and 370.44, CAP*

Regulations proposed under these sections do not cause substantive changes to the active and OMB-approved data collections under 1820–0520 and 1820–0528. These proposed requirements minimally change the current OMB-approved annual burden of 9 hours to 9.16 hours due to the addition of one respondent to the current 56 respondents. The current annual costs of $441.00 would increase to an estimated $449.00 under 1820–0520. For the OMB-approved data collection under 1820–0528, these proposed requirements minimally change the annual burden hours from 896 hours with 56 respondents and annual costs of $4,616.00 to 912 burden hours with 57 respondents and annual costs of approximately $4,698.00.

*Section 373.21 of the Rehabilitation National Activities Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

*Sections 381.10 and 381.32, PAIR*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0625 and 1820–0627. These proposed requirements do not change the current OMB-approved annual burden of 9 hours with 57 respondents and annual costs of $228.00 under 1820–0625. These proposed requirements do not change the current OMB-approved annual burden of 912 hours with 57 respondents and annual costs of $4,240.00 under 1820–0627.

*Sections 385.20 and 385.45 of the Rehabilitation Training Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

*Sections 386.21 and 386.36 of the Rehabilitation Long-Term Training Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018 and 1820–0617. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00 under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 350 hours with 350 respondents and annual costs of $17,500.00 under 1820–0617.

*Section 387.3 of the Innovative Rehabilitation Training Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

*Section 390.3 of the Rehabilitation Short-Term Training Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

*Section 396.20 of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program*

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

*Section 371.13 of the American Indian Vocational Rehabilitation Services Program*

Finally, for the American Indian Vocational Rehabilitation Services program, section 423(c) of WIOA requires that between 1.8–2 percent of funds appropriated for this program be reserved to provide training and technical assistance to AIVRS grantees and that the Commissioner conduct a survey of the governing bodies of Indian Tribes currently receiving grants under the AIVRS program regarding their training and technical assistance needs in order to determine priorities for the training and technical assistance provider.

The Department has amended the current information collection package (OMB 1820–0655) that was approved by OMB through September 30, 2017. This amendment requires governing bodies of existing 121 AIVRS projects to respond to a questionnaire that lists 41 potential topics. Grantees are required to identify up to 10 topics they consider to be essential to improving their overall performance. These responses are analyzed by RSA Project Officers and shared with the provider for use in developing its training and technical assistance program. We estimate that it will take each program less than 10 minutes to complete this questionnaire. We believe these amendments to the previous information data collection package places a negligible burden on the AIVRS grantees, and such burden is offset by the anticipated benefit of having properly targeted training and technical assistance made available to the projects.

**Intergovernmental Review**

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

**Assessment of Educational Impact**

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Federalism**

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in this document may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.240A Protection and Advocacy of Individual Rights; 84.161A Client Assistance Program; 84.177B Independent Living Services for Older Individuals Who Are Blind; 84.250J American Indian Vocational Rehabilitation Services; 84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities Program; 84.234 Projects With Industry; 84.128J Recreational Programs; and 84.265 State Vocational Rehabilitation Services Unit In Service Training)

**List of Subjects**

*34 CFR Part 367*

Aged, Blind, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 369*

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 370*

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 371*

Grant programs-Indians, Grant programs-social programs, Indians, Vocational rehabilitation.

*34 CFR Part 373*

Grant programs-education, Vocational rehabilitation.

*34 CFR Part 376*

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation, Youth.

*34 CFR Part 377*

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 379*

Business and industry, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 381*

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 385*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 386*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 387*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 388*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 389*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 390*

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 396*

Education of individuals with disabilities, Grant programs-education, Individuals with disabilities, Reporting and recordkeeping requirements.

Dated: March 6, 2015.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, under the authority of section 503(f) of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) and section 12(c) of the Rehabilitation Act of 1973, as amended by WIOA (29 U.S.C. 709(c)), the Secretary of Education proposes to amend chapter III of title 34 of the Code of Federal Regulations as follows:

■ 1. Part 367 is revised to read as follows:

## PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

### Subpart A—General

Sec.
367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

### Subpart B—Training and Technical Assistance

367.20 What are the requirements for funding training and technical assistance under this chapter?
367.21 How does the Secretary use these funds to provide training and technical assistance?
367.22 How does the Secretary make an award?
367.23 How does the Secretary determine funding priorities?
367.24 How does the Secretary evaluate an application?

### Subpart C—What Are the Application Requirements Under this Part?

367.30 How does a designated State agency (DSA) apply for an award?
367.31 What assurances must a DSA include in its application?

### Subpart D—How Does the Secretary Award Discretionary Grants?

367.40 Under what circumstances does the Secretary award discretionary grants to States?
367.41 How does the Secretary evaluate an application for a discretionary grant?

### Subpart E—How Does the Secretary Award Formula Grants?

367.50 Under what circumstances does the Secretary award formula grants to States?
367.51 How are allotments made?
367.52 How does the Secretary reallot funds under this program?

### Subpart F—What Conditions Must be Met After an Award?

367.60 When may a DSA make subawards or contracts?
367.61 What matching requirements apply?
367.62 What requirements apply if the State's non-Federal share is in cash?
367.63 What requirements apply if the State's non-Federal share is in kind?
367.64 What is the prohibition against a State's condition of an award of a subaward or contract based on cash or in-kind contributions?
367.65 What is program income and how may it be used?
367.66 What requirements apply to the obligation of Federal funds and program income?
367.67 What notice must be given about the Client Assistance Program (CAP)?
367.68 What are the special requirements pertaining to the protection, use, and release of personal information?
367.69 What access to records must be provided?
367.70 What records must be maintained?

**Authority:** Sections 751–753 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–796l, unless otherwise noted.

## Subpart A—General

### § 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—

(a) Provide any of the independent living (IL) services to older individuals who are blind that are described in § 367.3(b);

(b) Conduct activities that will improve or expand services for these individuals; and

(c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: Section 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a) and (d))

### § 367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(h) of the Act and §§ 367.30–367.31.

(Authority: Section 752(a)(2) and 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a)(2) and (h))

### § 367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in § 367.1 and paragraph (b) of this section.

(b) For purposes of § 367.1(a), IL services for older individuals who are blind include—

(1) Services to help correct blindness, such as—

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, individual advocacy training, facilitating the transition from nursing homes and other institutions to home and community-based residences with the requisite supports and services, and providing assistance to older individuals who are blind who are at risk of entering institutions so that the individuals may remain in the community; and

(8) Other IL services, as defined in § 367.5.

(Authority: Section 752(d) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k (d) and (e))

### § 367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart B and D.

(2) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart E.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in this part 367.

(Authority: Sections 12(c) and 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 796k)

### § 367.5 What definitions apply?

(a) The definitions of terms used in this part that are included in the regulations identified in § 367.4 as applying to this program.

(b) In addition, the following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act, as amended by WIOA.

(2) *Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(i) Involve representing an individual—

(A) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(B) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(ii) Be on behalf of—

(A) A single individual, in which case it is individual advocacy;

(B) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

(C) Oneself, in which case it is self advocacy.

(3) *Attendant care* means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(4) *Contract* means a legal instrument by which RSA in subpart B or the DSA receiving a grant under this part purchases property or services needed to carry out the program under this Part. The term as used in this part does not include a legal instrument, even if RSA or the DSA considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

(Authority: 20 U.S.C. 1221e–3)

(5) *Designated State Agency* means the agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(6) *Independent living services for older individuals who are blind* means those services listed in § 367.3(b).

(7) *Legally authorized advocate or representative* means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.

(8) *Minority group* means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

(9) *Older individual who is blind* means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(10) *Other IL services* include:

(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, older individuals who are blind;

(iii) Rehabilitation technology;

(iv) Services and training for older individuals who are blind who also have cognitive and sensory disabilities, including life skills training and interpreter;

(v) Personal assistance services, including attendant care and the training of personnel providing these services;

(vi) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(vii) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other older individuals who are blind who have traditionally been unserved or underserved by programs under the Act;

(viii) Education and training necessary for living in a community and participating in community activities;

(ix) Supported living;

(x) Transportation, including referral and assistance for transportation;

(xi) Physical rehabilitation;

(xii) Therapeutic treatment;

(xiii) Provision of needed prostheses and other appliances and devices;

(xiv) Individual and group social and recreational services;

(xv) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of older individuals who are blind;

(xvi) Appropriate preventive services to decrease the need of older individuals who are blind who are assisted under the Act for similar services in the future;

(xvii) Community awareness programs to enhance the understanding and integration into society of older individuals who are blind; and

(xviii) Any other services that may be necessary to improve the ability of an older individual who is blind to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(11) *Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

(12) *Peer role models* means individuals with significant disabilities whose achievements can serve as a positive example for other older individuals who are blind.

(13) *Personal assistance services* means a range of IL services, provided by one or more persons, designed to assist an older individual who is blind to perform daily living activities on or off the job that the individual would typically perform if the individual was not blind. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(14) *Service provider* means—

(i) the DSA that directly provides services authorized under § 367.3; or

(ii) any other entity that receives a subaward or contract from the DSA to provide services authorized under § 367.3.

(15) *Significant disability* means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

(16) *State* means, except where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands.

(17) *Subaward* a grant or a cooperative agreement provided by the DSA to a subrecipient for the subrecipient to carry out part of the Federal award received by the DSA under this part. It does not include payments to a contractor or payments to an individual that is a beneficiary of a program funded under this part. A subaward may be provided through any form of legal agreement, including an agreement that the DSA considers a contract.

(Authority: 20 U.S.C. 1221e–3)

(18) *Subrecipient* a non-Federal entity that receives a subaward from the DSA to carry out all or part of the program funded under this part; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

(Authority: 20 U.S.C. 1221e–3)

(19) *Transportation* means travel and related expenses that are necessary to enable an older individual who is blind to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an older individual who is blind to benefit from that IL service.

(20) *Unserved and underserved groups or populations,* with respect to groups or populations of older individuals who are blind in a State, include, but are not limited to, groups or populations of older individuals who are blind who—

(i) Have cognitive and sensory impairments;

(ii) Are members of racial and ethnic minority groups;

(iii) Live in rural areas; or

(iv) Have been identified by the DSA as unserved or underserved.

(Authority: Unless otherwise noted, Section 7 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705)

## Subpart B—Training and Technical Assistance

### § 367.20 What are the requirements for funding training and technical assistance under this chapter?

For any fiscal year, beginning with fiscal year 2015, the Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this chapter to provide training and technical assistance to DSAs, or other providers of independent living services for older individuals who are blind, that are funded under this chapter for such fiscal year.

(Authority: Section 751A(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a))

### § 367.21 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements with entities that have the capacity to provide technical assistance and training in the provision of independent living services for older individuals who are blind.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to DSAs or other service providers to assist them in improving the operation and performance of programs and services for older individuals who are blind resulting in their enhanced independence and self-sufficiency.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

### § 367.22 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 751A of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to DSAs or other service providers of IL services to older individuals who are blind and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

### § 367.23 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of DSAs that receive grants under section 752 regarding training and technical assistance needs in order to inform funding priorities for such training and technical assistance.

(Authority: Section 751A(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b))

### § 367.24 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) If the Secretary uses a contract to award funds under this subpart, the application process will be conducted and the subsequent award will be made in accordance with 34 CFR part 75.

(Authority: Section 751A of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b), 20 U.S.C. 1221e–3, and 3474)

## Subpart C—What Are the Application Requirements Under This Part?

### § 367.30 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(h) or a reallotment grant under section 752(i)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Sections 752(h) and (i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h) and (i))

### § 367.31 What assurances must a DSA include in its application?

An application for a grant under section 752(h) or a reallotment grant under section 752(i)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in § 367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, information that the Secretary determines necessary for the proper and efficient administration of this program, including—

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities; and

(ii) Older individuals with significant disabilities who are blind;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(d) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and

(2) Engage in—

(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts; and

(e) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Approved by the Office of Management and Budget under control numbers 1820–0660 and 1820–0608)

(Authority: Section 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h))

## Subpart D—How Does the Secretary Award Discretionary Grants?

### § 367.40 Under what circumstances does the Secretary award discretionary grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States in accordance with section 752(b) of the Act and EDGAR regulations at 34 CFR part 75 (Direct Grant Programs).

(b) The Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded under this part—as long as the grantee satisfies the applicable requirements in this part, the terms of the grant, and 34 CFR 75.250 through 75.253 (Approval of Multi-year Projects).

(c) Subparts A, C, D, and F of this part govern the award of competitive grants under this part.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

### § 367.41 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant based on the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) In addition to the selection criteria, the Secretary considers the geographic distribution of projects in making an award.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

## Subpart E—How Does the Secretary Award Formula Grants?

### § 367.50 Under what circumstances does the Secretary award formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, C, E, and F of this part govern the award of formula grants under this part.

(Authority: Section 752(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c))

### § 367.51 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(i) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(i) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of

section 752(h) of the Act and §§ 367.30 and 367.31.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c)(2))

**§ 367.52 How does the Secretary reallot funds under this program?**

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallotment grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and § 367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and § 367.51 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(h) of the Act and in accordance with §§ 367.30 and 367.31; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallotment grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.51 for that fiscal year only.

(e) A state that does not intend to expend the full amount of its allotment must notify RSA at least 45 days prior to the end of the fiscal year that its grant, or a portion of it, is available for reallotment.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(i)(4))

## Subpart F—What Conditions Must Be Met After an Award?

**§ 367.60 When may a DSA make subawards or contracts?**

A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

(a) Subawards to public or private nonprofit agencies or organizations; or

(b) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(Authority: Sections 752(g) and (h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(g) and (h)(2)(A))

**§ 367.61 What matching requirements apply?**

Non-Federal contributions required by § 367.31(b) must meet the requirements in 2 CFR 200.306 (Cost sharing or matching).

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

**§ 367.62 What requirements apply if the State's non-Federal share is in cash?**

(a) Expenditures that meet the non-Federal share requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement. Expenditures used as non-Federal share must also meet the following requirements:

(1) The expenditures are made with funds made available by appropriation directly to the DSA or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the DSA in accordance with State law for expenditure by, and at the sole discretion of, the DSA for activities authorized by § 367.3; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for activities listed in § 367.3;

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a subaward or contract under section 752(g) of the Act from the DSA is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the subaward or contract was awarded under the State's regular competitive procedures. The State may not exempt the awarding of the subaward or contract from its regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

**§ 367.63 What requirements apply if the State's non-Federal share is in kind?**

In-kind contributions may be—

(a) Used to meet the matching requirement under section 752(f) of the Act if the in-kind contributions meet the requirements and are allowable under 2 CFR 200.306; and

(b) Made to the program or project by the State or by a third party (*i.e.,* an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a subrecipient or contractor that is receiving or will receive assistance under section 752(g) of the Rehabilitation Act.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

**§ 367.64 What is the prohibition against a State's condition of an award of a subaward or contract based on cash or in-kind contributions?**

(a) A State may not condition the making of a subaward or contract under section 752(g) of the Act on the requirement that the applicant for the subaward or contract make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a subrecipient or contractor of the State, may not condition the award of a subcontract on the requirement that the applicant for the subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the subrecipient or contractor of the State.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

**§ 367.65 What is program income and how may it be used?**

(a) *Definition. Program income* means gross income earned by the grantee, subrecipient, or contractor that is directly generated by a supported activity or earned as a result of the grant, subaward, or contract.

(1) Program income received through the transfer of Social Security Administration program income from the State Vocational Rehabilitation Services program (Title I) in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(2) [Reserved]

(b) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of services authorized under § 367.3.

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(3) Program income may not be used to meet the non-Federal share requirement under § 367.31(b).

(Authority: 20 U.S.C. 3474)

**§ 367.66 What requirements apply to the obligation of Federal funds and program income?**

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSA during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under this part remain available for obligation in the succeeding fiscal year only to the extent that the DSA complied with its matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(c) Program income is considered earned in the fiscal year in which it is received. Program income earned during the fiscal year must be disbursed during the time in which new obligations may be incurred to carry out the work authorized under the award, and prior to requesting additional cash payments in accordance with 2 CFR 200.305(b)(5).

(Authority: 20 U.S.C. 3474)

**§ 367.67 What notice must be given about the Client Assistance Program (CAP)?**

The DSA and all other service providers under this part shall use formats that are accessible to notify individuals seeking or receiving services under this part about—

(a) The availability of CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

**§ 367.68 What are the special requirements pertaining to the protection, use, and release of personal information?**

(a) *General provisions.* The DSA and all other service providers under this part shall adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(1) Specific safeguards protect current and stored personal information;

(2) All applicants for, or recipients of, services under this part and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

(v) Identification of other agencies to which information is routinely released;

(4) Persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals served under this part as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) *Service provider use.* All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of services under this part and the administration of the program under which services are provided under this part. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of services under this part or the administration of the program under which services are provided under this part. In the provision of services under this part or the administration of the program under which services are provided under this part, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) Release to recipients of services under this part.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of services under this part, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of a program under this part, or for purposes that would significantly improve the quality of life for individuals served under this part and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

(e) Release to other programs or authorities.

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

(5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: 20 U.S.C. 3474)

### § 367.69 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the DSA and all other service providers shall provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under this part

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this part; and

(c) All individual case records or files or consumer service records of individuals served under this part, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: 20 U.S.C. 1221e–3)

### § 367.70 What records must be maintained?

The DSA and all other service providers shall maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: 20 U.S.C. 1221e–3)

## PART 369 [Removed and Reserved]

■ 2. Part 369 is removed and reserved.

■ 3. Part 370 is revised to read as follows:

## PART 370—CLIENT ASSISTANCE PROGRAM

### Subpart A—General

Sec.
370.1 What is the Client Assistance Program (CAP)?
370.2 Who is eligible for an award?
370.3 Who is eligible for services and information under the CAP?
370.4 What kinds of activities may the Secretary fund?
370.5 What regulations apply?
370.6 What definitions apply?
370.7 What shall the designated agency do to make its services accessible?

### Subpart B—What Requirements Apply to Redesignation?

370.10 When do the requirements for redesignation apply?
370.11 What requirements apply to a notice of proposed redesignation?
370.12 How does a designated agency preserve its right to appeal a redesignation?
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370.14 How does a designated agency appeal a written decision to redesignate?
370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?
370.16 How does the Secretary review an appeal of a redesignation?
370.17 When does a redesignation become effective?

### Subpart C—What are the Requirements for Requesting a Grant?

370.20 What must be included in a request for a grant?

### Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?

### Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to employees of a designated agency?
370.42 What access must the CAP be afforded to policymaking and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to a Governor of a State?
370.47 What is program income and how may it be used?
370.48 When must grant funds and program income be obligated?
370.49 What are the special requirements pertaining to the protection, use, and release of personal information?

**Authority:** Section 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732, unless otherwise noted.

### Subpart A—General

### § 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients and client-applicants of all services and benefits available to them through programs authorized under the Rehabilitation Act of 1973, as amended (Act), including activities carried out under sections 113 and 511;

(b) Assist and advocate for clients and client-applicants in their relationships with projects, programs, and community rehabilitation programs providing services under the Act; and

(c) Inform individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the Act and under title I of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12111 *et seq.*).

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

**§ 370.2 Who is eligible for an award?**

(a)(1) Any State, through its Governor, and the protection and advocacy system serving the American Indian Consortium, is eligible for an award under this part if the State or eligible protection and advocacy system submits, and receives approval of, an application in accordance with § 370.20.

(2) For purposes of this part, the terms—

(i) ''American Indian Consortium'' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) (42 U.S.C. 15002); and

(ii) ''Protection and advocacy system'' means a protection and advocacy system established under subtitle C of title I of the DD Act (42 U.S.C. 15041 *et seq.*).

(b) Notwithstanding the protection and advocacy system serving the American Indian Consortium, the Governor of each State shall designate a public or private agency to conduct the State's CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) An agency designated by the Governor of a State to conduct the State's CAP or the protection and advocacy system serving the American Indian Consortium under this part may not make a subaward to or enter into a contract with an agency that provides services under this Act either to carry out the CAP or to provide services under the CAP.

(f) A designated agency, including the protection and advocacy system serving the American Indian Consortium, that contracts to provide CAP services with another entity or individual remains responsible for—

(1) The conduct of a CAP that meets all of the requirements of this part;

(2) Ensuring that the entity or individual expends CAP funds in accordance with—

(i) The regulations in this part; and

(ii) The regulations at 2 CFR part 200 applicable to the designated agency identified in paragraph (b) or the protection and advocacy system serving the American Indian Consortium, as described in paragraph (a) of this section; and

(3) The direct day-to-day supervision of the CAP services being carried out by the contractor. This day-to-day supervision must include the direct supervision of the individuals who are employed or used by the contractor to provide CAP services.

(Authority: Sections 12(c) and 112(a), (c)(1)(A), and (e)(1)(E) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a), (c)(1)(A), and (e)(1)(E))

**§ 370.3 Who is eligible for services and information under the CAP?**

(a) Any client or client applicant is eligible for the services described in § 370.4.

(b) Any individual with a disability is eligible to receive information on the services and benefits available to individuals with disabilities under the Act and title I of the ADA.

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

**§ 370.4 What kinds of activities may the Secretary fund?**

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client-applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act; and

(ii) Their rights in connection with those services and benefits;

(2) Informing individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under title I of the ADA;

(3) Upon the request of the client or client applicant, assisting and advocating on behalf of the client or client applicant in his or her relationship with projects, programs, and community rehabilitation programs that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting and advocating on behalf of the client or client applicant to pursue, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client applicant under the Act; and

(ii) To facilitate access by individuals with disabilities, including students and youth with disabilities who are making the transition from school programs, to services funded under the Act; and

(4) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy services under this part with respect to services under title I of the Act, a designated agency may provide assistance and advocacy services to a client or client applicant to facilitate the individual's employment, including assistance and advocacy services with respect to the individual's claims under title I of the ADA, if those claims under title I of the ADA are directly related to services under title I of the Act that the individual is receiving or seeking.

(Authority: Sections 12(c) and 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a))

**§ 370.5 What regulations apply?**

The following regulations apply to the expenditure of funds and the administration of the program under this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under § 370.30(d)(1) when the CAP appropriation equals or exceeds $14,000,000.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.708;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act-Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of Part 81.

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) Other regulations as follows:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(c) The regulations in this part 370.

Note to § 370.5: Any funds made available to a State under this program that are transferred by a State to a designated agency do not make a subaward as that term is defined in 2 CFR 200.330. The designated agency is not, therefore, in these circumstances a subrecipient, as that term is defined in 2 CFR 200.330.

(Authority: Sections 12(c) and 112 of the Rehabilitation Act, as amended; 29 U.S.C. 709(c) and 732)

**§ 370.6 What definitions apply?**

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200, subpart A.

(c) Other definitions. The following definitions also apply to this part:

*Act* means the Rehabilitation Act of 1973, as amended.

*Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group of individuals, in which case it is systems (or systemic) advocacy, but systems or systemic advocacy, for the purposes of this part, may not include class actions, or

(3) Oneself, in which case it is self advocacy.

*American Indian Consortium* means that entity described in § 370.2(a).

*Class action* means a formal legal suit on behalf of a group or class of individuals filed in a Federal or State court that meets the requirements for a ''class action'' under Federal or State law. ''Systems (or systemic) advocacy'' that does not include filing a formal class action in a Federal or State court is not considered a class action for purposes of this part.

*Client or client applicant* means an individual receiving or seeking services under the Act, respectively.

*Designated agency* means the agency designated by the Governor under § 370.2 or the protection and advocacy system serving the American Indian Consortium that is conducting a CAP under this part.

*Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator may not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

*Protection and Advocacy System* has the meaning set forth at § 370.2(a).

*Services under the Act* means vocational rehabilitation, independent living, supported employment, and other similar rehabilitation services provided under the Act. For purposes of the CAP, the term ''services under the Act'' does not include activities carried out under the protection and advocacy program authorized by section 509 of the Act (*i.e.,* the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381).

*State* means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of the allotments under § 370.30, in which case ''State'' does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c), and 732)

**§ 370.7 What shall the designated agency do to make its services accessible?**

The designated agency shall provide, as appropriate, the CAP services described in § 370.4 in formats that are accessible to clients or client-applicants who seek or receive CAP services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**Subpart B—What Requirements Apply to Redesignation?**

**§ 370.10 When do the requirements for redesignation apply?**

(a) The Governor shall redesignate the designated agency for carrying out the CAP to an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act if, after August 7, 1998—

(1) The designated State agency undergoes any change in the organizational structure of the agency that results in one or more new State agencies or departments, or results in the merger with one or more other State agencies or departments, and

(2) The designated State agency contains an office or unit conducting the CAP.

(3) For purposes of paragraph (a) of this section, the designated State agency has the meaning given to that term at 34 CFR 361.5(c)(12) and described at 34 CFR 361.13.

(b) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and § 370.2(b) without good cause and without complying with the requirements of §§ 370.10 through 370.17.

(c) For purposes of §§ 370.10 through 370.17, a ''redesignation of'' or ''to redesignate'' a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State's CAP to a new or different agency, unit, or organization, including—

(1) A decision by a designated agency to cancel its existing contract with another entity with which it has previously contracted to carry out and operate all or part of its responsibilities under the CAP (including providing advisory, assistance, or advocacy services to eligible clients and client-applicants); or

(2) A decision by a designated agency not to renew its existing contract with another entity with which it has previously contracted. Therefore, an agency that is carrying out a State's CAP under a contract with a designated agency is considered a designated agency for purposes of §§ 370.10 through 370.17.

(d) For purposes of paragraph (b) of this section, a designated agency that does not renew a contract for CAP services because it is following State

procurement laws that require contracts to be awarded through a competitive bidding process is presumed to have good cause for not renewing an existing contract. However, this presumption may be rebutted.

(e) If State procurement laws require a designated agency to award a contract through a competitive bidding process, the designated agency must hold public hearings on the request for proposal before awarding the new contract.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.11 What requirements apply to a notice of proposed redesignation?**

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Council (SRC), and the State Independent Living Council (SILC) and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency, the SRC, and the SILC and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).

(2) The goals and function of the CAP.

(3) The name of the current designated agency.

(4) A description of the current CAP and how it is administered.

(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.

(6) The effective date of the proposed redesignation.

(7) The name of the agency the Governor proposes to administer the CAP.

(8) A description of the system that the redesignated (*i.e.,* new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and

(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides the SRC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.12 How does a designated agency preserve its right to appeal a redesignation?**

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.13 What are the requirements for a decision to redesignate?**

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.14 How does a designated agency appeal a written decision to redesignate?**

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor's notice of proposed redesignation in accordance with § 370.12.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?**

(a) If the designated agency files a formal written appeal in accordance

with § 370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.16 How does the Secretary review an appeal of a redesignation?**

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**§ 370.17 When does a redesignation become effective?**

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

**Subpart C—What are the Requirements for Requesting a Grant?**

**§ 370.20 What must be included in a request for a grant?**

(a) Each State and the protection and advocacy system serving the American Indian Consortium seeking assistance under this part shall submit to the Secretary, in writing, at the time and in the manner determined by the Secretary to be appropriate, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of clients or client-applicants within the State or American Indian Consortium.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client-applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements in this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State or the protection and advocacy system serving the American Indian Consortium must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State or tribal law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(b) and (f))

**Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?**

**§ 370.30 How does the Secretary allocate funds?**

(a) After reserving funds required under paragraphs (c) and (d) of this section, the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no such entity shall receive less than $50,000.

(b) The Secretary allocates $30,000 each, unless the provisions of section 112(e)(1)(D) of the Act are applicable, to American Samoa, Guam, the Virgin Islands, and the Commonwealth of Northern Mariana Islands.

(c) The Secretary shall reserve funds, from the amount appropriated to carry out this part, to make a grant to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this part. The amount of the grant to the protection and advocacy system serving the American Indian Consortium shall be the same amount as is provided to a territory under paragraph (b) of this section.

(d)(1) For any fiscal year for which the amount appropriated equals or exceeds $14,000,000, the Secretary may reserve not less than 1.8 percent and not more

than 2.2 percent of such amount to provide a grant for training and technical assistance for the programs established under this part.

(2) All training and technical assistance shall be coordinated with activities provided under 34 CFR 381.22.

(3) The Secretary shall make a grant pursuant to paragraph (d)(1) of this section to an entity that has experience in or knowledge related to the provision of services authorized under this part.

(4) An entity receiving a grant under paragraph (d)(1) of this section shall provide training and technical assistance to the designated agencies or entities carrying out the CAP to assist them in improving the provision of services authorized under this part and the administration of the program.

(e)(1) Unless prohibited or otherwise provided by State or tribal law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a), (b), or (c) of this section, the amount specified in the State's or the eligible protection and advocacy system's approved request. Because the designated agency, including the protection and advocacy system serving the American Indian Consortium, is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 and 2 CFR part 200 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant.

(2) Notwithstanding the grant made to the protection and advocacy system serving the American Indian Consortium under paragraph (c) of this section, the State remains the grantee for purposes of 34 CFR part 76 and 2 CFR part 200 because it is the State that submits an application for and receives the CAP grant. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

(Authority: Sections 12(c) and 112(b) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(b) and (e))

### § 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 45 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year or the succeeding fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c), 19, and 112(e)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 732(e)(2))

## Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

### § 370.40 What are allowable costs?

(a) The designated agency, including the eligible protection and advocacy system serving the American Indian Consortium, shall apply the regulations at 2 CFR part 200.

(b) Consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable, in accordance with 2 CFR part 200. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(c)(1) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(2) For purposes of the grant made under this part to the protection and advocacy system serving the American Indian Consortium, such entity will be solely accountable to the Secretary for the proper use of funds made available under this part. If the Secretary determines it necessary, the Secretary may recover funds from the protection and advocacy system serving the American Indian Consortium pursuant to the procedures in 34 CFR part 81.

(Authority: Sections 12(c) and 112(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(3))

### § 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

(1) Serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or community rehabilitation program receiving assistance under the Act in the State; or

(2) Provide any services under the Act, other than CAP and PAIR services.

(b) An employee of a designated agency under contract with a designated agency, may—

(1) Receive a traineeship under section 302 of the Act;

(2) Provide services under the PAIR program;

(3) Represent the CAP on any board or council (such as the SRC) if CAP representation on the board or council is specifically permitted or mandated by the Act; and

(4) Consult with policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs, if consultation with the designated agency is specifically permitted or mandated by the Act.

(Authority: Sections 12(c) and 112(g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(1))

### § 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

The CAP must be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required by section 101(a)(16) of the Act.

(Authority: Sections 12(c), 101(a)(16), and 112(g)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16), and 732(g)(2))

### § 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies. In designing these procedures, the designated agency may take into account its level of resources.

(b) For purposes of this section, mediation may involve the use of professional mediators, other independent third parties mutually agreed to by the parties to the dispute, or an employee of the designated agency who—

(1) Is not assigned to advocate for or otherwise represent or is not involved with advocating for or otherwise representing the client or client applicant who is a party to the mediation; and

(2) Has not previously advocated for or otherwise represented or been involved with advocating for or otherwise representing that same client or client applicant.

(Authority: Section 112(g)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(g)(3))

**§ 370.44 What reporting requirement applies to each designated agency?**

In addition to the program and fiscal reporting requirements in *34 CFR 76.720 and 2 CFR 200.327* that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests received by the designated agency for information on services and benefits under the Act and title I of the ADA;

(b) The number of referrals to other agencies made by the designated agency and the reason or reasons for those referrals;

(c) The number of requests for advocacy services received by the designated agency from clients or client-applicants;

(d) The number of requests for advocacy services from clients or client-applicants that the designated agency was unable to serve;

(e) The reasons that the designated agency was unable to serve all of the requests for advocacy services from clients or client-applicants; and

(f) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

**§ 370.45 What limitation applies to the pursuit of legal remedies?**

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: Section 112(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(d))

**§ 370.46 What consultation requirement applies to a Governor of a State?**

In designating a client assistance agency under § 370.2, redesignating a client assistance agency under § 370.10, and carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: Section 112(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(c)(2))

**§ 370.47 What is program income and how may it be used?**

(a)(1) *Definition. Program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Funds received through the transfer of Social Security Administration payments from the designated State unit, as defined in 34 CFR 361.5(c)(13), in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income, whenever earned or received, must be used for the provision of services authorized under § 370.4.

(2) Designated Agencies are authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 728, and 3474)

**§ 370.48 When must grant funds and program income be obligated?**

Any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out the activities under this part that are not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the designated agency during that succeeding fiscal year in accordance with section 19 of the Act and 34 CFR 76.709.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

**§ 370.49 What are the special requirements pertaining to the protection, use, and release of personal information?**

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her parent, legal guardian, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (e) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of conducting any periodic audit, preparing or producing any report, or conducting any evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section and consistent with paragraph (f) of this section, a designated agency shall disclose to the Secretary, if the Secretary so requests, the identity of, or any other personally identifiable information (*i.e.,* name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to,

any individual requesting assistance under the CAP if—

(1) An audit, evaluation, monitoring review, State plan assurance review, or other investigation produces reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds; or

(2) The Secretary determines that this information may reasonably lead to further evidence that is directly related to alleged misconduct of the designated agency.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information to the Secretary is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

■ 4. Part 371 is revised to read as follows:

## PART 371—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

### Subpart A—General

Sec.
371.1 What is the American Indian Vocational Rehabilitation Services program?
371.2 Who is eligible for assistance under this program?
371.3 What types of projects are authorized under this program?
371.4 What is the length of the project period under this program?
371.5 What regulations apply to this program?
371.6 What definitions apply to this program?

### Subpart B—Training and Technical Assistance

371.10 What are the requirements for funding training and technical assistance under this subpart?
371.11 How does the Secretary use these funds to provide training and technical assistance?
371.12 How does the Secretary make an award?
371.13 How does the Secretary determine funding priorities?
371.14 How does the Secretary evaluate an application?

### Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures for this program?
371.21 What are the special application requirements related to the projects funded under this part?

### Subpart D—How Does the Secretary Make a Grant?

371.31 How are grants awarded?
371.32 What other factors does the Secretary consider in reviewing an application?

### Subpart E—What Conditions Apply to a Grantee Under this Program?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?
371.44 What are the special requirements pertaining to the protection, use, and release of personal information?
371.45 What notice must be given about the Client Assistance Program (CAP)?

**Authority:** Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741, unless otherwise noted.

## Subpart A—General

### § 371.1 What is the American Indian Vocational Rehabilitation Services program?

This program is designed to provide vocational rehabilitation services, including culturally appropriate services, to American Indians with disabilities who reside on or near Federal or State reservations, consistent with such eligible individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individual may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

(Authority: Section 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(a))

### § 371.2 Who is eligible for assistance under this program?

(a) Applications may be made only by Indian tribes and consortia of those Indian tribes located on Federal and State reservations.

(1) The applicant for the grant must be

(i) The governing body of an Indian tribe, either on behalf the Indian tribe or on behalf of a consortium of Indian tribes; or

(ii) A tribal organization that is a separate legal organization from an Indian tribe.

(2) In order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must have as one of its functions the vocational rehabilitation of American Indians with disabilities.

(3) If a grant is made to the governing body of an Indian tribe, a consortium of those governing bodies or a tribal organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the making of such a grant.

(b) Applications for awards under Subpart B may be made by State, local or tribal governments, non-profit organizations, or institutions of higher education.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

### § 371.3 What types of projects are authorized under this program?

The American Indian Vocational Rehabilitation Services program provides financial assistance for the establishment and operation of tribal vocational rehabilitation services programs for American Indians with disabilities who reside on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended Act, 29 U.S.C. 709(c) and 741(a)

### § 371.4 What is the length of the project period under this program?

The Secretary approves a project period of up to sixty months.

(Authority: Sections 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 121(b)(3))

### § 371.5 What regulations apply to this program?

The following regulations apply to this program—

(a) The regulations in this part 371.

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485;

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(d) 34 CFR part 75 Direct Grant Programs

(e) 34 CFR part 77 Definitions that Apply to Department Regulations

(f) 34 CFR part 81 General Education Provisions Act—Enforcement

(g) 34 CFR part 82 New Restrictions on Lobbying

(h) 34 CFR part 84 Governmentwide Requirements for Drug-Free Workplace

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 371.6 What definitions apply to this program?

(a) The definitions of terms included in the applicable regulations listed in § 371.5;

(b) The following definitions also apply to this program—

*Act* means the Rehabilitation Act of 1973, as amended.

*Assessment for determining eligibility and vocational rehabilitation needs* means as appropriate in each case—

(1)(i) A review of existing data—

(A) To determine whether an individual is eligible for vocational rehabilitation services; and

(B) To assign priority for an order of selection described in an approved plan or the approved grant application; and

(ii) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(2) To the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment—

(i) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) Uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(A) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in an approved plan or the approved grant application for the individual; and

(B) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(iii) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

(iv) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(v) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings;

(3) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(4) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(2) and 709(c))

*Community rehabilitation program* means a program that provides directly, or facilitates providing, one or more of the following vocational rehabilitation services to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement—

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language, and hearing therapy;

(6) Psychiatric, psychological, and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Customized employment;

(16) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(17) Personal assistance services; or

(18) Services similar to the services described in paragraphs (1) through (17) of this definition.

(Authority: Sections 7(4) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(4) and 709(c))

*Comparable services and benefits* means—

(1) Services and benefits, including auxiliary aids and services, that are—

(i) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(ii) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment; and

(iii) Commensurate to the services that the individual would otherwise receive from the Tribal Vocational Rehabilitation unit.

(2) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8)(A) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 721(a)(8)(A))

*Competitive integrated employment* means work—

(1) That is performed on a full-time or part-time basis (including self-employment); and for which an individual is compensated at a rate that—

(i) Shall not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the rate specified in the applicable State or local minimum wage law; and

(ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who

have similar training, experience, and skills; and

(iv) Is eligible for the level of benefits provided to other employees; and

(2) That is at a location typically found in the community and where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit, employees within the entire work site, and, as appropriate to the work performed, other persons (*e.g.,* customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(3) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

*Consortium* means two or more eligible governing bodies of Indian tribes that apply for an award under this program by either:

(1) Designating one governing body to apply for the grant; or

(2) Establishing and designating a tribal organization to apply for a grant.

(Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

*Customized employment* means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

(1) Job exploration by the individual;

(2) Working with an employer to facilitate placement, including—

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; and

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(3) Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(4) Providing services and supports at the job location.

(Authority: Sections 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(7) and 709(c))

*Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of Section 102(a)(1) of the Act.

(Authority: Sections 7(20)(A), 12(c), and 102(a)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(20)(A), 709(c), and 722)

*Employment outcome* means, with respect to an individual, entering, advancing or retaining full-time or, if appropriate, part-time competitive integrated employment, including customized employment, self-employment, telecommuting, business ownership, or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(11), and 709(c))

*Family member* for the purposes of receiving vocational rehabilitation services means an individual—

(1) Who either—

(i) Is a relative or guardian of an applicant or eligible individual; or

(ii) Lives in the same household as an applicant or eligible individual;

(2) Who has a substantial interest in the well-being of that individual; and

(3) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

*Governing bodies of Indian tribes* means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

*Indian; American Indian; Indian American; Indian tribe* means—

(1) *Indian, American Indian,* and *Indian American* mean an individual who is a member of an Indian tribe and includes a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)) and this section.

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(19))

*Individual with a disability* means—

In general any individual who—

(1) Who has a physical or mental impairment;

(2) Whose impairment constitutes or results in a substantial impediment to employment; and

(3) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

*Individual with a significant disability* means—

In general an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to

cause comparable substantial functional limitation.

(Authority: Section 7(21) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(21))

*Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

*Examples:* The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

*Example 1:* The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

*Example 2:* The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

*Example 3:* The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

*Physical and mental restoration services* means—

(1) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(2) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Drugs and supplies;

(7) Prosthetic and orthotic devices;

(8) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(9) Podiatry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech or hearing therapy;

(13) Mental health services;

(14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(15) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(16) Other medical or medically related rehabilitation services.

(17) Services reflecting the cultural background of the American Indian being served, including treatment provided by native healing practitioners in accordance with 34 CFR 371.41(a)(2).

(Authority: Sections 12(c), 103(a)(6), and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(6), and 741(b)(1)(B))

*Physical or mental impairment* means—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder such as intellectual or developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

*Post-employment services* means one or more of the services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 723(a)(18))

**Note to definition of post-employment services:** Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.,* the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; or the individual requires assistive technology to maintain the employment; to regain employment, *e.g.,* the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.,* the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

*Representatives of the Tribal Vocational Rehabilitation program* means, consistent with 34 CFR 371.21(b), those individuals specifically responsible for determining eligibility, the nature and scope of vocational rehabilitation services, and the provision of those services.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1)(D))

*Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act; or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(Authority: Sections 12(c) and 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(e))

*Subsistence* means a form of self-employment in which individuals produce, using culturally relevant and traditional methods, goods or services that are predominantly consumed by their own household or used for noncommercial customary trade or barter and that constitute an important basis for the worker's livelihood.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

*Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

*Supported employment* means

(1) Competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability is working on a short-term basis toward competitive integrated employment that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(i) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the Tribal Vocational Rehabilitation Unit, in order to perform this work; or

(2) Transitional employment for individuals with the most significant disabilities due to mental illness.

(3) *Short-term basis.* For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment.

(Authority: Sections 7(38) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38) and 709(c))

*Supported employment services* means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the Tribal Vocational Rehabilitation Unit—

(1) Singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(3) For a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(4) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(39) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39) and 709(c))

*Transition services* means a coordinated set of activities for an individual with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Sections 12(c), 103(a)(15), and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(15), and (b)(7))

*Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a)(8))

*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 or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(Authority: Sections 7(19) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19) and 709(c); Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450(b))

*Tribal Vocational Rehabilitation program* means the unit designated by the governing bodies of an Indian Tribe, or consortia of governing bodies, to implement and administer the grant under this program in accordance with the purpose of the grant and all applicable programmatic and fiscal requirements.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1))

*Vocational Rehabilitation Services for Individuals* means any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including, but not limited to—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.

(2) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(4) Physical and mental restoration services, to the extent that financial support is not readily available from a

source other than the Tribal Vocational Rehabilitation unit (such as through health insurance or a comparable service or benefit.

(5) Vocational and other training services, including personal and vocational adjustment training, advanced training in science, technology, engineering, or mathematics (including computer science) field, medicine, law or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(6) Maintenance.

(7) Transportation in connection with the rendering of any vocational rehabilitation service.

(8) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(9) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(10) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(11) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(12) Supported employment services.

(13) Personal assistance services.

(14) Post-employment services.

(15) Occupational licenses, tools, equipment, initial stocks, and supplies.

(16) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(17) Transition services for students with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment.

(18) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(19) Customized employment.

(20) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

*Vocational Rehabilitation Services for Groups of Individuals provided for the benefit of groups of individuals with disabilities* may also include the following:

(1) In the case of any type of small business operated by individuals with significant disabilities under the supervision of the Tribal Vocational Rehabilitation unit, management services and supervision provided by the Tribal Vocational Rehabilitation unit, along with the acquisition by the Tribal Vocational Rehabilitation unit of vending facilities or other equipment and initial stocks and supplies in accordance with the following requirements:

(i) Management services and supervision includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) Initial stocks and supplies include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the Tribal Vocational Rehabilitation unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the Tribal Vocational Rehabilitation unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the Tribal Vocational Rehabilitation unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(2) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services described in this section that promote integration into the community and that prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment. Examples of ''special circumstances'' include the destruction by natural disaster of the only available center serving an area or a Tribal Vocational Rehabilitation unit determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(3) The use of telecommunications systems (including telephone, television, video description services, satellite, radio, tactile-vibratory devices, and other similar systems) that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities.

(4)(i) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the Tribal Vocational Rehabilitation unit to provide services for individuals with developmental disabilities, centers for independent living (as defined in

section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an IPE goal. Services may include, but are not limited to group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a science, technology, engineering, or mathematics (including computer science) field, medicine, law, or business, provided after an individual eligible to receive services under this title, demonstrates

(i) Such eligibility;

(ii) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a science, technology, engineering, or mathematics (including computer science) field, a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that no training provided at an institution of higher education shall be paid for with funds under this program unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training. Nothing in this paragraph shall prevent any Tribal Vocational Rehabilitation unit from providing similar support to individuals with disabilities pursuant to their approved IPEs who are eligible to receive support under this program and who are not served under this paragraph.

(Authority: Sections 12(c) and 103(a) and (b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a) and (b))

## Subpart B—Training and Technical Assistance

### § 371.10 What are the requirements for funding training and technical assistance under this chapter?

The Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this program to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

### § 371.11 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to make grants to, or enter into contracts or other cooperative agreements with, entities that have staff with experience in the operation of vocational rehabilitation services programs under this part.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

### § 371.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 121(c) of the Act and this subpart, an applicant shall submit an application to the Secretary at such time, in such manner, and containing a proposal to provide such training and technical assistance, and any additional information as the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the operation of vocational rehabilitation services programs under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

### § 371.13 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of the governing bodies of Indian tribes funded under this part regarding training and technical assistance needs in order to determine funding priorities for such training and technical assistance.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

### § 371.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part.

(c) If the Secretary uses a contract to award funds under this subpart, the application process will be conducted and the subsequent award will be made in accordance with 34 CFR part 75.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

## Subpart C—How Does One Apply for a Grant?

### § 371.20 What are the application procedures for this program?

(a) In the development of an application, the applicant is required to consult with the designated State unit (DSU) for the state vocational rehabilitation program in the State or States in which vocational rehabilitation services are to be provided.

(b) The procedures for the review and comment by the DSU or the DSUs of the State or States in which vocational rehabilitation services are to be provided on applications submitted from within the State that the DSU or DSUs serve are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 121(b)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(C))

### § 371.21 What are the special application requirements related to the projects funded under this part?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

(b) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will be made by a representative of the tribal vocational rehabilitation program funded through this grant and such decisions will not be delegated to another agency or individual.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(D))

(c) Priority in the delivery of vocational rehabilitation services will be given to those American Indians with disabilities who are the most significantly disabled.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(5))

(d) An order of selection of individuals with disabilities to be served under the program will be specified if services cannot be provided to all eligible American Indians with disabilities who apply.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 (c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized plan for employment which has been developed jointly by the representative of the tribal vocational rehabilitation program and each American Indian with disabilities being served.

(Authority: Sections 12(c) and 101(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721 (a)(9))

(f) American Indians with disabilities living on or near Federal or State reservations where tribal vocational rehabilitation service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery by the tribal vocational rehabilitation program.

(Authority: Sections 12(c) and 101(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(16))

(g) Cooperative working arrangements will be developed with the DSU, or DSUs, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(Authority: Sections 12(c) and 101(a)(11)(F) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11)(F))

(h) Any comparable services and benefits available to American Indians with disabilities under any other program, which might meet in whole or in part the cost of any vocational rehabilitation service, will be fully considered in the provision of vocational rehabilitation services.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a representative of the tribal vocational rehabilitation program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(c)(1)–(5) and (7) of the Act.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(1)–(5) and (7))

(j) The tribal vocational rehabilitation program funded under this part must assure that any facility used in connection with the delivery of vocational rehabilitation services meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(Authority: Sections 12(c) and 101(a)(6)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(C))

(k) The tribal vocational rehabilitation program funded under this part must ensure that providers of vocational rehabilitation services are able to communicate in the native language of, or by using an appropriate mode of communication with, applicants and eligible individuals who have limited English speaking ability, unless it is clearly not feasible to do so.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

## Subpart D—How Does the Secretary Make a Grant?

### § 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Authority: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

### § 371.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making an award under this program, considers the past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

## Subpart E—What Conditions Apply to a Grantee Under this Program?

### § 371.40 What are the matching requirements?

(a) *Federal share* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued pursuant to match requirements in 2 CFR 200.306.

(c) *Waiver of non-Federal share* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

### § 371.41 What are allowable costs?

(a) In addition to those allowable cost established in 2 CFR 200.400–200.475, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist an individual with disabilities to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to individuals with disabilities not residing on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) and (b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a) and (b)(1))

**§ 371.42 How are services to be administered under this program?**

(a) *Directly or by contract.* A grantee under this part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a DSU, a community rehabilitation program, or another agency to assist in the implementation of the tribal vocational rehabilitation program.

(b) *Inter-tribal agreement.* A grantee under this part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable services.* To the maximum extent feasible, services provided by a grantee under this part must be comparable to vocational rehabilitation services provided under the State vocational rehabilitation program to other individuals with disabilities residing in the State.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

**§ 371.43 What other special conditions apply to this program?**

(a) Any American Indian with disabilities who is eligible for services under this program but who wishes to be provided services by the DSU must be referred to the DSU for such services.

(Authority: Sec. 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(3))

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to American Indians with disabilities.

(Authority: Sections 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program (25 U.S.C. 450c, 450d, 450e, and 450f(a)). These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Sec. 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(d) The Tribal Vocational Rehabilitation unit must develop and maintain written policies regarding the provision of vocational rehabilitation services that ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(1) *Off-reservation services.* (i) The Tribal Vocational Rehabilitation unit may establish a preference for on- or near-reservation services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an equivalent off-reservation service at a higher cost than an available in-State service, the Tribal Vocational Rehabilitation unit is not responsible for those costs in excess of the cost of the on- or near-reservation service, if either service would meet the individual's rehabilitation needs.

(ii) The Tribal Vocational Rehabilitation unit may not establish policies that effectively prohibit the provision of off-reservation services.

(2) *Payment for services* (i) The Tribal Vocational Rehabilitation unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(ii) The Tribal Vocational Rehabilitation unit may establish a fee schedule designed to ensure the program pays a reasonable cost for each service, as long as the fee schedule—

(A) Is not so low as effectively to deny an individual a necessary service; and

(B) permits exceptions so that individual needs can be addressed.

(C) The Tribal Vocational Rehabilitation unit may not place absolute dollar limits on the amount it will pay for specific service categories or on the total services provided to an individual.

(3) *Duration of services* (i) The Tribal Vocational Rehabilitation unit may establish reasonable time periods for the provision of services provided that the time periods—

(A) Are not so short as effectively to deny an individual a necessary service; and

(B) Permit exceptions so that individual needs can be addressed.

(ii) The Tribal Vocational Rehabilitation unit may not place time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on the basis of that individual's needs and reflected in that individual's individualized plan for employment.

(4) *Authorization of services.* The Tribal Vocational Rehabilitation unit must establish policies related to the timely authorization of services.

(Authority: Sections 12(c) and 121(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b))

(e) *Informed choice.* Each individual who is an applicant for or eligible to receive vocational rehabilitation services must be afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process carried out under programs funded under this part. The Tribal Vocational Rehabilitation unit must develop and maintain written policies and procedures that require it—

(1) To inform each applicant and eligible individual, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) To develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services, and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) To provide or assist eligible individuals in acquiring information that enables them to exercise informed choice in the development of their IPEs and selection of—

(i) The employment outcome;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) The entity that will provide the services;

(iv) The employment setting and the settings in which the services will be provided; and

(v) The methods available for procuring the services; and

(5) To ensure that the availability and scope of informed choice is consistent with the obligations of the Tribal Vocational Rehabilitation unit.

(6) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(i) Cost, accessibility, and duration of potential services;

(ii) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(iii) Qualifications of potential service providers;

(iv) Types of services offered by the potential providers;

(v) Degree to which services are provided in integrated settings; and

(vi) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(7) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(i) Lists of services and service providers.

(ii) Periodic consumer satisfaction surveys and reports.

(iii) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(iv) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(v) Opportunities for individuals to visit or experience various work and service provider settings.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: Sections 12(c), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(b)(2)(B), and 722(d))

**§ 371.44 What are the special requirements pertaining to the protection, use, and release of personal information?**

(a) *General provisions.* (1) Tribal Vocational Rehabilitation unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the Tribal Vocational Rehabilitation unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the Tribal Vocational Rehabilitation unit intends to use or release the information;

(C) Explanation of whether providing requested information to the Tribal Vocational Rehabilitation unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the Tribal Vocational Rehabilitation unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of the Tribal Vocational Rehabilitation unit's policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The Tribal Vocational Rehabilitation unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) Tribal Vocational Rehabilitation Program Use. All personal information in the possession of the Tribal Vocational Rehabilitation unit must be used only for the purposes directly connected with the administration of the Tribal Vocational Rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies or other tribal agencies that do not have official responsibility for administration of the program. In the administration of the program, the Tribal Vocational Rehabilitation unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the Tribal Vocational Rehabilitation unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has

been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Tribal Vocational Rehabilitation unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the tribal vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the Tribal Vocational Rehabilitation unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may be released if the other agency or organization assures the Tribal Vocational Rehabilitation unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The Tribal Vocational Rehabilitation unit must release personal information if required by Federal law or regulations.

(4) The Tribal Vocational Rehabilitation unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The Tribal Vocational Rehabilitation unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1))

### § 371.45 What notice must be given about the Client Assistance Program (CAP)?

The Tribal Vocational Rehabilitation unit shall use formats that are accessible to notify individuals seeking or receiving services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, about—

(a) The availability of CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

■ 5. Part 373 is revised to read as follows:

## PART 373—SPECIAL DEMONSTRATION PROGRAMS

### Subpart A—General

Sec.
373.1 What is the purpose of the Special Demonstration Programs?
373.2 Who is eligible for assistance?
373.3 What regulations apply?
373.4 What definitions apply?
373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?
373.6 What types of projects may be funded?
373.7 What are the priorities and other factors and requirements for competitions?

### Subpart B—How Does the Secretary Make a Grant?

373.10 What selection criteria does the Secretary use?
373.11 What other factors does the Secretary consider when making a grant?

### Subpart C—What Conditions Must Be Met By a Grantee?

373.20 What are the matching requirements?
373.21 What are the reporting requirements?
373.22 What are the limitations on indirect costs?
373.23 What additional requirements must be met?
373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

**Authority:** Section 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 773(b), unless otherwise noted.

## Subpart A—General

### § 373.1 What is the purpose of the Special Demonstration Programs?

The purpose of this program is to provide competitive grants, including cooperative agreements, to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluation activities.

(Authority: Sections 2(b) and (c), 7(40), 12(c), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701(b) and (c), 705(40), 709(c), and 773(b))

### § 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:

(1) State vocational rehabilitation agencies.

(2) Community rehabilitation programs.

(3) Indian tribes or tribal organizations.

(4) Other public or nonprofit agencies or organizations, including institutions of higher education.

(5) For-profit organizations, if the Secretary considers them to be appropriate.

(6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.

(7) Other organizations identified by the Secretary and published in the **Federal Register**.

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

**§ 373.3 What regulations apply?**

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 35 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 373.

(c) The regulations in 48 CFR part 31 (Contracts Cost Principles and Procedures).

(d)(1) 2 CFR part 180 (Nonprocurement Debarment and Suspension), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 773(b)

**§ 373.4 What definitions apply?**

The following definitions apply to this part:

*Act* means the Rehabilitation Act of 1973, as amended.

(Authority: Section 2 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701 *et seq.*)

*Competitive integrated employment* is defined in 34 CFR 361.5(c)(9).

(Authority: Section 7(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5))

*Early intervention* means a service delivery or model demonstration program for adults with disabilities designed to begin the rehabilitation services as soon as possible after the onset or identification of actually or potentially disabling conditions. The populations served may include, but are not limited to, the following:

(1) Individuals with chronic and progressive diseases that may become more disabling, such as multiple sclerosis, progressive visual disabilities, or HIV.

(2) Individuals in the acute stages of injury or illness, including, but not limited to, diabetes, traumatic brain injury, stroke, burns, or amputation.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b))

*Employment outcome* is defined in 34 CFR 361.5.

(Authority: Section 7(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11))

*Individual with a disability* is defined as follows:

(1) For an individual who will receive rehabilitation services under this part, an individual with a disability means an individual—

(i) Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and

(ii) Who can benefit in terms of an employment outcome from vocational rehabilitation services.

(2) For all other purposes of this part, an individual with a disability means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(3) For purposes of paragraph (b) of this definition, projects that carry out services or activities pertaining to Title V of the Act must also meet the requirements for ''an individual with a disability'' in section 7(20)(c) through (e) of the Act, as applicable.

(Authority: Section 7(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20))

*Individual with a significant disability* means an individual—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, intellectual disability, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

*Informed choice* means the provision of activities whereby individuals with disabilities served by projects under this part have the opportunity to be active, full partners in the rehabilitation process, making meaningful and informed choices as follows:

(1) During assessments of eligibility and vocational rehabilitation needs.

(2) In the selection of employment outcomes, services needed to achieve the outcomes, entities providing these services, and the methods used to secure these services.

(Authority: Sections 2(c) and 12(c) of the Act 29 U.S.C. 701(c) and 709(c))

*Rehabilitation services* means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

*Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's capacities and abilities.

(Authority: Section 5(20)(A) of the Act 29; U.S.C. 705(20)(A))

*Supported employment* is defined in 34 CFR 361.5(c)(53).

(Authority: Section 5(38) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38))

*Vocational Rehabilitation Services* means services provided to an individual with a disability in preparing

for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Vocational Rehabilitation Services for an individual with a disability may include—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) Diagnosis and treatment of physical and mental impairments;

(7) Maintenance for additional costs incurred while the individual is receiving services;

(8) Transportation;

(9) On-the-job or other related personal assistance services;

(10) Interpreter and reader services;

(11) Rehabilitation teaching services, and orientation and mobility services;

(12) Occupational licenses, tools, equipment, and initial stocks and supplies;

(13) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(16) Supported employment services;

(17) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(18) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(19) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(i) Self-employment, business ownership, and entreprenuership;

(ii) Non-traditional jobs, professional employment, and work settings;

(iii) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(iv) Other services as identified by the Secretary and published in the **Federal Register**.

*Youth or Young adults with disabilities* means individuals with disabilities who are between the ages of 14 and 24 inclusive when entering the program.

(Authority: Section 5(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42)

(Authority: Sections 7(40), 12(c), and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c) and 723(a))

**§ 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?**

(a)(1) For projects that provide rehabilitation services or activities to expand and improve the provision of rehabilitation services and other services authorized under Titles I, III, and VI of the Act, individuals are eligible who meet the definition in paragraph (a) of an ''individual with a disability'' as stated in § 373.4.

(2) For projects that provide independent living services or activities, individuals are eligible who meet the definition in paragraph (b) of an ''individual with a disability'' as stated in § 373.4.

(3) For projects that provide other services or activities that further the purposes of the Act, individuals are eligible who meet the definition in paragraph (b) of an ''individual with a disability'' as stated in § 373.4.

(b) By publishing a notice in the **Federal Register**, the Secretary may identify individuals determined to be eligible under one or more of the provisions in paragraph (a) of this section.

(Authority: Sections 12(c), 103(a), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a), and 773(b))

**§ 373.6 What types of projects may be funded?**

The Secretary may fund the following types of projects under this program:

(a) Special projects of service delivery.

(b) Model demonstration.

(c) Technical assistance.

(d) Systems change.

(e) Special studies, research, or evaluations.

(f) Dissemination and utilization.

(Authority: Sections 12(c) and 303(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(4))

**§ 373.7 What are the priorities and other factors and requirements for competitions?**

(a) In announcing competitions for grants and contracts, the Secretary gives priority consideration to—

(1) Initiatives focused on improving transition from education, including postsecondary education, to employment, particularly in competitive integrated employment, for youth who are individuals with significant disabilities.

(2) Supported employment, including community-based supported employment programs to meet the needs of individuals with the most significant disabilities or to provide technical assistance to States and community organizations to improve and expand the provision of supported employment services.

(3) Increasing competitive integrated employment for individuals with significant disabilities.

(b) In announcing competitions for grants and contracts, the Secretary may also identify one or more of the following as priorities—

(1) Expansion of employment opportunities for individuals with disabilities, as authorized in paragraph(s) of the definition of ''vocational rehabilitation services'' as stated in § 373.4.

(2) System change projects to promote meaningful access of individuals with disabilities to employment-related services under subtitle B of title I of the Workforce Innovation and Opportunity Act and under other Federal laws.

(3) Innovative methods of promoting achievement of high-quality employment outcomes.

(4) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(5) Projects to find alternative methods of providing affordable transportation services to individuals with disabilities.

(6) Technical assistance to designated State units and their personnel in working with employers to identify competitive integrated employment opportunities and career exploration opportunities in order to facilitate the

provision of vocational rehabilitation services and transition services for youth with disabilities and students with disabilities.

(7) Consultation, training and technical assistance to businesses that have hired or are interested in hiring individuals with disabilities.

(8) Technical assistance and training to designated State units and their personnel on establishment and maintenance of education and experience requirements, to ensure that the personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities.

(9) Technical assistance to State vocational rehabilitation agencies or State vocational rehabilitation units to improve management practices that will improve the provision of vocational rehabilitation services and increase competitive employment outcomes for individuals with disabilities.

(10) Other projects that will expand and improve the provision, extent, availability, scope, and quality of rehabilitation and other services under the Act or that further the purpose and policy of the Act as stated in sections 2(b) and (c) of the Act.

(c) In announcing competitions of grants and contract the Secretary may limit the priorities listed in paragraphs (a) and (b) of this section to address one or more of the following factors:

(1) Age ranges.

(2) Types of disabilities.

(3) Types of services.

(4) Models of service delivery.

(5) Stages of the vocational rehabilitation process;

(6) Unserved and underserved populations.

(7) Unserved and underserved geographical areas.

(8) Individuals with significant disabilities.

(9) Low-incidence disability populations.

(10) Individuals residing in federally designated Empowerment Zones and Enterprise Communities.

(d) The Secretary may require that an applicant certify that the project does not include building upon or expanding activities that have previously been conducted or funded, for that applicant or in that service area.

(e) The Secretary may require that the project widely disseminate the methods of vocational rehabilitation service delivery or model proven to be effective, so that they may be adapted, replicated, or purchased under fee-for-service arrangements by State vocational rehabilitation agencies and other disability organizations in the project's targeted service area or other locations.

(Authority: Sections 12(c), 101(a)(7)(B)(ii) and (11)(E), 103(b)(5), 108a, and 303(b)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7)(B)(ii) and (11)(E), 723(b)(5), 728a, and 773(b)(5))

## Subpart B—How Does the Secretary Make a Grant?

### § 373.10 What selection criteria does the Secretary use?

The Secretary publishes in the **Federal Register** or includes in the application package the selection criteria for each competition under this program. To evaluate the applications for new grants under this program, the Secretary may use the following:

(a) Selection criteria established under 34 CFR 75.209.

(b) Selection criteria in 34 CFR 75.210.

(c) Any combination of selection criteria from paragraphs (a) and (b) of this section.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

### § 373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to competitions announced in the **Federal Register**.

(b) The Secretary may consider the past performance of the applicant in carrying out activities under previously awarded grants.

(c) The Secretary awards bonus points if identified and published in the **Federal Register** for specific competitions.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

## Subpart C—What Conditions Must Be Met By a Grantee?

### § 373.20 What are the matching requirements?

The Secretary may make grants to pay all or part of the cost of activities covered under this program. If the Secretary determines that the grantee is required to pay part of the costs, the amount of grantee participation is specified in the application notice, and the Secretary will not require grantee participation to be more than 10 percent of the total cost of the project.

(Authority: Sections 12(c) and 303(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(1))

### § 373.21 What are the reporting requirements?

(a) In addition to the program and fiscal reporting requirements in 34 CFR *75.720 and 2 CFR 200.327* that are applicable to projects funded under this program, the Secretary may require that recipients of grants under this part submit information determined by the Secretary to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

(b) Specific reporting requirements for competitions will be identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 12(c), 303(b)(2)(B), and 306 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 773(b)(2)(B), and 776)

### § 373.22 What are the limitations on indirect costs?

(a) Indirect cost reimbursement for grants under this program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.

(b) Indirect costs in excess of the 10 percent limit may be used to satisfy matching or cost-sharing requirements.

(c) The 10 percent limit does not apply to federally recognized Indian tribal governments and their tribal representatives.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 373.23 What additional requirements must be met?

(a) Each grantee must do the following:

(1) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(2) Encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(3) Advise individuals with disabilities who are applicants for or recipients of the services, or the applicants' representatives or the individuals' representatives, of the availability and purposes of the Client Assistance Program, including information on means of seeking assistance under that program.

(4) Provide, through a careful appraisal and study, an assessment and evaluation of the project that indicates the significance or worth of processes, methodologies, and practices implemented by the project.

(b) A grantee may not make a subgrant under this part. However, a grantee may contract for supplies, equipment, and other services, in accordance with 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2)(B))

#### § 373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project reporting and evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, has been obtained in writing. The Secretary or other Federal officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final products of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 773(b)(2)(B))

## PART 376—[REMOVED AND RESERVED]

■ 6. Part 376 is removed and reserved.

## PART 377—[REMOVED AND RESERVED]

■ 7. Part 377 is removed and reserved.

## PART 379—[REMOVED AND RESERVED]

■ 8. Part 379 is removed and reserved.

■ 9. Part 381 is revised to read as follows:

## Part 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

### Subpart A—General

Sec.

381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

### Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

### Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.22 How does the Secretary allocate funds under this program?

### Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements?
381.33 What are the requirements related to the use of funds provided under this part?

**Authority:** Section 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e, unless otherwise noted.

### Subpart A—General

#### § 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Section 509(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(a))

#### § 381.2 Who is eligible for an award?

(a)(1) A protection and advocacy system that is established under part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), 42 U.S.C. 15041 *et seq.,* and that meets the requirements of § 381.10 is eligible to apply for a grant award under this part.

(2)(i) For any fiscal year in which the appropriation to carry out the activities of this part equals or exceeds $10,500,000, the eligible system serving the American Indian Consortium is eligible to apply for a grant award under this part.

(ii) For purposes of this part, an eligible system is defined at § 381.5(c).

(iii) For purposes of this part, the American Indian Consortium means a consortium established as described in section 102 of the DD Act (42 U.S.C. 15002).

(b) In any fiscal year in which the amount appropriated to carry out this part is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part.

(c) In any fiscal year in which the amount appropriated to carry out this part is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may apply to receive the amount allotted pursuant to section 509(c)–(e) of the Act.

(Authority: Section 509(b), (c), and (m) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(b), (c), and (m))

#### § 381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State or the American Indian Consortium.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State or American Indian Consortium, including individuals with disabilities who are exiting from school programs.

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));

(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program) (42 U.S.C. 3001 *et seq.*);

(iii) Part C of the DD Act; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 2000 (PAIMI) (42 U.S.C. 10801–10807).

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in § 381.10(a)(6).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are

afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Sections 12(c) and 509(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f)).

### § 381.4 What regulations apply?

The following regulations apply to the PAIR program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under § § 381.20 or 381.22(a)(1).

(2) 34 CFR part 76 (State-Administered Programs), if the appropriation for the PAIR program is equal to or greater than $5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(d) The regulations in this part 381.

(Authority: Sections 12(c) and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e)

### § 381.5 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200 subpart A.

(c) *Other definitions.* The following definitions also apply to this part:

*Act* means the Rehabilitation Act of 1973, as amended.

*Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

(3) Oneself, in which case it is self advocacy.

*Eligible individual with a disability* means an individual who—

(1) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act; and

(2) Is ineligible for—

(i) Protection and advocacy programs under part C of the DD Act; and

(ii) Protection and advocacy programs under the PAIMI.

*Eligible system* means a protection and advocacy system that is established under part C of the DD Act and that meets the requirements of § 381.10.

*Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

*State* means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of sections 509(c)(3)(B) and (c)(4) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c) and 794e)

## Subpart B—How Does One Apply for an Award?

### § 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including the authority to access records and program income, as in part C of title I of the DD Act;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State and the American Indian Consortium;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State and the American Indian Consortium, including individuals with disabilities who are exiting from school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of the PAIR program provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DD Act; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with tribal or State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 509(f) and (g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f) and (g)(1))

## Subpart C—How Does the Secretary Make an Award?

### § 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: Sections 12(c) and 509(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(b) and (f))

### § 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide a grant, contract, or cooperative agreement for training and technical assistance to eligible systems carrying out activities under this part.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)–(d) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(c) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $10,500,000, the Secretary shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian Consortium. The Secretary shall make the grant in an amount of not less than $50,000 for the fiscal year.

(d) *Reallotment.* (1) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $5,500,000 and if the Secretary determines that any amount of an allotment to an eligible system within a State will not be expended by such system in carrying out the provisions of this part, the Secretary shall make such amount available to one or more of the eligible systems that the Secretary determines will be able to use additional amounts during such year for carrying out this part.

(2) Any reallotment amount made available to an eligible system for any fiscal year shall, for the purposes of this section, be regarded as an increase in the eligible system's allotment under this part for that fiscal year.

(Authority: Sections 12(c) and 509(c)–(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(c)–(e))

## Subpart D—What Conditions Must Be Met After an Award?

### § 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or make a subaward to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, ''services under the Act'' and ''treatment, services, or habilitation'' does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under part C of the DD Act and the PAIMI, or any other protection and advocacy services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit,

report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (*i.e.,* name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 509(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(h))

**§ 381.32 What are the reporting requirements?**

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to § 381.10(a)(6).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c), 13, and 509(k) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 710, and 794e(k))

**§ 381.33 What are the requirements related to the use of funds provided under this part?**

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under this part. For purposes of this paragraph, ''costs of administration'' include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (*e.g.,* rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

(c) Funds paid to an eligible system within a State for a fiscal year to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the eligible system within a State for obligation during the succeeding fiscal year in accordance with section 509(g) of the Act and 34 CFR 76.709.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, § 75.707 applies. If the appropriation for the PAIR program is equal to or greater than $5,500,000, § 76.707 applies. An eligible system is considered a State for purposes of § 76.707.

(e) *Program income.* (1) *Program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Grantees are authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(3) Any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated or expended prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the grantee during that succeeding fiscal year.

(Authority: Sections 12(c), 19, and 509(f)(7), (g), and (i) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 794e(f)(7), (g), and (i); and 20 U.S.C. 3474)

■ 10. Part 385 is revised to read as follows:

## PART 385—REHABILITATION TRAINING

### Subpart A—General

Sec.

385.1 What is the Rehabilitation Training program?
385.2 Who is eligible for assistance under these programs?
385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

### Subpart B [Reserved]

### Subpart C—How Does One Apply for a Grant?

385.20 What are the application procedures for these programs?

### Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
385.31 How does the Secretary evaluate an application?
385.33 What other factors does the Secretary consider in reviewing an application?

### Subpart E—What Conditions Must Be Met by a Grantee?

385.40 What are the requirements pertaining to the membership of a project advisory committee?
385.41 What are the requirements affecting the collection of data from designated State agencies?
385.42 What are the requirements affecting the dissemination of training materials?
385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?
385.44 What requirement applies to the training of individuals with disabilities?
385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?
385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

**Authority:** Sections 12(c), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771 and 772, unless otherwise noted.

## Subpart A—General

### § 385.1 What is the Rehabilitation Training program?

(a) *Purpose.* The Rehabilitation Training program is designed to—

(1) Ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs (including supported employment programs), through economic and business development programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed, including personnel specifically trained to deliver rehabilitation services, including supported employment services and customized employment services, to individuals with the most significant disabilities, and personnel specifically trained to deliver services to individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting, to provide state-of-the-art service delivery and rehabilitation technology services; and

(3) Provide training and information to individuals with disabilities, the parents, families, guardians, advocates, and authorized representatives of the individuals, and other appropriate parties to develop the skills necessary for individuals with disabilities to access the rehabilitation system and to become active decision makers in the vocational rehabilitation process.

(b) The Secretary awards grants and contracts on a competitive basis to pay part of the costs of projects for training, traineeships or scholarships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing vocational rehabilitation services and other services provided under the Act, to individuals with disabilities. Financial assistance is provided through multiple training programs, including:

(1) Rehabilitation Long-Term Training (34 CFR part 386).

(2) Innovative Rehabilitation Training (34 CFR part 387).

(3) Rehabilitation Short-Term Training (34 CFR part 390).

(4) Training of Interpreters for Individuals Who Are Deaf and Hard of Hearing and Individuals Who Are Deaf-Blind (34 CFR part 396).

(Authority: Sections 12(c), 301 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771 and 772)

### § 385.2 Who is eligible for assistance under these programs?

States and public or private nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Sections 7(19), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19), 771 and 772)

### § 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 385.

(c) The regulations in 34 CFR parts 386, 387, 390, and 396, as appropriate.

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 711(c) and 772)

### § 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under the Rehabilitation Training Program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program:

*Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

*Assistive technology* means technology designed to be utilized in an assistive technology device or assistive technology service.

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

*Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities;

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(7) A service consisting of expanding the availability of access to technology, including electronic and information

technology, to individuals with disabilities.

*Community rehabilitation program* means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language, and hearing therapy;

(6) Psychiatric, psychological, and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

*Designated State agency* means an agency designated under section 7(8) and 101(a)(2)(A) of the Act.

*Designated State unit* means

(1) Any State agency unit required under section 7(8) and 101(a)(2)(B) of the Act, or

(2) In cases in which no State agency unit is required, the State agency described in section 101(a)(2)(B)(ii) of the Act.

*Independent living core services* means—

(1) Information and referral services;

(2) Independent living skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

*Independent living services* includes—

(1) Independent living core services; and

(2)(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) Services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) Rehabilitation technology;

(iv) Mobility training;

(v) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) Personal assistance services, including attendant care and the training of personnel providing these services;

(vii) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) Consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this Act;

(ix) Education and training necessary for living in the community and participating in community activities;

(x) Supported living;

(xi) Transportation, including referral and assistance for transportation;

(xii) Physical rehabilitation;

(xiii) Therapeutic treatment;

(xiv) Provision of needed prostheses and other appliances and devices;

(xv) Individual and group social and recreational services;

(xvi) Training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) Services for children;

(xviii) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xvix) Appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(xx) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(xxi) Such other services as may be necessary and not inconsistent with the provisions of this Act.

*Individual with a disability* means any individual who—

(1) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment;

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, or VI of the Rehabilitation Act of 1973, as amended; and

(3) Has a disability as defined in section 7(20)(B) of the Act.

*Individual with a significant disability* means an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, intellectual disability, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.

*Institution of higher education* has the meaning given the term in section 101(a) of the Higher Education Act (20 U.S.C. 1001(a)).

*Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

*Qualified personnel:* (1) For designated State agencies or designated State units, means personnel who have

met standards that are consistent with existing national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services.

(2) For other than designated State agencies or designated State units, means personnel who have met existing State certification or licensure requirements, or, in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

*Rehabilitation services* means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

*Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

*State* includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Stipend* means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

*Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most severe disabilities—

(1)(i) For whom competitive integrated employment has not traditionally occurred; or

(ii) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(2) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform the work involved.

*Supported employment services* means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with most severe disability in supported employment, that are—

(1) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in entering or maintaining integrated, competitive employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(3) Provided by the designated State unit for a period of time not more than 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized plan for employment.

*Vocational rehabilitation services* means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, and services provided for the benefit of groups of individuals with disabilities. Vocational Rehabilitation Services for an individual with a disability may include—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) Diagnosis and treatment of physical and mental impairments;

(7) Maintenance for additional costs incurred while the individual is receiving services;

(8) Transportation;

(9) On-the-job or other related personal assistance services;

(10) Interpreter and reader services;

(11) Rehabilitation teaching services, and orientation and mobility services;

(12) Occupational licenses, tools, equipment, and initial stocks and supplies;

(13) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(16) Supported employment services;

(17) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(18) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(19) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(i) Self-employment, business ownership, and entrepreneurship;

(ii) Non-traditional jobs, professional employment, and work settings;

(iii) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(iv) Other services as identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 7(40), 12(c), and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c), and 721(a)(7))

## Subpart B—[Reserved]

## Subpart C—How Does One Apply for a Grant?

### § 385.20 What are the application procedures for these programs?

The Secretary gives the designated State agency an opportunity to review and comment on applications submitted

from within the State that it serves. The procedures to be followed by the applicant and the State are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

## Subpart D—How Does the Secretary Make a Grant?

### § 385.30 [Reserved]

### § 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 390, and 396, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

### § 385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 75.210 and parts 386, 387, 390, and 396 the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

## Subpart E—What Conditions Must Be Met by a Grantee?

### § 385.40 What are the requirements pertaining to the membership of a project advisory committee?

If a project funded under 34 CFR parts 386, 387, 390, or 396 establishes an advisory committee, its membership must include individuals with disabilities or parents, family members, guardians, advocates, or other authorized representatives of the individuals; members of minority groups; trainees; and providers of vocational rehabilitation and independent living rehabilitation services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 385.41 What are the requirements affecting the collection of data from designated State agencies?

If the collection of data is necessary from individuals with disabilities being served by two or more designated State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?

Any grantee who provides training of rehabilitation counselors or other rehabilitation personnel under any of the programs in 34 CFR parts 386, 387, 390, and 396 must train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made to the Rehabilitation Act by the Workforce Innovation and Opportunity Act of 2014. The grantee must also furnish training to these counselors and personnel regarding applications of rehabilitation technology in vocational rehabilitation services, the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities.

(Authority: Sections 12(c), 101(a), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a) and 772)

### § 385.44 What requirement applies to the training of individuals with disabilities?

Any grantee or contractor who provides training under any of the programs in 34 CFR parts 386 through 390 and 396 shall give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)

### § 385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?

(a) All applicants for a grant or contract to provide training under any of the programs in 34 CFR parts 386 through 390 and 396 shall demonstrate how the training they plan to provide will prepare rehabilitation professionals to address the needs of individuals with disabilities from minority backgrounds.

(b) All applicants for a grant under any of the programs in 34 CFR parts 386 through 390 and 396 shall include a detailed description of strategies that will be utilized to recruit and train persons so as to reflect the diverse populations of the United States, as part of the effort to increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide rehabilitation services.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 21(a) and (b) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 718(a) and (b) and 772)

### § 385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.

(Authority: Section 302(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(b)(3))

■ 11. Part 386 is revised to read as follows:

## Part 386—Rehabilitation Training: Rehabilitation Long-Term Training

**Subpart A—General**

Sec.
386.1 What is the Rehabilitation Long-Term Training program?

**386.2 Who is eligible for an award?**

**386.3 What regulations apply?**

**386.4 What definitions apply?**

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**386.20 What additional selection criteria are used under this program?**

386.21 What are the application procedures for these programs?

**Subpart D—What Conditions Must Be Met After an Award?**

386.30 What are the matching requirements?
386.31 What are the requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?
386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?

**Subpart E—What Conditions Must Be Met by a Scholar?**

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

**Authority:** Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772, unless otherwise noted.

## Subpart A—General

### § 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training that leads to an academic degree or academic certificate in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting;

(2) Vocational rehabilitation counseling;

(3) Rehabilitation technology, including training on its use, applications, and benefits;

(4) Rehabilitation medicine;

(5) Rehabilitation nursing;

(6) Rehabilitation social work;

(7) Rehabilitation psychiatry;

(8) Rehabilitation psychology;

(9) Rehabilitation dentistry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech pathology and audiology;

(13) Physical education;

(14) Therapeutic recreation;

(15) Community rehabilitation program personnel;

(16) Prosthetics and orthotics;

(17) Rehabilitation of individuals who are blind or visually impaired, including rehabilitation teaching and orientation and mobility;

(18) Rehabilitation of individuals who are deaf or hard of hearing;

(19) Rehabilitation of individuals who are mentally ill;

(20) Undergraduate education in the rehabilitation services;

(21) Independent living;

(22) Client assistance;

(23) Administration of community rehabilitation programs;

(24) Rehabilitation administration;

(25) Vocational evaluation and work adjustment;

(26) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(27) Job development and job placement services to individuals with disabilities;

(28) Supported employment services and customized employment services for individuals with the most significant disabilities;

(29) Specialized services for individuals with significant disabilities;

(30) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: Sections 12 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 and 772)

### § 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(a))

### § 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(a))

### § 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

*Academic year* means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

*Certificate* means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

*Professional corporation or professional practice* means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

*Related agency* means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement or other arrangement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.
(ii) A nonprofit organization.
(iii) A professional corporation or professional practice group.

*Scholar* means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

*Scholarship* means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, books and supplies, and student travel in conjunction with training assignments.

*State vocational rehabilitation agency* means the designated State agency as defined in 34 CFR 361.5(c)(13).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

## Subpart B—[Reserved]

## Subpart C—How Does the Secretary Make an Award?

### § 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal vocational rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal vocational rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, customized employment, pre-employment transition services, transition services, or independent living rehabilitation services to individuals with disabilities, especially individuals with significant disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, customized employment, employer engagement, and independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

### § 386.21 What are the application procedures for these programs?

(a) *Application.* No grant shall be awarded or contract entered into under the Rehabilitation Long-Term Training program unless the applicant has submitted to the Secretary an application at such time, in such form, in accordance with such procedures identified by the Secretary and, and including such information as the Secretary may require, including—

(1) A description of how the designated State unit or units will participate in the project to be funded under the grant or contract, including, as appropriate, participation on advisory committees, as practicum sites, in curriculum development, and in other ways so as to build closer relationships between the applicant and the designated State unit and to encourage students to pursue careers in public vocational rehabilitation programs;

(2) The identification of potential employers that provide employment that meets the requirements in § 386.33(c); and

(3) An assurance that data on the employment of graduates or trainees who participate in the project is accurate.

(b) The Secretary gives the designated State agency an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 302(b)(2) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b)(2) and (d))

## Subpart D—What Conditions Must Be Met After an Award?

### § 386.30 What are the matching requirements?

The grantee is required to contribute at least ten percent of the total cost of a project under this program. However, if the grantee can demonstrate that it has insufficient resources to contribute the entire match but that it can fulfill all other requirements for receiving an award, the Secretary may waive part of the non-Federal share of the cost of the project after negotiations with Department staff.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 65 percent of the total cost of a project under this program for scholarships as defined in § 386.4.

(b) The Secretary may waive the requirement in (a) and award grants that use less than 65 percent of the total cost of the project for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) A scholar may not receive concurrent scholarships from more than one project under this program.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

### § 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.
(b) Tuition and fees.
(c) Books and supplies.
(d) Student travel in conjunction with required practicum or internship.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

### § 386.33 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee—

(a)(1) Must obtain documentation that the individual is—

(i) A U.S. citizen or national; or

(ii) A permanent resident of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(2) Must confirm from documentation issued to the individual by the U.S. Department of Homeland Security that he or she—

(i) Is a lawful permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(b) Must confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with significant disabilities;

(c) Must obtain documentation, as described in § 386.40(a)(6), that the individual expects to seek and maintain employment in a designated State agency or in a related agency as defined in § 386.4 where

(1) The employment is in the field of study in which the training was received or

(2) Where the job functions are directly relevant to the field of study in which the training was received.

(d) Must ensure that the scholarship, when added to the amount of financial aid the scholar receives for the same academic year under title IV of the Higher Education Act, does not exceed the scholar's cost of attendance;

(e) Must limit scholarship assistance to no more than four academic years, unless the grantee provides an extension consistent with the institution's accommodations under section 504 of the Act; and

(f) Must obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

**§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?**

A grantee under this part that intends to grant scholarships for any academic year must provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses. An agreement must be executed between the grantee and scholar for each subsequent year that scholarship funds are disbursed and must contain the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement between the grantee and a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Prior to granting each year of a scholarship, the grantee will require each scholar to enter into a signed written agreement in which the scholar agrees to the terms and conditions set forth in § 386.40. This agreement must be in the form and contain any additional terms and conditions that the Secretary may require.

(d) *Executed agreement.* The grantee will provide an original signed executed payback agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar must complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; *e.g.,* full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* (1) At the time of exit from the program, the grantee will provide the following information to the scholar:

(i) The name of the institution and the number of the Federal grant that provided the scholarship.

(ii) the total amount of scholarship assistance received subject to § 386.40(a)(6).

(iii) The scholar's field of study and the obligation of the scholar to perform the service obligation with employment that meets the requirements in § 386.40(a)(6)(i).

(iv) The number of years the scholar needs to work to satisfy the work requirements in § 386.40(a)(6)(ii).

(v) The time period during which the scholar must satisfy the work requirements in § 386.40(a)(7).

(vi) As applicable, all other obligations of the scholar in § 386.40.

(2) Upon receipt of this information from the grantee, the scholar must provide written and signed certification to the grantee that the information is correct.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the signed payback agreement. In order to determine whether a scholar has met the terms and conditions set forth in § 386.40, the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, name of supervisor, position title, a description of the duties the scholar performed, and whether the employment is full- or part-time;

(2) Documentation of how the employment meets the requirements in § 386.40(a)(6); and

(3) In the event a grantee is experiencing difficulty locating a scholar, documentation that the grantee has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry

out the Secretary's functions under this part.

(i) *Repayment status.* The grantee will immediately report to the Secretary whenever a scholar has entered repayment status under § 386.43(e) and provide all necessary documentation in support thereof.

(j) *Records.* The grantee will maintain accurate and complete records as outlined in paragraphs (g) and (h) of this section for a period of time not less than one year beyond the date that all scholars provided financial assistance under the grant—

(1) Have completed their service obligation or

(2) Have entered into repayment status pursuant to § 386.43(e).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

**§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?**

A grantee that is an institution of higher education provided assistance under this part must cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

**§ 386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?**

The Department may recover, in whole or in part, from the grantee the debt amount and any collection costs described in §§ 386.40 and 386.43, if the Department:

(a) Is unable to collect, or improperly collected, some or all of these amounts or costs from a scholar and

(b) Determines that the grantee failed to provide to the Department accurate and complete documentation described in § 386.34.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

## Subpart E—What Conditions Must Be Met by a Scholar?

**§ 386.40 What are the requirements for scholars?**

(a) A scholar must—

(1) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b);

(2) Receive the training at the educational institution or agency designated in the scholarship;

(3) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under section 302 of the Act and this part;

(4) Enter into a signed written agreement with the grantee, prior to the receipt of scholarship funds, as required in § 386.34(c);

(5) Maintain satisfactory progress toward the certificate or degree as determined by the grantee;

(6) Upon exiting the training program under paragraph (a)(1) of this section, subsequently maintain employment on a full- or part-time basis subject to the provisions in paragraph (b) of this section—

(i)(A) In a State vocational rehabilitation agency or related agency as defined in § 386.4; and

(B)(*1*) In the field of study for which training was received, or

(*2*) Where the field of study is directly relevant to the job functions performed; and

(ii) For a period of at least the full-time equivalent of two years for every academic year for which assistance under this section was received subject to the provisions in paragraph (c) of this section for part-time coursework;

(7) Complete the service obligation within a period, beginning after the recipient exits the training program for which the scholarship was awarded, of not more than the sum of the number of years in the period described in paragraph (a)(6)(ii) of this section and two additional years;

(8) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of this section, except as provided for in § 386.41 for exceptions and deferrals; and

(9) Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements in § 386.34(f) and, as necessary, thereafter for any changes necessary for the grantee to monitor the scholar's service obligation under this section.

(b)(1) The period of qualifying employment that meets the requirements of paragraph (a)(6) of this section may begin—

(i) For courses of study of at least one year, only subsequent to the completion of one academic year of the training for which the scholarship assistance was received.

(ii) For courses of study of less than one year, only upon completion of the training for which the scholarship assistance was received.

(2) The work completed as part of an internship, practicum, or any other work-related requirement necessary to complete the educational program is not considered qualifying employment.

(c) If the scholar is pursuing coursework on a part-time basis, the service obligation for these part-time courses is based on the equivalent total of actual academic years of training received.

(d) If a scholar fails to provide the information in paragraph (a)(9) of this section or otherwise maintain contact with the grantee pursuant to the terms of the signed payback agreement and enters into repayment status pursuant to § 386.43, the scholar will be held responsible for any costs assessed in the collection process under that section even if that information is subsequently provided.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

**§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?**

Based upon sufficient evidence to substantiate the grounds as detailed in § 386.42, a repayment exception to or deferral of the requirements of § 386.40(a)(6) may be granted, in whole or in part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a permanent disability that meets one of the following conditions:

(i) The disability had not been diagnosed at the time the scholar signed the agreement in § 386.34(c); or

(ii) The disability did not prevent the scholar from performing the

requirements of the course of study or the work obligation at the time the scholar signed the agreement in § 386.34(c) but subsequently worsened; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study in the field of rehabilitation at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States for a period not in excess of four years;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973;

(5) Experiencing a temporary disability that affects the scholar's ability to continue the course of study or perform the work obligation, for a period not to exceed three years; or

(c) Under limited circumstances as determined by the Secretary and based upon credible evidence submitted on behalf of the scholar, the Secretary may grant an exception to, or deferral of, the requirement to repay a scholarship in instances not specified in this section. These instances could include, but are not limited to, the care of a disabled spouse, partner, or child or the need to accompany a spouse or partner on active duty in the Armed Forces.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

#### § 386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?

To obtain an exception or a deferral to performance or repayment under a scholarship agreement under § 386.41, a scholar must provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* Sufficient documentation must be provided to substantiate the grounds for all deferrals or exceptions, including the following, as appropriate.

(1) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a letter from a qualified physician or other medical professional, on official stationery, attesting how the disability affects the scholar in completing the course of study or performing the work obligation. The documentation must be less than three months old and include the scholar's diagnosis and prognosis and ability to complete the course of study or work with accommodations.

(2) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(3) Documentation necessary to substantiate a deferral or exception under 386.41(c) based upon the disability of a spouse, partner, or child must meet the criteria, as relevant, in paragraph (b)(1) of this section.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

#### § 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar must repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) Amounts and frequency of payment. The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

■ 12. Part 387 is revised to read as follows:

## PART 387—INNOVATIVE REHABILITATION TRAINING

**Subpart A—General**

Sec.
387.1 What is the Innovative Rehabilitation Training Program?
387.2 Who is eligible for assistance under this program?
387.3 What regulations apply to this program?
387.4 What definitions apply to this program?
387.5 What types of projects are authorized under this program?

**Subpart B—[Reserved]**

**Subpart C—[Reserved]**

**Subpart D—How Does the Secretary Make a Grant?**

387.30 What additional selection criteria are used under this program?

**Subpart E—What Conditions Must Be Met by a Grantee?**

387.40 What are the matching requirements?
387.41 What are allowable costs?

**Authority:** Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 772, unless otherwise noted.

### Subpart A—General

#### § 387.1 What is the Innovative Rehabilitation Training Program?

This program is designed—

(a) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to individuals with disabilities;

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services to individuals with disabilities by designated State rehabilitation agencies and designated State rehabilitation units or other public or non-profit rehabilitation service agencies or organizations; and

(c) To develop new innovative training programs for vocational rehabilitation professionals and paraprofessionals to have a 21st century understanding of the evolving labor force and the needs of individuals with

disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

(Authority: Sections 12(c), 121(a)(7), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7), and 772)

#### § 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

#### § 387.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 387.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

#### § 387.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

#### § 387.5 What types of projects are authorized under this program?

The Innovative Rehabilitation Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation personnel may be demonstrated.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

### Subpart B—[Reserved]

### Subpart C—[Reserved]

### Subpart D—How Does the Secretary Make a Grant?

#### § 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation personnel.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with significant disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation processes, concepts, programs, and services.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

### Subpart E—What Conditions Must Be Met by a Grantee?

#### § 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

#### § 387.41 What are allowable costs?

In addition to those allowable costs established under 34 CFR 75.530–75.562, the following items are allowable under Innovative Rehabilitation training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

## PART 388—[REMOVED AND RESERVED]

■ 13. Part 388 is removed and reserved.

## PART 389—[REMOVED AND RESERVED]

■ 14. Part 389 is removed and reserved.

■ 15. Part 390 is revised to read as follows:

## PART 390—REHABILITATION SHORT-TERM TRAINING

**Subpart A—General**

Sec.
390.1 What is the Rehabilitation Short-Term Training program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

**Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?**

390.10 What types of projects are authorized under this program?

**Subpart C—[Reserved]**

**Subpart D—How Does the Secretary Make a Grant?**

390.30 What additional selection criterion is used under this program?

**Subpart E—What Conditions Must Be Met by a Grantee?**

390.40 What are the matching requirements?
390.41 What are allowable costs?

**Authority:** Sections 12(a) and (c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a) and (c) and 772, unless otherwise noted.

### Subpart A—General

#### § 390.1 What is the Rehabilitation Short-Term Training program?

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

(Authority: Sections 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

#### § 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

**§ 390.3 What regulations apply to this program?**

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 390.

(Authority: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

**§ 390.4 What definitions apply to this program?**

The definitions in 34 CFR part 385 apply to this program.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

## Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

**§ 390.10 What types of projects are authorized under this program?**

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance programs.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Authority: Section 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

## Subpart C—[Reserved]

## Subpart D—How Does the Secretary Make a Grant?

**§ 390.30 What additional selection criterion is used under this program?**

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) *Evidence of training needs.* The Secretary reviews each application for evidence of training needs as identified through training needs assessment conducted by the applicant or by designated State agencies or designated State units or any other public and private nonprofit rehabilitation service agencies or organizations that provide rehabilitation services and other services authorized under the Act, whose personnel will receive the training.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

## Subpart E—What Conditions Must Be Met by a Grantee?

**§ 390.40 What are the matching requirements?**

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

**§ 390.41 What are allowable costs?**

(a) In addition to those allowable costs established in 34 CFR 75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for trainees with handicaps.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

■ 16. Part 396 is revised to read as follows:

# PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING AND INDIVIDUALS WHO ARE DEAF-BLIND

## Subpart A—General

Sec.

396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?
396.2 Who is eligible for an award?
396.3 What regulations apply?
396.4 What definitions apply?
396.5 What activities may the Secretary fund?

## Subpart B—[Reserved]

## Subpart C—How Does One Apply for an Award?

396.20 What must be included in an application?

## Subpart D—How Does the Secretary Make an Award?

396.30 How does the Secretary evaluate an application?
396.31 What additional selection criteria are used under this program?
396.32 What additional factors does the Secretary consider in making awards?
396.33 What priorities does the Secretary apply in making awards?
396.34 What are the matching requirements?

**Authority:** Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (f), unless otherwise noted.

## Subpart A—General

**§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?**

The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified interpreters throughout the country in order to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind by—

(a) Training interpreters to effectively interpret and transliterate between spoken language and sign language, and to transliterate between spoken language and oral or tactile modes of communication;

(b) Ensuring the maintenance of the interpreting skills of qualified interpreters; and

(c) Providing opportunities for interpreters to raise their skill level competence in order to meet the highest standards approved by certifying associations.

(Authority: Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (f))

**§ 396.2 Who is eligible for an award?**

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

**§ 396.3 What regulations apply?**

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program:

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations under this part 396.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

**§ 396.4 What definitions apply?**

(a) *Definitions in EDGAR.* The following terms defined in 34 CFR 77.1 apply to this part:

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) *Definitions in the rehabilitation training regulations.* The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education

(c) *Other definitions.* The following definitions also apply to this part:

*Existing program that has demonstrated its capacity for providing interpreter training services* means an established program with—

(1) A record of training qualified interpreters who are serving the deaf, hard of hearing, and deaf-blind communities; and

(2) An established curriculum that uses evidence-based practices in the training of interpreters and promising practices when evidence-based practices are not available.

*Individual who is deaf* means an individual who has a hearing impairment of such severity that the individual must depend primarily upon visual modes, such as sign language, speech reading, and gestures, or reading and writing to facilitate communication.

*Individual who is deaf-blind* means an individual—

(1)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs (1)(i) and (ii) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(2) Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(3) Who meets any other requirements that the Secretary may prescribe.

*Individual who is hard of hearing* means an individual who has a hearing impairment such that, in order to facilitate communication, the individual depends upon visual modes, such as sign language, speech reading, and gestures, or reading and writing, in addition to any other auditory information.

*Interpreter for individuals who are deaf or hard of hearing* means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills, as appropriate to the needs of individuals who are deaf or hard of hearing, to facilitate communication between individuals who are deaf or hard of hearing and other individuals.

*Interpreter for individuals who are deaf-blind* means a qualified professional who uses tactile or other manual language or fingerspelling modes, as appropriate to the needs of individuals who are deaf-blind, to facilitate communication between individuals who are deaf-blind and other individuals.

*Qualified professional* means an individual who has—

(1) Met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; and

(2) Successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.

*Related agency* means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement or other arrangement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended and Section 206 of Pub. L. 98–221; 29 U.S.C. 709(c) and 772(f) and 29 U.S.C 1905)

**§ 396.5 What activities may the Secretary fund?**

The Secretary may award grants to public or private nonprofit agencies or organizations, including institutions of higher educations, to provide assistance for establishment of interpreter training programs or for projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf or hard of hearing, and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

## Subpart B—[Reserved]

## Subpart C—How Does One Apply for an Award?

**§ 396.20 What must be included in an application?**

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the communication needs for training interpreters in the geographical area to be served by the project;

(c) A description of the applicant's capacity or potential for providing training of interpreters for individuals who are deaf or hard of hearing and interpreters for individuals who are deaf-blind that is evidence-based, and based on promising practices when evidence-based practices are not available;

(d) An assurance that any interpreter trained or retrained under this program shall meet those standards of competency for a qualified professional, that the Secretary may establish;

(e) An assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program;

(f) The descriptions required in 34 CFR 385.45 with regard to the training

of individuals with disabilities, including those from minority groups, for rehabilitation careers; and

(g) Such other information as the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c), 21(c), and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 718(c), and 772(f))

## Subpart D—How Does the Secretary Make an Award?

### § 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

### § 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application. The Secretary reviews each application to determine the extent to which—

(a) The proposed interpreter training project was developed in consultation with State Vocational Rehabilitation agencies and their related agencies and consumers;

(b) The training is appropriate to the needs of both individuals who are deaf or hard of hearing and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or hard of hearing or individuals who are deaf-blind in the geographical area to be served by the training project;

(c) The curriculum for the training of interpreters includes evidence-based practices, and promising practices when evidence-based practices are not available;

(d) There is a working relationship between the interpreter training project and State Vocational Rehabilitation agencies and their related agencies, and consumers; and

(e) There are opportunities for individuals who are deaf or hard of hearing and individuals who are deaf-blind to provide input regarding the design and management of the training project.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

### § 396.32 What additional factors does the Secretary consider in making awards?

In addition to the selection criteria listed in § 396.31 and 34 CFR 75.210, the Secretary, in making awards under this part, considers the geographical distribution of projects throughout the country, as appropriate, in order to best carry out the purposes of this program. To accomplish this, the Secretary may in any fiscal year make awards of regional or national scope.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

### § 396.33 What priorities does the Secretary apply in making awards?

(a) The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations, including institutions of higher education, with existing programs that have demonstrated their capacity for providing interpreter training.

(b) In announcing competitions for grants and contracts, the Secretary may give priority consideration to—

(1) Increasing the skill level of interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind in the unserved or underserved geographic areas;

(2) Existing programs that have demonstrated their capacity for providing interpreter training services that raise the skill level of interpreters in order to meet the highest standards approved by certifying associations; and

(3) Specialized topical training based on the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

(Authority: Sections 12(c) and 302(f)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f)(1)(C))

### § 396.34 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Section 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

[FR Doc. 2015–05535 Filed 4–2–15; 4:15 pm]

BILLING CODE 4000–01–P

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 361, 363, and 397**

**RIN 1820–AB70**

**[Docket ID ED–2015–OSERS–OOO1]**

## State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services program and the State Supported Employment Services program in order to implement changes to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) enacted on July 22, 2014. The Secretary also proposes to update, clarify, and improve the current regulations.

Finally, the Secretary proposes to issue new regulations regarding limitations on the use of subminimum wages that are added by WIOA and under the purview of the Department.

**DATES:** We must receive your comments on or before June 15, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086, Potomac Center Plaza (PCP), Washington, DC 20202–2800.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7488 or by email: *Janet.LaBreck@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

Purpose of This Regulatory Action: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services program (VR program) (34 CFR part 361) and State Supported Employment Services program) (Supported Employment program) (34 CFR part 363), administered by the Rehabilitation Services Administration (RSA), to implement changes to the Act made by WIOA (P.L. 113–128), enacted on July 22, 2014. In so doing, the Secretary also proposes to update and clarify current regulations to improve program function. Finally, the Secretary proposes to promulgate regulations in 34 CFR part 397 that implement the limitations on the payment of subminimum wages to individuals with disabilities in section 511 of the Act that fall under the purview of the Secretary.

For a more detailed description of the purpose of these proposed regulatory actions, see the *Background* section in this notice of proposed rulemaking (NPRM).

Summary of the Major Provisions of This Regulatory Action: We summarize here those proposed regulatory changes needed to implement the amendments to the Act made by WIOA. Under the *Proposed Changes* section of this NPRM, we provide a more complete summary of these changes and a detailed description of the substantive proposed regulations for each part in the order it appears in the Code of Federal Regulations (CFR). We also describe in detail under the *Proposed Changes* section the amendments to each part to update, clarify, and improve the regulations.

The Secretary proposes to implement the following changes to the VR program and Supported Employment program made by WIOA.

### State Vocational Rehabilitation Services Program

People with disabilities represent a vital and integral part of our society, and we are committed to ensuring that individuals with disabilities have opportunities to compete for and enjoy high quality employment in the 21st century global economy. Some individuals with disabilities face particular barriers to high quality employment. Giving workers with disabilities the supports and the opportunity to acquire the skills that they need to pursue in-demand jobs and careers is critical to growing our economy, ensuring that everyone who works hard is rewarded, and building a strong middle class. To help achieve this priority for individuals with disabilities, the Rehabilitation Act of 1973, as amended by WIOA, seeks to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.

The VR program is authorized by title I of the Act, as amended by WIOA (29 U.S.C. 720 *et seq.*), to provide support to each State to assist in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State program as an integral part of a statewide workforce development system; and to assess, plan, and provide vocational rehabilitation (VR) services to individuals with disabilities so that those individuals may prepare for and engage in competitive integrated employment consistent with their unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice. The Department last published regulations for this program in part 361 on January 17, 2001 (66 FR 4382), to implement amendments made by the Workforce Investment Act of 1998.

WIOA makes significant changes to title I of the Act that affect the VR program. First, WIOA strengthens the alignment of the VR program with other components of the workforce development system by imposing unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. This alignment brings together entities responsible for administering separate workforce and employment, educational, and other human resource programs and funding streams to collaborate in the creation of a seamless custom-focused service delivery network that integrates service delivery across programs, enhances access to the program's services, and improves long-

term employment outcomes for individuals receiving assistance. In so doing, WIOA places heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job-seekers, including those with disabilities, and employers. Therefore, the Departments of Education and Labor propose to issue a joint NPRM to implement jointly administered activities under title I of WIOA (*e.g.,* those related to Unified or Combined State Plans, performance accountability, and the one-stop delivery system), applicable to the workforce development system's core programs (Adult, Dislocated Worker and Youth programs; Adult Education and Literacy programs; Wagner-Peyser Employment Service program and the Vocational Rehabilitation program). These joint proposed regulations are set forth in a separate NPRM published elsewhere in this issue of the **Federal Register**.

WIOA also makes corresponding changes to title I of the Act. Consequently, we propose to make conforming changes throughout part 361 and align the VR program-specific regulations with the joint proposed regulations to ensure consistency among all core programs.

Second, WIOA places heightened emphasis throughout the Act on the achievement of competitive integrated employment. The foundation of the VR program is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary skills and supports. To increase the employment of individuals with disabilities in the competitive labor market, the workforce system must provide the opportunity for such individuals to participate in job-driven training and pursue high-quality employment outcomes. The amendments to the Act—from the stated purpose of the Act, to the expansion of services designed to maximize the potential of individuals with disabilities, including those with the most significant disabilities, to achieve competitive integrated employment, and, finally, to the inclusion of limitations on the payment of subminimum wages to individuals with disabilities—reinforce the congressional intent that individuals with disabilities, with appropriate supports and services, are able to achieve the same kinds of competitive integrated employment as non-disabled individuals.

As a result, we propose to amend part 361 throughout to emphasize the key role that the VR program plays in employment outcomes and preparing individuals with disabilities to achieve competitive integrated employment in the community. We propose, among other things, to amend the definition of ''employment outcome'' to include only those outcomes in competitive integrated employment or supported employment, thereby eliminating uncompensated employment from the scope of employment outcomes for purposes of the VR program. We also propose to amend numerous other provisions throughout part 361 to address the expansion of available services, requirements related to the development of the individualized plan for employment, and order of selection for services, all of which are intended to maximize the potential for individuals with disabilities to prepare for, obtain, retain, and advance in the same high-quality jobs, and high demand careers as persons without disabilities.

Third, WIOA places heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. The Act, as amended by WIOA, expands not only the population of students with disabilities who may receive services but also the kinds of services that the VR agencies may provide to youth and students with disabilities who are transitioning from school to postsecondary education and employment.

Most notably, the Act, as amended by WIOA, requires States to reserve 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. These pre-employment transition services are designed to provide job exploration and other services, such as counseling and self-advocacy training, in the early stages of the transition process.

With the addition of these early pre-employment transition services, the VR program can be characterized as providing a continuum of VR services, especially for students and youth with disabilities. To that end, we propose to amend numerous sections of part 361 to implement new definitions for the terms ''student with a disability'' and ''youth with a disability'' and new requirements related to pre-employment transition services and the provision of transition services to students and youth with disabilities. All of the proposed changes demonstrate the continuum of services available to students and youth with disabilities under the VR program to maximize their potential to transition from school to postsecondary education and employment.

**Supported Employment Program**

WIOA makes several significant changes to title VI of the Act, which governs the Supported Employment program. All of the amendments to title VI are consistent with those made throughout the Act, namely to maximize the potential of individuals with disabilities, especially those with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities.

First, WIOA amends the definition of ''supported employment'' to make clear that supported employment outcomes must be in competitive integrated employment or, if in an integrated setting that is not competitive integrated employment, then in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. By adding a timeframe to this definition, Congress reinforces its intention that individuals with disabilities should not be allowed to languish in subminimum wage jobs under the Supported Employment program. Thus, the Secretary proposes to amend part 363 to implement the revised definition of ''supported employment.'' The Secretary proposes to define ''short-term basis'' in this context to mean no longer than six months. We believe this proposed change is consistent with the Act, as amended by WIOA, in its entirety as well as the stated congressional intent.

Second, WIOA requires States to reserve at least 50 percent of their supported employment program allotment for the provision of supported employment services to youth with the most significant disabilities. With these reserved funds, States may provide extended services, for a period up to four years, to youth with the most significant disabilities. Prior to the enactment of WIOA, extended services were not permitted under either the VR program or the Supported Employment program. In addition, States must provide a non-Federal share of 10 percent of the funds reserved for the provision of supported employment services to youth with the most significant disabilities. By requiring that States use half of their supported employment program funds and provide a match for these reserved funds,

Congress reinforces the heightened emphasis on the provision of services to youth with disabilities. Congress makes clear that youth with significant disabilities must be given every opportunity to receive the services necessary to ensure the maximum potential to achieve competitive integrated employment. Accordingly, the Secretary proposes to amend part 363 to implement new requirements regarding the reservation of funds, and the services to be provided with those funds, to youth with the most significant disabilities.

**Limitations on the Payment of Subminimum Wages**

Section 511 of the Act, as added by WIOA, imposes requirements on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level. Section 511 also establishes the roles and responsibilities of the designated State units (DSU) for the VR program and State and local educational agencies in assisting individuals with disabilities, including youth with disabilities, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the local educational agencies.

The addition of section 511 to the Act is consistent with all other amendments to the Act made by WIOA. Throughout the Act, Congress makes clear that individuals with disabilities, including those with the most significant disabilities, can achieve competitive integrated employment if provided the necessary supports and services. The limitations imposed by section 511 reinforce this belief by requiring individuals with disabilities, including youth with disabilities, to satisfy certain service-related requirements in order to start or maintain, as applicable, subminimum wage employment. To that end, the Secretary proposes to develop new regulations at part 397 that would implement requirements of section 511 that fall under the purview of the Department.

*Costs and Benefits:* The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. Further information related to costs and benefits may be found in the Regulatory Impact Analysis section later in this NPRM.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 5093, Potomac Center Plaza, 550 12th Street SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Workforce Innovation and Opportunity Act (WIOA) (Pub L. 113–128), enacted July 22, 2014, made significant changes to the Rehabilitation Act of 1973 (hereafter referred to as the Act). As a result, the Secretary proposes to amend parts 361 and 363 of title 34 of the CFR. These parts, respectively, implement the:

- State Vocational Rehabilitation (VR) Services program; and
- State Supported Employment Services program.

In addition, WIOA added section 511 to title V of the Act. Section 511 limits the payment of subminimum wages to individuals with disabilities by employers holding special wage certificates under the FLSA. Although the Department of Labor administers the FLSA, some requirements of section 511 fall under the purview of the Secretary. Therefore, the Secretary proposes to add a new part 397 to title 34 of the CFR to implement those particular provisions.

These proposed changes are further described under the *Summary of Proposed Changes* and *Significant Proposed Regulations* sections of this NPRM. WIOA also makes changes to other programs authorized under title I of the Act, including the Client Assistance Program and the American Indian Vocational Rehabilitation Services (AIVRS) program, as well as discretionary grant programs authorized under title III, the Protection and Advocacy of Individual Rights program under title V, and the Independent Living Services for Older Individuals Who are Blind program under title VII. The Secretary proposes regulatory changes to implement the amendments to these programs and projects made by WIOA through a separate, but related, NPRM published elsewhere in this issue of the **Federal Register**.

**Summary of Proposed Changes**

The Secretary proposes to implement the following changes to the VR program and Supported Employment program made by WIOA.

**State Vocational Rehabilitation Services Program**

The VR program is authorized by title I of the Act, as amended by WIOA (29 U.S.C. 720 through 731, and 733), to provide support to each State to assist in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State VR program as an integral part of a statewide workforce development system; and to assess, plan, and provide VR services to individuals with disabilities so that those individuals may prepare for and engage in competitive integrated employment consistent with their unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

The Department last published regulations for this program in part 361 on January 17, 2001 (66 FR 4382), to implement amendments made by the Workforce Investment Act of 1998 (WIA).

In implementing the amendments to the VR program made by WIOA, the numerous proposed regulatory changes to part 361 improve employment outcomes for individuals with disabilities by: (1) Strengthening the alignment of the VR program with other components of the workforce

development system through unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system; (2) emphasizing the achievement of competitive integrated employment by individuals with disabilities, including individuals with the most significant disabilities; and (3) expanding services to support the transition of students and youth with disabilities to postsecondary education and employment.

To implement jointly administered activities under title I of WIOA (*e.g.,* those related to Unified or Combined State Plans, performance accountability and the one-stop delivery system), the U.S. Departments of Labor and Education are proposing a set of joint regulations applicable to the workforce development system's core programs, including the VR program. Through these proposed joint regulations, we lay the foundation for establishing a comprehensive, accessible, and high quality workforce development system that serves all individuals in need of employment services, including individuals with disabilities, and employers in a manner that is customer-focused and that supports an integrated service design and delivery model. These joint proposed regulations are in a separate NPRM published elsewhere in this issue of the **Federal Register**.

WIOA makes corresponding changes to title I of the Act regarding the submission, approval, and disapproval of the VR services portion of the Unified or Combined State Plan; the standards and indicators used to assess VR program performance; and the involvement of the VR program in the one-stop delivery system. Consequently, we propose to amend current § 361.10 to require that all assurance and descriptive information previously submitted through the VR State plan and supported employment supplement be submitted through the VR services portion of the Unified or Combined State Plan under sections 102 and 103 of the Act, respectively, of WIOA. We also propose to implement changes specific to the content of the VR services portion of the Unified or Combined State Plan by amending current § 361.29(a) to require that the comprehensive statewide needs assessment include the results of the needs of students and youth with disabilities for VR services, including pre-employment transition services. Additionally, we propose to clarify in current § 361.29 that States will report to the Secretary updates to the statewide needs assessment and goals and priorities, estimates of the numbers of individuals with disabilities served through the VR program and the costs of serving them, and reports of progress on goals and priorities at such time and in such manner determined by the Secretary, thereby resolving inconsistencies in reporting requirements within section 101(a) of the Act. Finally, we clarify in proposed § 361.20 when designated State agencies must conduct public hearings to obtain comment on substantive changes to policies and procedures governing the VR program.

We propose to implement the changes to section 106 of the Act made by WIOA through proposed § 361.40, by replacing the current standards and indicators used to assess the performance of the VR program under current § 361.80 through § 361.89 with a cross-reference to the joint regulations for the common performance accountability measures for the core programs of the workforce development system. Similarly, we propose to provide a cross-reference in current § 361.23, regarding the roles and responsibilities of the VR program in the one-stop delivery system, to the joint regulations implementing requirements for the one-stop delivery system.

WIOA makes extensive changes to title I of the Act to improve the VR services provided to, and the employment outcomes achieved by, individuals with disabilities, including those with the most significant disabilities. Embedded throughout the provisions of WIOA and the amendments to the Act is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving competitive integrated employment when provided the necessary skills and supports. As a result, we propose to adopt a definition of ''competitive integrated employment'' in § 361.5(c)(9) that combines, clarifies, and enhances the two separate definitions of ''competitive employment'' and ''integrated setting'' for the purpose of employment in current § 361.5(b)(11) and (b)(33)(ii).

We propose to incorporate this principle throughout part 361, from the statement of program purpose in proposed § 361.1, to a requirement in proposed § 361.46(a) that the individualized plan for employment include a specific employment goal consistent with the general goal of competitive integrated employment. This principle is most evident in the definition of ''employment outcome'' in proposed § 361.5(c)(15), which specifically identifies customized employment as an employment outcome under the VR program, and requires that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition for purposes of the VR program. We will provide guidance and technical assistance to VR agencies to assist them in implementing this proposed change.

We propose additional regulatory changes to ensure that individuals with disabilities are provided a full opportunity through the VR program to participate in job-driven training and pursue high-quality employment outcomes. Proposed § 361.42(a)(1)(iii) would clarify that an applicant meeting all other eligibility criteria may be determined eligible if he or she requires services to advance in employment, not just obtain or maintain employment. We also propose to clarify in proposed §§ 361.48(b)(6)and 361.49, that VR services are available to assist individuals with disabilities to obtain graduate level education needed for this purpose. We clarify in proposed § 361.42(c)(1) the prohibition against a duration of residency requirement and in § 361.42(c)(2) those factors that cannot be considered when determining the eligibility of VR program applicants. We propose removing the option to use extended evaluations, as a limited exception to trial work experiences, to explore an individual's abilities, capabilities, and capacity to perform in work situations by deleting paragraph (f) from current § 361.42. To enable individuals with disabilities, including students and youth with disabilities, to receive VR services in a timely manner, proposed § 361.45(e) would require the individualized plan for employment of each individual to be developed within 90 days following the determination of eligibility. Finally, if a State VR agency is operating under an order of selection for services, it would have the option under proposed § 361.36 to indicate in its portion of the Unified or Combined State Plan that it will serve eligible individuals with disabilities outside that order who have an immediate need for equipment or services to maintain employment.

WIOA enhances the VR agency's focus on coordination and collaboration with other entities by emphasizing coordination with employers, non-educational agencies working with youth, AIVRS programs, and other agencies and programs providing services to individuals with disabilities to support the achievement of competitive integrated employment.

Proposed § 361.24 reflects the enhancements. The collaboration with employers is essential to the success of VR program participants and proposed § 361.32 would describe the training and technical assistance services that can be provided to employers hiring, or interested in hiring, individuals with disabilities.

We propose to implement the emphasis on serving students and youth with disabilities contained in the amendments to the Act made by WIOA in many regulatory changes to part 361. We propose new definitions of ''student with a disability'' and ''youth with a disability'' in § 361.5(c)(51) and (c)(59), respectively. These definitions would assist VR agencies to determine the appropriate transition and other services that may be provided to each group. We propose in § 361.48(a) to implement the requirements of new sections 110(d) and 113 of the Act requiring VR agencies to reserve at least 15 percent of the Federal allotment, to provide and arrange, in coordination with local educational agencies, for the provision of pre-employment transition services to students with disabilities. We propose in § 361.49 to clarify the technical assistance VR agencies can provide to educational agencies and to permit the provision of transition services for the benefit of groups of students and youth with disabilities. To enable VR agencies and local educational agencies to better determine their respective responsibilities for the provision of transition services, including pre-employment transition services, through greater interagency collaboration, we propose in § 361.22(c) to clarify that nothing in this part is to be construed as reducing the responsibility of the local educational agencies or any other agencies under the Individuals with Disabilities Education Act to provide or pay for transition services that are also considered to be special education or related services necessary for the provision of a free appropriate public education to students with disabilities.

So that VR agencies can recruit the qualified personnel needed to provide the services and engage in the activities summarized here, we propose in § 361.18 changes to the requirements for a comprehensive system of personnel development. The proposed regulations would establish minimum educational requirements and experience and eliminate the requirement to retrain staff not meeting the VR agency's personnel standard for qualified staff.

Finally, we propose changes to part 361 to improve the fiscal administration of the VR program. Proposed § 361.5(b) would make applicable to the VR program the definitions contained in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements. We also propose to make numerous conforming changes to align with 2 CFR 200 to ensure consistency.

We propose three changes to current § 361.65 regarding the allotment of VR program funds. First, we propose adding a new paragraph (a)(3) to § 361.65 that would require the State to reserve not less than 15 percent of its allotment for the provision of pre-employment transition services described in proposed § 361.48(a). Second, we propose to amend current § 361.65(b)(2) to clarify that reallotment occurs in the fiscal year the funds were appropriated; however, the funds may be obligated or expended during the period of performance, provided that matching requirements are met. Finally, we propose to add a new paragraph (b)(3) to § 361.65 that would describe the Secretary's authority to determine the criteria to be used to reallot funds when the amount requested exceeds the amount of funds relinquished. We provide a full discussion of these and other changes to part 361 in the *Significant Proposed Regulations* section of this notice.

**State Supported Employment Services Program**

Under the Supported Employment program authorized under title VI of the Act (29 U.S.C. 795g *et seq.*), the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve supported employment outcomes in competitive integrated employment. Grants made under the Supported Employment program supplement grants issued to States under the VR program (34 CFR part 361).

The regulations in 34 CFR part 363, governing the Supported Employment program, were last updated February 18, 1993 (59 FR 8331). Therefore, the changes proposed in part 363 would incorporate statutory changes made by WIOA, as well as update the regulations to improve the program and ensure consistency with changes proposed for part 361 governing the VR program.

The changes made to the Supported Employment program by WIOA are intended to ensure that individuals with the most significant disabilities, especially youth with the most significant disabilities, are afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment, including supported or customized employment. Proposed § 363.1 would require that supported employment be in competitive integrated employment or, if not, in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis not to exceed six months. Proposed § 363.50(b)(1) would extend the time from 18 months to 24 months for the provision of supported employment services. Proposed § 363.22 would require a reservation of 50 percent of a State's allotment under this part for the provision of supported employment services, including extended services, to youth with the most significant disabilities. Proposed § 363.23 would require not less than a 10 percent match for the amount of funds reserved to serve youth with the most significant disabilities. Proposed § 363.51 would reduce the amount of funds that may be spent on administrative costs.

**Limitation on Use of Subminimum Wages**

The Secretary proposes to promulgate new regulations in part 397 to implement new requirements for designated State units (DSUs) and educational agencies under the purview of the Department that are imposed by section 511 of the Act, which was added by WIOA. Section 511 imposes limitations on employers who hold special wage certificates, commonly known as 14(c) certificates, under the FLSA (29 U.S.C. 214(c)) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level. The proposed regulations in part 397 focus exclusively on the related roles and responsibilities of educational agencies and DSUs for the VR program. The proposed regulations in part 397 are consistent with the changes proposed for parts 361 and 363, which govern the VR program and Supported Employment program, respectively.

Through amendments to the Act, WIOA prioritizes, and places heightened emphasis upon, the provision of services that maximize opportunities for competitive integrated employment for individuals with disabilities, including those with the most significant disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed

choice. WIOA also places heightened emphasis on the provision of services necessary to assist youth with disabilities to achieve competitive integrated employment in the community, including supported or customized employment. To that end, amendments to the Act require DSUs to reserve specified percentages of their VR or supported employment allotments for the provision of services to students or youth with disabilities, as applicable. These amendments, along with the addition of section 511, demonstrate the intent that individuals with disabilities, especially youth with disabilities, must be afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment.

Section 511 places limitations on the payment of subminimum wages by entities (*e.g.,* employers) holding special wage certificates under the FLSA. In particular, such employers are prohibited from hiring youth with disabilities at a subminimum wage level unless the youth are afforded meaningful opportunities to access services, including transition services under the Act or IDEA, so they may achieve competitive integrated employment in the community. For the purposes of these requirements, a ''youth with a disability'' is anyone who is 24 years or younger. This age range is consistent with the definition of a ''youth with a disability'' in section 7(42) of the Act. Additionally, employers are prohibited from continuing to employ individuals with disabilities, regardless of age, at the subminimum wage level unless other requirements are satisfied. Specifically, the individual with a disability, or the individual's parent or guardian if applicable, must receive certain information and career counseling-related services from the DSU every six months during the first year of such employment and annually thereafter for as long as the individual receives compensation at the subminimum wage level.

In addition to the requirements imposed on employers holding special wage certificates, section 511 of the Act requires DSUs to provide certain career counseling services. Further, educational agencies and the DSUs must develop a process, or use an existing process, for the timely provision of documentation necessary to demonstrate completion of required activities, as appropriate, to youth seeking employment, at a subminimum wage level. Finally, DSUs must provide documentation of the provision of career counseling and information and referral services to individuals with disabilities, regardless of age, who are currently employed at a subminimum wage level.

The proposed regulations in this part focus exclusively on those requirements under the purview of the Department of Education. To that end, we propose in part 397: (1) Documentation requirements that local educational agencies and DSUs would be required to satisfy; and (2) information and career counseling-related services DSUs would be required to provide. Requirements imposed on employers are under the purview of the Department of Labor, which administers the FLSA.

**Significant Proposed Regulations**

The Secretary proposes to amend the implementing regulations for the VR program (part 361) and the Supported Employment program (part 363). The Secretary also proposes to issue new regulations in part 397 to implement limitations on the payment of subminimum wages to individuals with disabilities. We discuss substantive issues within each subpart, by section or subject.

Generally, we do not address proposed changes that are technical or otherwise minor in effect, such as changes to the authority cited in the Act.

## Part 361—State Vocational Rehabilitation Services Program

**Organizational Changes**

Although the proposed regulations maintain the current structure of subparts A, B, and C, we propose organizational changes to other subparts within this part. First, we propose to reserve subparts within part 361 where we plan to incorporate the three subparts we are proposing in a separate, but related, NPRM (the joint regulations proposed by the Departments of Education and Labor implementing changes to title I of WIOA) published elsewhere in this issue of the **Federal Register**. Please see that NPRM for more information about how these subparts will be incorporated into part 361. Second, we propose to remove §§ 361.80 through 361.89, since the VR-specific standards and indicators are no longer applicable given amendments made by WIOA. Finally, we propose to eliminate Appendix A to current part 361—Questions and Responses. We will consider issuing guidance after the publication of the final regulations.

**Purpose (§ 361.1)**

*Statute:* Section 100(a)(1)(C) of the Act, as amended by WIOA (29 U.S.C. 720(a)(1)(C)), highlights competitive integrated employment as the type of employment that individuals with disabilities, including individuals with the most significant disabilities, are capable of achieving if appropriate supports and services are provided. This section, as revised, also incorporates economic self-sufficiency as a criterion to consider when providing VR services to an individual. The focus on competitive integrated employment is also reflected in changes made to section 100(a)(3)(B) of the Act.

*Current Regulations:* Current § 361.1(b) refers only to gainful employment, not competitive integrated employment. It also does not include economic self-sufficiency as a criterion to consider when providing VR services.

*Proposed Regulations:* We propose to amend current § 361.1(b) by: (1) Replacing the term ''gainful employment'' with ''competitive integrated employment''; and (2) incorporating ''economic self-sufficiency'' as a new criterion that must be considered to ensure that the VR services provided are consistent with the individual's unique circumstances.

*Reasons:* The regulatory changes are necessary to implement statutory amendments to section 100 of the Act that emphasize the ability of individuals with disabilities, including individuals with the most significant disabilities, to achieve competitive integrated employment, not ''gainful employment,'' the term previously used under the Act, as amended by WIA. We believe this change is significant given that section 7(5) of the Act, as amended by WIOA, includes a new term, ''competitive integrated employment,'' that includes mandatory criteria related to, among other things, compensation, advancement, and the integrated nature of the workplace. We also believe it is significant that Congress added economic self-sufficiency to the list of areas that must be considered when providing VR services to an individual because it reinforces a key element of ''competitive integrated employment,'' namely requirements related to compensation and benefits.

See the discussion of the term ''competitive integrated employment'' in this *Significant Proposed Regulations* section of the notice for a full explanation of this term for purposes of the VR program.

**Applicable Definitions (§ 361.5)**

*Definitions in 34 CFR 77.1*

*Statute:* None.

*Current Regulations:* Current regulations highlight only a few terms contained in 34 CFR 77.1.

*Proposed Regulations:* In paragraph (a) of § 361.5, we propose to incorporate by reference all definitions contained in 34 CFR 77.1.

*Reasons:* This change is necessary to clarify that all definitions in 34 CFR 77.1 are applicable to part 361.

*Adoption of 2 CFR Part 200*

*Statute:* None.

*Current Regulations:* Current § 361.5, which contains definitions relevant to the VR program and was last updated in 2001, does not include definitions from 2 CFR part 200 since those regulations were promulgated in 2014.

*Proposed Regulations:* We propose redesignating current paragraph (b) as paragraph (c) and adding a new paragraph (b) that incorporates by reference all definitions in 2 CFR part 200, subpart A (Uniform Administrative Requirements, Cost Principles, and Audit Requirements). Proposed substantive changes to paragraph (c) will be discussed throughout this NPRM in conjunction with the relevant topical discussion.

*Reasons:* OMB issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards on January 1, 2014. The new regulations supersede and streamline requirements from OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133, as well as the guidance in Circular A–50 on Single Audit Act follow-up. These regulations, codified in 2 CFR part 200, have been adopted by the Secretary in 2 CFR part 3474, which took effect on December 26, 2014. Consequently, terms and definitions that previously were not used in the VR program, such as ''subaward'' (2 CFR 200.92), will be applicable given the Department's adoption of 2 CFR part 200.

*Administrative Cost*

*Statute:* Section 7(1) of the Act, which defines ''administrative costs,'' remains unchanged by WIOA.

*Current Regulations:* The current definition in § 361.5(b)(2) mirrors the statute and defines ''administrative costs'' as including, among other things, the costs of operating and maintaining DSU facilities, equipment, and grounds.

*Proposed Regulations:* We propose to amend § 361.5(c)(2)(viii), as redesignated by other changes made in this part, by clarifying that operating and maintenance expenses, for purposes of the definition of ''administrative costs'' for the VR program, do not include capital expenditures, as defined in 2 CFR 200.13.

*Reasons:* The proposed change is necessary to clarify the scope of administrative costs, with regard to operating and maintenance expenditures, thereby ensuring consistency with 2 CFR part 200. There has been confusion among VR grantees as to whether operating or maintenance expenses, in the context of administrative costs, include capital expenditures. Operating or maintenance expenses in the context of administrative costs under the VR program are those costs incurred to maintain facilities, equipment, and grounds in good working order; whereas, capital expenditures, as defined in 2 CFR 200.13, are those expenditures that ''materially increase their value or useful life.'' We want to make clear that capital expenditures are permitted under the VR program in accordance with 2 CFR 200.439, but not as an administrative cost.

*Assessment for Determining Eligibility and Vocational Rehabilitation Needs*

*Statute:* Section 7(2)(B)(v) of the Act, as amended by WIOA (29 U.S.C. 705(2)), adds a new requirement that VR agencies must, to the maximum extent possible, rely on information from the individual's experiences obtained in an integrated employment setting in the community or in other integrated community settings when using existing information or conducting a comprehensive assessment for determining eligibility and the need for VR services for an individual with a disability.

*Current Regulations:* Current § 361.5(b)(6) defines ''assessment for determining eligibility and vocational rehabilitation needs,'' but does not include the requirement related to reliance on information about the individual's experiences in integrated settings because this is a new statutory requirement.

*Proposed Regulations:* We propose to amend the current regulations to conform to the statute in section 7(2)(B) of the Act by adding language to the definition of ''assessment for determining eligibility and vocational rehabilitation needs'' in proposed § 361.5(c)(5)(ii)(E) that would make clear that a comprehensive assessment, to the maximum extent possible, relies on information obtained from the eligible individual's experiences in integrated employment settings in the community and other integrated settings in the community.

*Reasons:* WIOA places a heightened emphasis on the achievement of competitive integrated employment by individuals with disabilities. To that end, amendments made by WIOA require that assessments for determining eligibility and VR needs of individuals with disabilities must rely on information about the individual's experiences in integrated employment and in other integrated community settings. The Act clearly places an emphasis on integrated settings by requiring that VR agencies rely on information learned from the individual's experiences in these settings, to the maximum extent possible, when conducting an assessment. Nonetheless a DSU is not precluded from determining an individual's eligibility for VR services based on other information obtained through the assessment process when the individual cannot participate in integrated community-based work experiences.

*Assistive Technology Terms*

*Statute:* Section 7(3) of the Act, as amended by WIOA (29 U.S.C. 705(3)), adds a new definition of ''assistive technology'' and combines the previous definitions of ''assistive technology device'' and ''assistive technology service'' under the heading ''assistive technology terms.''

*Current Regulations:* Current § 361.5(b)(7) defines ''assistive technology device'' and current § 361.5(b)(8) defines ''assistive technology service.'' There is no definition for ''assistive technology'' since this is a new statutory term.

*Proposed Regulations:* We propose to add the heading ''assistive technology terms'' in proposed § 361.5(c)(6), under which we would incorporate definitions for the new term ''assistive technology'' and for the existing terms ''assistive technology device'' and ''assistive technology service.'' We also propose to delete current § 361.5(b)(7) and (b)(8), as these separate definitions would no longer be necessary.

*Reasons:* The proposed changes are necessary to implement the new statutory definition in section 7(3) of the Act, as amended by WIOA. The proposed definition streamlines the definitions of the various terms by referencing the Assistive Technology Act of 1998.

*Competitive Integrated Employment*

*Statute:* WIOA adds a new term, ''competitive integrated employment,'' in section 7(5) of the Act (29 U.S.C. 705(5)). Although this is a new statutory term, the term and its definition generally represent a consolidation of two separate definitions and their terms

in current regulations—''competitive employment'' and ''integrated setting.'' In addition, the new statutory definition incorporates a criterion related to advancement in employment that is not included in either of the two current regulatory definitions.

*Current Regulations:* Current § 361.5(b)(11) defines ''competitive employment'' and current § 361.5(b)(33) defines ''integrated setting.'' Current regulations do not define ''competitive integrated employment'' since this is a new statutory term.

*Proposed Regulations:* We propose to replace the term ''competitive employment'' in current § 361.5(b)(11) with the new term ''competitive integrated employment'' in proposed § 361.5(c)(9). The proposed definition of ''competitive integrated employment'' would mirror the statutory definition in section 7(5) of the Act, as amended by WIOA, as well as provide two clarifications with respect to the criteria for integrated work locations.

First, proposed § 361.5(c)(9)(ii)(A) would clarify that the employment location must be in ''a setting typically found in the community.'' Second, proposed § 361.5(c)(9)(ii)(B) would clarify that the employee with a disability's interaction with other employees and others, as appropriate (*e.g.,* customers and vendors), who are not persons with disabilities (other than supervisors and service providers) must be to the same extent that employees without disabilities in similar positions interact with these same persons. This interaction must occur as part of the individual's performance of work duties and must occur both in the particular work unit and the entire work site, as applicable. We further propose to amend the definition of ''integrated setting'' in proposed § 361.5(c)(32)(ii) to conform to the clarifications provided in the proposed definition of ''competitive integrated employment'' in proposed § 361.5(c)(9)(ii) to ensure consistency between the two terms.

Finally, we propose to replace the terms ''competitive employment'' and ''employment in an integrated setting,'' as appropriate, with ''competitive integrated employment'' throughout this part.

*Reasons:* These proposed changes are necessary to implement and to clarify statutory amendments made by WIOA. Because the proposed definition of ''competitive integrated employment'' reflects, for the most part, a consolidation of two existing regulatory definitions, the substance of this proposed definition is familiar to DSUs and does not represent a divergence from current regulations, long-standing Department policy, practice, and the heightened emphasis on competitive integrated employment throughout the Act, as amended by WIOA.

In implementing these proposed regulations and determining whether an individual with a disability has achieved an employment outcome in ''competitive integrated employment,'' a DSU must consider, on a case-by case-basis, each of the criteria described in the proposed definition of ''competitive integrated employment.'' While most of the criteria are familiar and self-explanatory, we believe additional guidance is warranted here to explain those few new criteria contained in the statutory and proposed regulatory definitions, especially with regard to the criteria for an integrated employment setting. As a result, we further explain these criteria, highlighting those aspects that historically have raised the most questions from DSUs.

*Competitive Earnings:* The compensation criteria of the proposed definition of ''competitive integrated employment,'' which mirror the statutory definition, are consistent with those found in the current regulatory definition of ''competitive employment'' in § 361.5(b)(11). Proposed § 361.5(c)(9)(i)(A) would continue to require that, to be considered ''competitive integrated employment,'' the individual must perform full- or part-time work in which he or she earns at least the higher of the minimum wage rate established by Federal or applicable State law. Because several jurisdictions have established minimum wage rates substantially higher than those provided for under Federal or State law, the statutory definition and proposed § 361.5(c)(9)(i)(A) would require that the individual's earnings be at least equal to the legally established local minimum wage rate if that rate is higher than both the Federal and State rates. Also, as has been the case under the current definition of ''competitive employment,'' section 7(5) of the Act requires and proposed § 361.5(c)(9)(i)(D) would require that the individual with the disability must be eligible for the same level of benefits provided to employees without disabilities in similar positions. In implementing the statute, the proposed definition would establish additional criteria with respect to competitive earnings. First, proposed § 361.5(c)(9)(i)(B) would require that the DSU take into account the training, experience, and level of skills possessed by the employees without disabilities in similar positions. Second, the proposed definition recognizes that individuals, with or without disabilities, in self-employment may not receive an income from the business equal to or exceeding applicable minimum wage rates, particularly in the early stages of operation. Hence, proposed § 361.5(c)(9)(i)(C) would clarify that self-employed individuals with disabilities can be considered to be receiving competitive compensation if their income is comparable to that of individuals without disabilities in similar occupations or performing similar tasks who possess the same level of training, experience, and skills. Finally, to ensure consistency with the American Indian Vocational Rehabilitation Services program under part 371, we interpret subsistence employment as a form of self-employment common to cultures of many American Indian tribes.

*Integrated Location:* While the integrated setting criteria of the proposed definition of ''competitive integrated employment'' are consistent with the statutory definition in section 7(5)(B) of the Act, as amended by WIOA, and the current definition of ''integrated setting'' in § 361.5(b)(33)(ii), the proposed definition would provide important clarifications that are necessary to ensure consistency with expressed congressional intent and current Departmental guidance.

First, we propose to require that the work location be in ''a setting typically found in the community'' as required by current § 361.5(b)(33)(ii), meaning that an integrated setting must be one that is typically found in the competitive labor market. This particular criterion is included in the current definition of ''integrated setting'' and, thus, its incorporation in the proposed definition of ''competitive integrated employment'' would ensure consistency between the two terms. Furthermore, this long-standing Department interpretation is consistent with the expressed congressional intent throughout the Act, as well as with past legislative history. Specifically, integrated setting ''. . . is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with co-workers who do not have disabilities; and where workers with disabilities are not congregated . . .'' (Senate Report 105–166, page 10, March 2, 1998). Therefore, we continue to maintain the long-standing Department policy that settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (*e.g.,* sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market. We believe this criterion of the integrated

setting component of the proposed definition of competitive integrated employment is the first of two thresholds that must be satisfied.

Second, once the first threshold is met, we believe it is essential, consistent with the current definition of ''integrated setting,'' that individuals with disabilities have the opportunity to interact with non-disabled co-workers during the course of performing their work duties to the same extent that their non-disabled co-workers have to interact with each other when performing the same work. To that end, proposed § 361.5(c)(9)(ii)(B) would clarify that ''other persons'' as used in the statutory definition means other employees without disabilities with whom the employee with the disability works within the specific work unit and from across the entire work site. We want to make clear that this proposed clarification is contained, more generally, in the current definition of ''integrated setting.'' Furthermore, we believe this clarification is consistent with congressional intent, past legislative history, current Departmental guidance, and current regulations.

Historically, this element regarding integrated settings has raised many questions; therefore, we provide specific clarity with regard to certain job settings in which employees primarily interact with persons from outside the work unit, such as vendors and customers, rather than each other, while performing their job duties. We believe the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient by itself to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.

Nonetheless, we recognize that individuals who are self-employed or who telecommute may interact more frequently with persons such as vendors and customers than with other employees. Since these persons often work alone from their own homes rather than together in a single location, and may have little contact with fellow employees, we have long maintained that self-employment and telecommuting are considered to meet the criteria for an integrated location, so long as the employee with the disability interacts with employees in similar positions and other persons without disabilities to the same extent that these persons without disabilities interact with others, though this interaction need not be face-to-face.

The proposed definition of ''competitive integrated employment'' would further clarify, consistent with the general principles contained in the current definition of ''integrated setting,'' that the DSU is to consider the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace. As a result, it would not be pertinent to its determination of an integrated setting for a DSU to consider interactions in the lunchrooms and other common areas of the work site in which employees with disabilities and those without disabilities are not engaged in performing work responsibilities. This determination, particularly with regard to the level of interaction, would be applicable regardless of whether the individual with a disability is an employee of the work site or a community rehabilitation program hires the individual with a disability under a service contract for that work site. Specifically, individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone or in groups (*e.g.,* landscaping or janitorial crews), whose interaction with persons without disabilities (other than their supervisors and service providers) is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting. In summary, the DSU must determine, on a case-by-case basis, that a work location is in an integrated setting if it both is typically found in the community, and is one in which the employee with the disability interacts with employees and other persons, as appropriate to the position, who do not have disabilities to the same extent that employees without disabilities interact with these persons. Finally, the DSU is to consider the interaction between the employee with the disabilities and these other persons that takes place for the purpose of performing his or her job duties, not mere casual and social interaction.

*Opportunities for Advancement:* To ensure that the employment of persons with disabilities is equivalent in all respects to that of persons without disabilities, section 7(5) of the Act, as amended by WIOA, establishes a new criterion not contained in current regulations. Proposed § 361.5(c)(9)(iii) mirrors the language in section 7(5) of the Act and would require that the employee with the disability have the same opportunities for advancement as employees without disabilities in similar positions. We believe this new criterion is consistent with current definitions of ''competitive employment'' and ''integrated settings'' and should pose no hardship on DSUs to implement.

As explained here, the definition of ''competitive integrated employment'' in section 7(5) of the Act, as amended by WIOA, and as proposed in § 361.5(c)(9) establishes three essential criteria of employment—income (earnings and benefits), integration, and advancement—thereby ensuring that individuals with disabilities are provided through the VR program the full opportunity to participate in the same jobs available to persons without disabilities in the public.

Again, we want to make clear that two of the criteria—those related to compensation and the integrated nature of the worksite—are similar, if not identical, to criteria contained in the current definitions of ''competitive employment'' and ''integrated setting.'' Thus, the substance of this definition is familiar to the DSUs and should pose no hardship to implement.

*Customized Employment*

*Statute:* Section 7(7) of the Act, as amended by WIOA (29 U.S.C. 705 (7)), adds and defines the term ''customized employment,'' which means, in general, competitive integrated employment designed to meet both the specific abilities of the individual with a significant disability and the business needs of an employer.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add § 361.5(c)(11), to define ''customized employment'' to mirror the statute.

*Reasons:* The proposed regulation is necessary to implement the new statutory term and definition because the Act, as amended by WIOA, uses the term in a variety of contexts, including incorporating it into definitions of employment outcome and supported employment, and incorporating it into the list of individualized services permissible under the VR program. Customized employment provides

flexibility in developing individualized and customized strategies that are specific to an individual with a significant disability's unique needs, interests, and capabilities, through the use of flexible strategies that meet the needs of both the individual and the employer.

**Employment Outcome**

*Statute:* Section 7(11) of the Act, as amended by WIOA, revises the definition of ''employment outcome'' to include customized employment within its scope.

*Current Regulations:* Current § 361.5(b)(16) defines ''employment outcome,'' but does not include customized employment since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend the definition of ''employment outcome'' in § 361.5(c)(15), as redesignated by other changes made in this part, to specifically identify customized employment as an employment outcome under the VR program. We also propose to amend the definition to require that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes from the scope of the definition for purposes of the VR program.

Furthermore, we propose to amend current § 361.37(b) to expand the scope of those circumstances when the DSU must provide referrals to other programs and service providers for individuals who choose not to pursue an employment outcome under the VR program. Similarly, we propose to amend current § 361.43(d) to expand the requirement for the referral of individuals found ineligible for VR services or determined ineligible subsequent to the receipt of services to also include appropriate State, Federal, and local programs, and community service providers better suited to meet their needs.

*Reasons:* The proposed changes are necessary, in part, to implement statutory changes to the definition of ''employment outcome'' that include reference to ''customized employment.'' See the discussion of ''customized employment'' earlier in this preamble for further information regarding this type of employment outcome.

The proposed change that would limit the scope of employment outcomes under the VR program to competitive integrated employment or supported employment is necessary to implement the heightened emphasis of the Act on the achievement of competitive integrated employment. The Act, as amended by WIOA, makes clear—from the stated purpose of the Act, the addition of new requirements governing the development of individualized plans for employment and the transition of students and youth from school to post-school activities, and new limitations on the payment of subminimum wages—that individuals with disabilities, particularly those with significant disabilities, are able to achieve the same high-quality jobs in the competitive integrated labor market as persons without disabilities if they are provided appropriate services and supports. The amendments made by WIOA are consistent with and further other changes made over the past four decades, with each reauthorization, that have placed increasing emphasis on the achievement of competitive employment in an integrated setting through the VR program. See the discussion regarding ''competitive integrated employment'' earlier in this preamble.

It is in this context that we propose to amend the definition of ''employment outcome,'' for purposes of the VR program, to include only those outcomes that meet the requirements of competitive integrated employment (including customized employment, self-employment, telecommuting or business ownership), or supported employment, thereby eliminating from the scope of the definition, under the VR program, uncompensated outcomes, such as homemakers and unpaid family workers. We believe this proposed change is consistent with the statutory definition of ''employment outcome'' in section 7(11) of the Act, as well as the pervasive emphasis in the Act on the achievement of competitive integrated employment by individuals with disabilities, including those with the most significant disabilities. Given this emphasis, we believe the proposed change, not to include, within the scope of employment outcomes, uncompensated outcomes, such as homemakers and unpaid family workers, is consistent with the provisions of the Act.

We believe the proposed changes to the definition, while essential to fulfilling the expectation in the Act that individuals with disabilities, particularly individuals with significant disabilities, are capable of pursuing competitive integrated employment, should not cause significant difficulty for most State VR units in their administration of the VR program. Nationally, only a relatively small number of individuals currently exit the VR program as homemakers or unpaid family workers. Over the past 35 years the percentage of such outcomes has steadily and significantly decreased. For example, in FY 1980 homemaker outcomes as a percentage of all employment outcomes reported nationally to the Department by VR agencies through the VR program Case Service Report for the years FY 1980 through FY 2013 approximated 15 percent. This percentage dropped to 5.2 percent in FY 1999, and to 3.4 percent in FY 2004. By FY 2013, the most recent year for which data is available, this percentage had declined to 1.9 percent. There has been a similar decline in reported unpaid family workers. According to data reported by VR agencies through the VR program Case Service Report, in FY 2000, 642 individuals were reported in the category of unpaid family worker. By FY 2013, the most recent year for which we have data, only 135 individuals were reported to have obtained an unpaid family worker outcome. National data indicates that approximately 0.2 percent or less of all the outcomes reported annually by DSUs are unpaid family worker outcomes.

While we recognize that some VR agencies have a greater percentage of homemaker and unpaid family worker outcomes than others, particularly those agencies serving individuals who are blind and visually impaired, it is also evident that the majority of DSUs have been placing increased importance and emphasis on competitive employment outcomes, in their policies and procedures, as the optimal employment outcome and deemphasizing uncompensated outcomes. This shift in practice has been the product of the DSUs responding to the intent of the Act and translating that intent into their administration of the VR program. Nevertheless, we recognize that this proposed change could represent a significant shift in practice for a few VR agencies, particularly those with high percentages of individuals achieving employment outcomes as homemakers or unpaid family workers. These agencies may be providing services to assist individuals to obtain homemaker and unpaid family worker outcomes at the time the final regulations become effective. To allow these agencies to complete the VR process for these individuals, we are considering a transition period of six months following the effective date of the final regulations for the implementation of this proposed change. We are interested in receiving comments about providing such a transition period.

Since FY 2004, through monitoring of the VR program, we have reviewed the

attainment of homemaker outcomes and have found that VR agencies sometimes assist individuals to exit the program as homemakers to provide an alternate resource for the provision of independent living services that are otherwise available from the State Independent Living Services, Centers for Independent Living, and Independent Living Services for Older Individuals Who Are Blind programs. To ensure that individuals who choose to pursue homemaker and unpaid family worker outcomes, or who are determined ineligible for VR services either at the time of application or following the provision of services, are able to access independent living and other rehabilitation services, we propose to expand the scope of §§ 361.37(b) and 361.43(d) so that these circumstances would be among those when DSUs must refer these individuals to public and private agencies better suited to meet their needs. These current regulatory provisions are limited to those individuals who choose to pursue extended employment, which does not constitute an employment outcome under the VR program. As proposed, §§ 361.37(b) and 361.43(d) would be more broad, thus encompassing those individuals who choose to pursue uncompensated employment, such as homemakers and unpaid family workers, as well as those who choose to pursue extended employment.

The resources available through the independent living programs have expanded exponentially since FY 1992. Specifically, the number of Part C-funded centers for independent living has tripled since FY 1993, from 120 to 356 presently, including 20 new centers for independent living established in FY 2010 through funding under the American Recovery and Reinvestment Act of 2009. In addition, funding for the Independent Living Services for Older Individuals Who Are Blind program has increased since FY 1992, from $6,500,000 to approximately $33,000,000 in FY 2014. While we recognize that this proposed change would place the responsibility for making these referrals on DSUs, we believe that any burden associated with these requirements is outweighed by the benefit that individuals with disabilities would gain by having access to programs and services that can more appropriately meet their individualized needs.

*Extended Services*

*Statute:* Section 604(b) of the Act, as amended by WIOA, permits the expenditure of supported employment funds authorized under title VI, and the VR funds authorized under title I, on the provision of extended services to youth with the most significant disabilities for a period not to exceed four years.

*Current Regulation:* Current § 361.5(b)(20) defines ''extended services,'' but does not mention that these services may be provided to youth with the most significant disabilities since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend the definition in § 361.5(c)(19), as redesignated by other changes made in this part, to make clear that extended services may be provided to youth with the most significant disabilities for a period not to exceed four years. The changes proposed herein are consistent with those proposed for the Supported Employment program in part 363.

*Reasons:* The revisions are necessary to implement statutory changes to the Supported Employment program made by WIOA that also relate to the VR program since VR funds may be used to pay for allowable supported employment services. These proposed changes are consistent with those proposed in part 363 and discussed in more detail later in this NPRM.

*Indian; American Indian; Indian American and Indian Tribe*

*Statute:* Section 7(19) of the Act, as amended by WIOA, revises the definition of ''Indian,'' ''American Indian,'' ''Indian American,'' and ''Indian tribe'' to further clarify those terms.

*Current Regulations:* Current § 361.5(b)(3) defines ''American Indian'' to mean an individual who is a member of an Indian tribe. Current § 361.5(b)(26) defines ''Indian tribe'' to mean any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

*Proposed Regulations:* We propose to combine the definitions of ''American Indian'' and ''Indian tribe'' currently in § 361.5(b)(3) and (b)(26), respectively, to be consistent with the definition in section 7(19) of the Act, as amended by WIOA. To that end, the proposed definition in § 361.5(c)(25) would make clear that the term ''American Indian'' includes a Native and a descendant of a Native, as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602), and expands the term ''Indian tribe'' to include a tribal organization, as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

*Reasons:* These changes are necessary to implement the revised statutory definition in section 7(19) of the Act. These changes also are necessary to ensure consistency with changes proposed to part 371, implementing the American Indian Vocational Rehabilitation Services program, contained in a separate, but related, NPRM published elsewhere in this issue of the **Federal Register**.

*Local Workforce Development Board and Other Workforce Development Terms*

*Statute:* Sections 7(25), 7(35), and 7(36) of the Act, as amended by WIOA, define the terms ''Local workforce development board,'' ''State workforce development board,'' and ''Statewide workforce development system,'' respectively.

*Current Regulations:* Current §§ 361.5(b)(34), (b)(49), and (b)(50) define ''Local workforce investment board,'' ''State workforce investment board,'' and ''Statewide workforce investment system,'' respectively.

*Proposed Regulations:* We propose to amend part 361 throughout, including the definitions for ''Local workforce development board'' in § 361.5(c)(33), ''State workforce development board'' in § 361.5(c)(49), and ''Statewide workforce development system'' in § 361.5(c)(50), to substitute the word ''development'' for ''investment'' wherever those terms appear.

*Reasons:* These changes are necessary to implement revised terms used throughout WIOA. The amendments are technical in nature and do not represent a substantive change to the definitions themselves.

*Supported Employment*

*Statute:* Section 7(38) of the Act, as amended by WIOA, revises the definition of supported employment to, among other things, reference competitive integrated employment and customized employment, and requires that an individual who is employed in an integrated setting, but not in competitive integrated employment, must be working toward such an outcome on a short-term basis for such work to qualify as supported employment.

*Current Regulation:* Current § 361.5(b)(53) defines ''supported employment'' as the term was defined prior to the enactment of WIOA. There is no reference to ''competitive integrated employment'' or ''customized employment'' since these are new statutory requirements.

*Proposed Regulation:* We propose to amend the definition in § 361.5(c)(53),

as redesignated by other changes made in this part, to require that supported employment means competitive integrated employment, including customized employment, or employment in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. We also propose, in this context, that an individual be considered to be working on a ''short-term basis'' toward competitive integrated employment if the individual reasonably expects achieving a competitive integrated employment outcome within six months of achieving an employment outcome of supported employment. These proposed changes are consistent with those proposed in part 363 for the Supported Employment program, discussed later in this NPRM.

*Reasons:* The revisions are necessary to implement the new statutory definition in section 7(38) of the Act, as amended by WIOA, which reflects the heightened emphasis on the achievement of competitive integrated employment.

We also propose to include a definition of ''short-term basis,'' in the context of supported employment, to give meaning to the phrase and ensure congressional intent. By limiting the timeframe, we ensure that individuals do not remain in subminimum wage employment for the purpose of achieving supported employment outcomes. The proposed changes also ensure consistency with the amendments proposed in part 363, implementing the Supported Employment program, discussed later in this NPRM.

*Supported Employment Services*

*Statute:* Section 7(39) of the Act, as amended by WIOA, revises the definition of ''supported employment services'' to extend the allowable timeframe for the provision of these services from 18 months to 24 months. The statute also makes other technical changes to the definition.

*Current Regulation:* Current § 361.5(b)(54) defines ''supported employment services'' to include a timeframe of 18 months.

*Proposed Regulations:* We propose to revise the definition in § 361.5(c)(54), as redesignated due to other changes made in this part, to extend the allowable timeframe for the delivery of these services from 18 months to 24 months. We also propose to make changes that clarify the individualized and customized nature of supported employment services.

*Reasons:* The revisions are necessary to implement the new definition of ''supported employment services'' in section 7(39) of the Act, as amended by WIOA. Most importantly, the proposed definition extends the allowable timeframe for the provision of supported employment services from 18 to 24 months. The proposed changes also ensure consistency with revisions proposed in part 363, implementing the Supported Employment program, discussed later in this NPRM.

*Submission, Approval, and Disapproval of the State Plan (§ 361.10)*

*Statute:* Section 101(a)(1) of the Act, as amended by WIOA, requires that, a ''vocational rehabilitation services portion'' be included in a State's Unified State Plan in accordance with section 102, or a Combined State Plan in accordance with section 103, of WIOA. The ''vocational rehabilitation services portion'' must contain all State plan requirements under section 101(a) of the Act.

Section 101(b) of the Act, as amended by WIOA, makes conforming changes with regard to the submission, approval, and modification process for the VR services portion of the Unified or Combined State Plan.

*Current Regulations:* Current § 361.10 includes requirements for the submission and approval process for the VR State plan. Although current § 361.10(c) permits States to submit the VR State plan as part of the Unified State Plan, there is no requirement to do so.

*Proposed Regulations:* First, we propose to amend current § 361.10(a) to require the State to submit a VR services portion of a Unified or Combined State Plan in accordance with sections 102 or 103, respectively, of WIOA to be eligible to receive its VR allotment.

Second, we propose to clarify that the VR services portion of the Unified or Combined State Plan includes all information required under section 101(a) of the Act.

Third, we propose to amend § 361.10(d) by providing a cross-reference to subpart D of part 361, which is reserved for the joint regulations implementing requirements for the Unified and Combined State Plan proposed jointly by the Departments of Education and Labor. The proposed joint regulations that would implement jointly-administered activities under title I of WIOA are published elsewhere in this issue of the **Federal Register**. We also propose to remove current paragraph (e) and redesignate current paragraph (f)(3) as paragraph (e), and we propose to remove the remainder of current paragraph (f) and current paragraph (g). We propose to redesignate current paragraph (h) as paragraph (f) and rename it ''Due Process.''

Finally, we propose to make other conforming changes throughout § 361.10.

*Reasons:* The proposed revisions to § 361.10 are necessary to: (1) Implement the VR-specific amendments to sections 101(a)(1) and (b) of the Act made by WIOA; and (2) align VR-specific requirements with those contained in the joint regulations, developed by the Departments of Education and Labor, regarding the submission, approval, and modification of Unified or Combined State Plans. Taken together, these statutory amendments and proposed regulatory changes recognize that the VR services portion of the Unified or Combined State Plan is to be an integral part of the Unified or Combined State Plan, and provide the foundation for the seamless, effective, and efficient delivery of services through the collaboration and combined funding, to the extent allowable under relevant program requirements, of the workforce development system that will enable individuals with disabilities to obtain the skills necessary to participate in the high-demand jobs of today's economy. To further the integrated nature of the VR services portion of the Unified or Combined State Plan, we request that comments to proposed revisions to § 361.10 be limited to VR-specific requirements and that more general comments about the Unified or Combined State Plan be submitted in response to the proposed joint regulations published elsewhere in this issue of this **Federal Register**.

*Requirements for a State Rehabilitation Council (§ 361.17)*

*Statute:* Section 105(b)(1) of the Act, as amended by WIOA, makes a technical amendment to the composition requirement of the State Rehabilitation Council (SRC) related to section 121 projects. WIOA also amends section 105(b)(6) by requiring the SRC to include programs authorized under the Assistive Technology Act of 1998 among those agencies and organizations with which it must coordinate.

*Current Regulations:* Current § 361.17(b)(1)(ix) requires that, in a State with projects carried out under section 121 of the Act, a representative of the directors of these projects must serve on the SRC, but it does not use the new statutory term ''funded'' in place of ''carried out.'' Current § 361.17(h)(6) requires the SRC to collaborate with various other entities, but does not

include programs authorized under the Assistive Technology Act of 1998 since this is a new statutory requirement. Current § 361.17(h)(3) also requires the SRC to partner with the VR agency in establishing State goals and priorities and to assist in the preparation of the State plan.

*Proposed Regulations:* We propose to amend current § 361.17(b)(1)(ix) to substitute ''funded'' for ''carried out'' in the State to mirror the statute. Additionally, we propose to amend current § 361.17(h)(6) to include programs established under the Assistive Technology Act of 1998 in the list of entities with which the SRC must coordinate its activities. Finally, we propose to clarify in § 361.17(h)(3) that the SRC is only required to assist in the preparation of the VR services portion of the Unified or Combined State Plan, not the entire Unified or Combined State Plan.

*Reasons:* The proposed changes are necessary to implement statutory amendments to section 105 of the Act made by WIOA. We believe the proposed change in § 361.17(b)(1)(ix) is more technical than substantive in the context of the American Indian Vocational Rehabilitation Services program. Unlike most programs in which funds are awarded to a State or an entity in a State, the Department awards section 121 grant funds to tribes, whose reservations may cross State lines. In that context, the distinctions between ''funded,'' as used in WIOA, and ''carried out,'' as had been used previously, provides no substantive differences in practical meaning. For that reason, we believe this proposed change is primarily technical in nature.

The proposed inclusion in § 361.17(h)(6) of the programs authorized under the Assistive Technology Act of 1998 among the entities with which the SRC must coordinate its activities would underscore the integral role that assistive technology plays in the ability of individuals with disabilities to obtain and maintain employment. Through the coordination of SRC and assistive technology program activities, SRC members would be better informed of the resources and services available in the State for the provision of assistive technology devices and training, enabling the members to more effectively advise the DSU in the State.

Finally, as discussed in proposed § 361.10, title I of WIOA requires the VR program in each State to participate in a Unified or Combined State Plan with the other core programs or partner programs within the workforce development system. By replacing the term ''State plan'' with the ''vocational rehabilitation services portion of the Unified or Combined State Plan,'' we believe that members of the SRC would be responsible only for participating in the development of the goals and strategies contained in, and providing input on, the VR services portion of the Unified or Combined State Plan in accordance with the mandated activities of the SRC as set forth in proposed § 361.17(h).

*Comprehensive System of Personnel Development (§ 361.18)*

*Statute:* Section 101(a)(7) of the Act, as amended by WIOA, makes several changes to the comprehensive system of personnel development (CSPD) that each DSU must establish to ensure its personnel are adequately trained. In particular, the amendments add specific educational and experiential criteria that must be met by VR personnel. The statute also makes other technical changes throughout this section.

*Current Regulations:* Current § 361.18 requires a DSU to establish a CSPD that is based on either a national or State licensing or certification standard. Current regulations do not specify specific educational or experiential criteria since these are new statutory requirements.

*Proposed Regulations:* We propose to revise § 361.18(c)(1)(ii) to mirror the statute with regard to education and experience requirements for VR personnel. Accordingly, we would ensure that personnel have a 21st-century understanding of the evolving labor force and needs of individuals with disabilities. In addition, we propose to add a new § 361.18(c)(2)(ii) in which we would describe what we mean by personnel having a 21st-century understanding of the evolving labor force and needs of individuals with disabilities. We would provide examples of the skills that would demonstrate that personnel hired are appropriately qualified.

Further, we propose to amend § 361.18(d)(1)(i) to require that the CSPD include training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998. Finally, we propose to delete those provisions that are no longer applicable given statutory changes, such as those related to steps the State will take when personnel do not meet the highest standard in a State.

*Reasons:* The proposed changes are necessary to implement statutory changes made by WIOA. The changes we propose in § 361.18(c)(1)(ii) would ensure that DSU staff are well-qualified to assist individuals with disabilities to achieve competitive integrated employment in today's demanding labor market. The proposed regulations would describe education and experience, as applicable, requirements at the bachelor's, master's, and doctoral level, in fields related to rehabilitation that prepare the individual to work with individuals with disabilities and employers. For individuals hired at the bachelor's level, there also would be a requirement for at least one year of paid or unpaid experience. These proposed CSPD requirements would further the heightened emphasis throughout the Act on employer engagement and affording individuals with disabilities every opportunity to achieve competitive integrated employment.

In order to further clarify what types of skills we intend for personnel to demonstrate, we propose some illustrative examples in § 361.18(c)(2)(ii), which are by no means all-inclusive but which are typically required of rehabilitation professionals hired by the DSU. Finally, in proposing to amend current § 361.18(d)(1)(i) to require that the CSPD include training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998, we are reflecting a new statutory requirement that is consistent with the emphasis on coordination throughout the Act.

*Public Participation Requirements (§ 361.20)*

*Statute:* Section 101(a)(16)(A) of the Act requires that the State plan provide that the designated State agency, prior to the adoption or amendment of any policies or procedures governing the provision of VR services under the State plan, must conduct public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consult with agencies and organizations involved in the vocational rehabilitation of individuals with disabilities. This requirement remains unchanged by WIOA.

*Current Regulations:* Current § 361.20 implements section 101(a)(16)(A) of the Act.

*Proposed Regulations:* We propose to clarify that the public participation requirements under current § 361.20 pertain to the VR services portion of the Unified or Combined State Plan. We also propose to add paragraphs (a)(1) and (a)(2) to clarify through descriptive examples the distinction between substantive changes that would require the designated State agency to conduct

a public hearing, and administrative changes for which a public hearing need not be conducted. All other requirements for public participation as described in current § 361.20(b) through (e), to the extent they are consistent with public participation requirements proposed in the joint regulations, remain unchanged in the proposed regulations, except for technical modifications to the language required by WIOA. Public participation requirements related to Unified or Combined State Plans generally are addressed through the NPRM jointly published by the Departments of Labor and Education elsewhere in this issue of the **Federal Register**.

*Reasons:* These proposed changes to current § 361.20 are necessary to reflect statutory changes that require what previously was a stand-alone VR State plan to be submitted as a VR services portion of the Unified or Combined State Plan under WIOA. Additionally, by clarifying what is meant by a substantive change—that is, a change that would have a direct impact on the nature and scope of the VR services provided to individuals with disabilities or the manner in which these individuals interact with the State VR program, as opposed to a change that is purely administrative or technical in nature—State VR agencies would better understand when they must conduct a public hearing, specific to the VR program. The ability to provide comments and input at public hearings is an important mechanism for strengthening the voice of community stakeholders and ensuring that any changes to the implementation of the VR services portion of the Unified or Combined State Plan reflect concerns and interests of those whom the program serves.

*Requirements Related to the Statewide Workforce Development System (§ 361.23)*

*Statute:* Section 121(b)(1)(B)(iv) of WIOA includes the VR program as a core partner of the workforce development system.

*Current Regulations:* Current § 361.23 outlines a VR program's roles and responsibilities in the workforce investment system, as required under WIA.

*Proposed Regulations:* We propose to amend current § 361.23(a) by cross-referencing to subpart F of part 361. We also propose to remove the remainder of this section because the substance of these requirements is contained in joint regulations developed by the Departments of Education and Labor.

*Reasons:* The changes are necessary to implement amendments to title I of WIOA and ensure consistency with joint regulations proposed by the Departments of Education and Labor, which are published elsewhere in this issue of the **Federal Register**. We ask that you submit any comments regarding the VR program's role in the one-stop delivery system in conjunction with related provisions contained in the joint proposed regulations, rather than in connection with this particular section of the proposed VR program-specific regulations.

*Cooperation and Coordination With Other Entities (§ 361.24)*

*Statute:* WIOA amends section 101(a)(11) of the Act by expanding the scope of entities with which the DSU must collaborate and coordinate its activities under the VR program. The new entities include, among others, employers, non-educational agencies serving out-of-school youth, programs authorized under the Assistive Technology Act of 1998, the State agency administering the State Medicaid plan, the agency responsible for serving individuals with intellectual and/or developmental disabilities, agencies responsible for providing mental health services, and other agencies serving as employment networks under the Ticket to Work and Self-Sufficiency program.

*Current Regulations:* Current § 361.24 requires that the State plan include assurances and descriptions, as applicable, of the DSU's interagency cooperation with various entities, but does not include the new entities required by the WIOA amendments since these are new statutory requirements.

*Proposed Regulations:* We propose to amend § 361.24 to include the additional agencies and entities with which the DSU must coordinate its activities under the VR program, as required by section 101(a)(11) of the Act, as amended by WIOA.

*Reasons:* The proposed changes are necessary to implement new statutory requirements regarding the DSU's coordination with other entities. The changes are designed to ensure DSU collaboration and coordination with employers and State and Federal agencies to increase access by individuals with disabilities, especially youth and individuals with the most significant disabilities, to services and supports to assist them in achieving competitive integrated employment.

*Third-Party Cooperative Arrangement Requirements (§ 361.28)*

*Statute:* None.

*Current Regulations:* Current § 361.28 includes requirements related to third-party cooperative arrangements, a mechanism by which a DSU may work with another public agency to provide VR services.

*Proposed Regulations:* We propose to amend § 361.28(a) by removing the words ''administering'' and ''furnishing'' and providing more accurate descriptions of the cooperating agency's responsibilities. Proposed § 361.28(a) also would clarify that the non-Federal share provided by the cooperating agency must be consistent with the requirements in proposed § 361.28(c). Proposed § 361.28(a)(4) and 361.28(b) change references to ''cooperative programs'' and ''cooperative agreements'' to ''cooperative arrangements'' to make the language consistent throughout this section. We propose to insert a new paragraph (c) to clarify the manner in which other public agencies may contribute toward the non-Federal share under a third-party cooperative arrangement.

*Reasons:* With the exception of § 361.28(c), the changes to this section are editorial and the minor clarifications would ensure consistent language and interpretation. Proposed § 361.28(c) would list the manner in which a State agency or a local public agency could provide part or all of the non-Federal share under a third-party cooperative arrangement. Under the proposed § 361.28(c) the DSU could utilize cash transfers or certified personnel expenditures for the time cooperating agency staff spent providing direct VR services pursuant to a third-party cooperative arrangement to meet part or all of the non-Federal share. Given the prohibition in § 361.60(b)(2) against using third-party in-kind contributions for match purposes under the VR program, we have not included certified expenditures for equipment and supplies as an allowable source of match under the VR program. In so doing, we avoid potential third-party in-kind contributions that could arise with such certified expenditures.

*Statewide Assessment; Estimates; State Goals and Priorities; Strategies; and Progress Reports (§ 361.29)*

*Statute:* Section 101(a)(15) of the Act, as amended by WIOA, makes several technical and conforming changes, as well as expands the scope of estimates that the DSUs must report and the areas of focus the States must consider in

conducting their triennial needs assessment.

Section 101(a)(23) requires DSUs to assure that the State will submit to the Secretary reports required by section 101(a)(15) at such time and in such manner as the Secretary may determine to be appropriate. This statutory requirement remains unchanged by WIOA.

*Current Regulations:* Current § 361.29 implements the requirements of section 101(a)(15) of the Act, but does not include the new statutory requirements. The current regulations also require that the State submit reports regarding goals, strategies, and estimates annually.

*Proposed Regulations:* We propose to amend current § 361.29 by requiring that reports and updates related to assessment, estimates, goals and priorities, and reports of progress, be submitted to the Secretary, in such time and such manner as determined by the Secretary, rather than annually. We also propose to amend the regulations to require DSUs to report estimates of the number of individuals not receiving services because of the implementation of an order of selection. We also propose to make several technical and conforming changes throughout. See related discussion of this section in the context of transition services later in this NPRM, for proposed changes related to students and youth in transition.

*Reasons:* The proposed changes are necessary, in part, to implement the statutory amendments to section 101(a)(15) of the Act made by WIOA. The proposed changes also would ensure consistency in the reporting requirements imposed throughout section 101(a) of the Act, as well as in title I of WIOA since the VR State plan will be incorporated into the State's Unified or Combined State Plan as a portion of that plan.

To date, we have collected the required information through the annual submission of the VR State plan (now known as the VR services portion of the Unified or Combined State Plan), rather than through the submission of separate reports. Because the VR services portion will be submitted with all other components of the Unified or Combined State Plan every four years with modifications submitted every two years, there would be no vehicle for the submission of these annual reports without imposing additional reporting requirements on the State separate from the State plan.

By permitting the submission of the required information at a time and in a manner determined by the Secretary, rather than annually, the Secretary exercises the statutory flexibility to establish reporting requirements consistent with those for the VR services portion of the Unified or Combined State Plan under section 101(a)(1) of the Act, as amended by WIOA, and section 102(c) of WIOA, and avoid any additional burden that would be imposed on DSUs through the submission of separate reports.

*Provision of Training and Services for Employers (§ 361.32)*

*Statute:* Section 109 of the Act, as amended by WIOA, expands the types of training, technical assistance, and other services DSUs may provide under the VR program, to employers, who have hired or are interested in hiring individuals with disabilities. In addition, WIOA repealed the Projects with Industry program, previously authorized at title VI, part A of the Act.

*Current Regulations:* Current § 361.32 implements requirements regarding coordination between the VR program and the Projects with Industry program. There are no current regulations that implement section 109 of the Act.

*Proposed Regulations:* We propose to amend § 361.32 in its entirety by eliminating all requirements related to the Projects with Industry program since those requirements are no longer applicable. In its place, we propose to implement requirements regarding the types of activities DSUs may engage in with employers, pursuant to section 109 of the Act.

*Reasons:* The changes are necessary to implement new statutory requirements in section 109 of the Act, as amended by WIOA, as well as remove requirements that are no longer applicable to the VR program due to the repeal of the Projects with Industry program. Section 109 of the Act, as amended by WIOA, authorizes the DSU to expend VR funds for training and services for employers who are interested in hiring individuals with disabilities, thereby assisting those individuals in achieving competitive integrated employment. This training could assist employers in providing opportunities for work-based learning experiences; training employees who are individuals with disabilities; and promoting awareness of disability-related obstacles to continued employment.

The amendments made throughout WIOA place heightened emphasis on the collaboration between DSUs and employers to improve and maximize opportunities for individuals with disabilities, including those with the most significant disabilities, to achieve competitive integrated employment.

*Innovation and Expansion Activities (§ 361.35)*

*Statute:* Section 101(a)(18) of the Act sets forth requirements regarding innovation and expansion activities for DSUs. This statutory provision remains unchanged by WIOA.

*Current Regulations:* Current § 361.35 requires the State plan to assure that the State will reserve and use a portion of its VR funds to support, among other things, the resource plans for the State Rehabilitation Council and the Statewide Independent Living Council.

*Proposed Regulations:* Proposed § 361.35 would clarify that the State must reserve a portion of its VR program funds to support the resource plan for the Statewide Independent Living Council, but it may choose not to use these funds if the Statewide Independent Living Council and the State decide to use other available resources to fund the resource plan for the Statewide Independent Living Council.

*Reasons:* This proposed change is consistent with the Department's longstanding interpretation of section 101(a)(18) of the Act and current § 361.35. In the case of the State Rehabilitation Council, there is no other funding source available under the Act to support its resource plan. The funds for the State Rehabilitation Council must come from this section. On the other hand, the Statewide Independent Living Council has multiple funding sources that may be used to support the resource plan, including independent living funds under title VII, part B, of the Act; State-appropriated independent living funds; and other public and private sources, to the extent allowable by those sources. Therefore, our interpretation of the requirement has been that the State and the Statewide Independent Living Council may decide in the resource plan of the Statewide Independent Living Council to use funds under this section, but do not have to use these funds. They can use other sources of available funding to fund the Statewide Independent Living Council resource plan. This interpretation would have minimal impact on States since not all States use innovation and expansion funds to support the resource plan of the Statewide Independent Living Council.

*Ability To Serve All Eligible Individuals; Order of Selection for Services (§ 361.36)*

*Statute:* Section 101(a)(5) of the Act, as amended by WIOA, permits DSUs to serve eligible individuals who require specific services or equipment to maintain employment, regardless of

whether they are currently receiving VR services. The DSUs may serve these individuals regardless of any order of selection the State has established.

*Current Regulations:* Although current § 361.36(a)(3) sets forth criteria a State must follow in establishing an order of selection, there is no mention of this particular discretionary exemption because this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.36(a)(3) by adding a new paragraph (v) that would require DSUs implementing an order of selection to indicate in the VR services portion of the Unified or Combined State Plan if they have elected to serve eligible individuals in need of specific services or equipment for the purpose of maintaining employment, regardless of their assignment to a priority category in the State's order of selection.

*Reasons:* This change is necessary to implement the amendments to the Act. Prior to the enactment of WIOA, DSUs who were on an order of selection were not permitted to serve eligible individuals who did not meet the criteria of that order, which was designed to ensure that individuals with the most significant disabilities received a priority for services when resources were limited. Section 101(a)(5) of the Act, as amended by WIOA, allows greater flexibility by permitting DSUs to serve eligible individuals, regardless of any order of selection that has been established by the State, if those individuals require specific services or equipment to maintain employment (*e.g.,* because the individual's disability has progressed or the individual's job duties have changed).

This statutory change, as well as the proposed regulatory change, is significant because, in effect, it creates an exemption from order of selection for eligible individuals who need a specific service or equipment in order to maintain employment. Prior to the passage of WIOA, these individuals would have been placed in the order, depending on the severity of their disability, which could have resulted in a placement on a waiting list. With the proposed regulatory change, DSUs may, at their discretion, elect to serve these individuals outside of the order of selection criteria that are otherwise in place in order to serve these individuals who could be at risk of losing employment if such services or equipment is not received. In this way, DSUs could assist these individuals, including those with significant disabilities, to maintain economic self-sufficiency, thereby reducing their potential need for publicly-funded services or benefits.

We want to make four points clear. First, proposed § 361.36(a)(3)(v) is discretionary. DSUs would have the ability to serve these individuals outside of the established order and should consider doing so if financial and staff resources are sufficient. Second, if a DSU elects to do so, it must, in accordance with proposed § 361.36(a)(3)(v), its plans in the VR services portion of the Unified or Combined State Plan before implementing this authority. Third, the services and equipment provided under this authority must be consistent with an individual's individualized plan for employment, in the same manner as any other service or equipment provided under the VR program. Finally, proposed § 361.36(a)(3)(v) would apply to those specific services or equipment that the individual needs to maintain employment, not to other services the individual may need for other purposes.

*Reports; Evaluation Standards and Performance Indicators (§ 361.40)*

*Statute:* Section 101(a)(10)(C) of the Act, as amended by WIOA, expands the data that DSUs must report to include data about: Students with disabilities who are receiving pre-employment transition services; individuals with open service records and the types of services they are receiving; individuals referred to the VR program by one-stop operators; and individuals referred to these one-stop operators by DSUs. In addition, section 106 of the Act, as amended by WIOA, requires the VR program to be subject to the common performance accountability measures, established in section 116 of WIOA, applicable to core programs of the workforce development system.

*Current Regulations:* Current § 361.40 addresses the data that a DSU must report, but does not include the new data elements since these are new statutory requirements. Current §§ 361.81 through 361.89 implement current evaluation standards and performance indicators applicable to the VR program. These standards and indicators do not incorporate the common performance measures since these are new statutory requirements.

*Proposed Regulations:* We propose to reorganize current § 361.40 into two paragraphs. Proposed paragraph (a) would retain all existing provisions in current § 361.40, as well as incorporate requirements regarding new VR-specific data related to individuals with open service records and the types of services they are receiving; students with disabilities receiving pre-employment transition services; and individuals referred to the State VR program by one-stop operators and those referred to these one-stop operators by the State VR program.

In proposed paragraph (b), we provide a cross-reference to subpart E of this part, which will include the joint regulations implementing common performance measures. In so doing, we also propose to remove current §§ 361.80 through 361.89, as the current standards and indicators are no longer applicable to the VR program.

*Reasons:* The proposed changes to current § 361.40 are necessary to implement amendments to the Act made by WIOA. Specifically, we include VR-specific data regarding, among others, individuals with open service records and the types of services they are receiving, as well as students with disabilities who are receiving pre-employment transition services, to ensure that the Secretary has the information needed to assess the performance of the VR program.

It is significant to note that the VR program will no longer be subject to its own set of performance standards and indicators established by the Department. Section 106 of the Act requires that the VR program comply with the common performance accountability measures established under section 116 of WIOA, which apply to all core programs of the workforce development system. To that end, the Departments of Labor and Education have developed proposed joint regulations to implement these requirements. The proposed joint regulations regarding the performance accountability system, which will be incorporated in subpart E of this part, will be presented in a separate NPRM published elsewhere in this issue of the **Federal Register**. Given this significant statutory change in section 106 of the Act, we have determined that most of the provisions we had in current §§ 361.80 through 361.89 are no longer applicable and, therefore, we propose to remove them. We ask that you provide only comments specific to the VR program with respect to this section. Any comments regarding the common performance measures or data requirement, applicable to all core programs, should be provided in connection with the relevant provisions of the joint proposed regulations.

*Assessment for Determining Eligibility and Priority for Services (§ 361.42)*

*Eligibility Criteria*

*Statute:* Section 102(a)(1) of the Act, as amended by WIOA, makes clear that

an individual with a disability, whose physical or mental impairment constitutes a substantial impediment to employment, may be determined eligible for VR services if he or she requires services to advance in employment.

*Current Regulations:* Current § 361.42(a)(1)(iii) specifies that the applicant may be determined eligible if he or she meets all other eligibility criteria and requires VR services to prepare for, secure, retain, or regain employment. Current regulations do not reference advancing in employment since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.42(a)(1)(iii) to clarify that an applicant, who meets all other eligibility criteria, may be determined eligible if he or she requires VR services to advance in employment.

We also propose to clarify in current § 361.42(c)(2) that a DSU must not consider an applicant's employment history, current employment status, level of education or educational credentials when determining eligibility for services.

*Reasons:* The proposed changes are necessary, in part, to implement statutory amendments to section 102(a)(1) of the Act made by WIOA. The proposed changes also would ensure that individuals with disabilities are able to obtain through the VR program the skills necessary to engage in the high demand jobs available in today's economy. It has been the Department's long-standing policy that the VR program is not intended solely to place individuals with disabilities in entry-level jobs, but rather to assist them to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The extent to which DSUs should assist eligible individuals to advance in their careers through the provision of VR services depends upon whether the individual has achieved employment that is consistent with this standard.

Furthermore, the proposed additional factors that a DSU must not consider when determining an applicant's eligibility for VR services in proposed § 361.42(c)(2) would be consistent with longstanding policy. By specifically proposing the additional factors related to employment and education history in the regulation, we reinforce the requirement in section 102(a)(1)(iii) of the Act and proposed § 361.42(a)(1)(iii).

*Residency*

*Statute:* Section 101(a)(12) of the Act requires that the State plan will include an assurance that the State will not impose a residence requirement that excludes from services provided under the plan any individual who is present in the State. This provision remains unchanged by WIOA.

*Current Regulations:* Current § 361.42(c)(1) requires that the State plan must assure that the State unit will not impose, as part of determining an applicant's eligibility for VR services, a duration of residence requirement that excludes from services any applicant who is present in the State.

*Proposed Regulations:* We propose to amend current § 361.42(c)(1) to clarify that a DSU must not require the applicant to demonstrate a presence in the State by the production of documentation that would, under State or local law, or practical circumstances, result in a duration of residency.

*Reasons:* The proposed clarification in § 361.42(c)(1) is consistent with our long-standing interpretation of this statutory requirement, as expressed in monitoring reports and other guidance. Many State VR agencies require individuals applying for VR services to provide documents that substantiate that the individual is present in the State and, hence, available to participate in the eligibility determination process and to receive VR services. Some forms of documentation, however, such as a driver's license or voter registration card, may require a significant amount of time to obtain. Moreover, States or local jurisdictions may impose durational requirements prior to the issuance of some forms of documentation or identification. By proposing these changes, we would clarify that the requirement of such forms of documentation to demonstrate presence in the State constitutes a de facto duration requirement, which is prohibited by the Act. Although documents that take time to obtain may be accepted as proof of an applicant's presence in the State if available at the time of application, the DSU must permit the use of other documentation that includes sufficient information to demonstrate presence in the State, such as documentation that includes a residential address in the State.

*Extended Evaluation*

*Statute:* WIOA amends section 102(a)(2)(B) of the Act by removing the limited exception to trial work experiences, whereby VR agencies made extended evaluations available to applicants, prior to determining that an individual is unable to benefit from VR services due to the severity of the individual's disability and, thus, is ineligible for VR services. Although the term ''extended evaluation'' was not referenced in the Act, this is the term used in current regulation to describe the process by which the DSUs assess an individual's ability to benefit from VR services due to the severity of disability, when the individual, under limited circumstances, is unable to participate in trial work experiences.

*Current Regulations:* Current § 361.42(f) permits, in limited circumstances, the provision of extended evaluations to individuals with disabilities who cannot take advantage of trial work experiences, or for whom trial work experiences have been exhausted.

Current § 361.41(b)(1)(ii) permits the exploration of an individual's abilities, capabilities, and capacity to perform in work situations in accordance with § 361.42(e) or, if appropriate, an extended evaluation in accordance with § 361.42(f).

*Proposed Regulations:* We propose to remove paragraph (f) from current § 361.42 and redesignate (g) as (f).

Proposed § 361.41(b)(1)(ii) would remove reference to extended evaluation and only permit an exploration of the individual's abilities, capabilities, and capacity to perform in work situations carried out in accordance with current § 361.42(e).

*Reasons:* These changes are necessary to implement the amendments to section 102(a)(2)(B) of the Act made by WIOA. The proposed changes also would ensure that before a DSU make an ineligibility determination, it must conduct a full assessment of the capacity of the applicant to perform in realistic work settings, without the exception of extended evaluations.

**Development of the Individualized Plan for Employment (§ 361.45)**

*Timeframe for Completing the Individualized Plan for Employment*

*Statute:* Section 102(b)(3)(F) of the Act, as amended by WIOA, mandates that the individualized plan for employment be developed as soon as possible but no later than 90 days after the date of determination of eligibility, unless the DSU and the eligible individual agree to an extension of that timeframe.

*Current Regulations:* Current § 361.45(e) requires the DSU to establish and implement standards for the prompt development of individualized plans for employment for eligible individuals; however, the 90-day timeframe is not included because this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.45(e) to require

that the DSU develop the individualized plan for employment for each eligible individual as soon as possible, but no later than 90 days following determination of eligibility, unless the DSU and the individual agree to a specific extension of that timeframe.

*Reasons:* This change is necessary to implement the statutory requirement made by WIOA that VR agencies develop the individualized plan for employment within 90 days following determination of eligibility. The intent is to move all eligible individuals through the VR process with minimal delay in order to efficiently and effectively serve these individuals, resulting in the achievement of employment outcomes in competitive integrated employment. While the majority of DSUs have already adopted the 90-day timeframe, some DSUs have adopted extended timeframes that impede the efficient and effective movement of individuals through the VR process, therefore, resulting in the delay of services, and ultimately delaying the achievement of employment outcomes. Additionally, some DSUs have established interim steps or plans prior to the development of the individualized plan for employment or have adopted longer timeframes for transition-age youth or other specific populations. The establishment of a 90-day timeframe by WIOA ensures consistency across the VR program nationally and sets the expectation that all eligible individuals receive timely services through an effective and efficient VR program with an outcome of improved VR agency performance and resulting in employment outcomes for individuals with disabilities.

*Options for Developing the Individualized Plan for Employment*

*Statute:* WIOA amends section 102(b)(1)(A) of the Act by clarifying that the DSU must provide eligible individuals with information regarding the availability of assistance in developing all or part of the individualized plan for employment from disability advocacy organizations. In addition, WIOA amends section 102(b) to require a DSU to provide to eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act, general information on additional supports, such as assistance with benefits planning.

*Current Regulations:* Current § 361.45(c)(1) requires that the DSU provide eligible individuals information regarding the options for developing the individualized plan for employment, but does not reference disability advocacy organizations since this is a new statutory requirement. Current § 361.45(c)(2) requires the DSU to provide additional information to eligible individuals relevant to the development of the individualized plan for employment, but does not mention benefits planning or other information specific to Social Security beneficiaries with disabilities since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.45(c)(1) by requiring a DSU to provide eligible individuals information about the option of requesting assistance from a disability advocacy organization when developing the individualized plan for employment. We also propose to amend current § 361.45(c)(2) by adding a new paragraph (v) that would require a DSU to provide eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act information on assistance and supports available to individuals desiring to enter the workforce, including benefits planning.

*Reasons:* The proposed changes are necessary to implement the amendments to section 102(b) of the Act made by WIOA. The inclusion of disability advocacy groups as a specific source of assistance, as appropriate, for eligible individuals in the development of the individualized plan for employment supports, and acknowledges the important role that these groups may play in mentoring an eligible individual through the VR process and in designing the plan of services that will successfully lead to an employment outcome. In coordination with the expertise of the qualified rehabilitation counselor, the experience of advocacy groups may lend a perspective and understanding of the disability-related needs, responsibilities, and services that are required to achieve the individual's employment goal. The inclusion of advocacy groups as a resource also recognizes and emphasizes the importance of self-determination, empowerment, and self-advocacy as cornerstones in rehabilitation.

By requiring that a DSU provide eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act with information on benefits planning, we intend that the individuals understand the implications of employment for continued receipt of their benefits so that they can make a fully informed choice of an employment goal.

*Content of the Individualized Plan for Employment (§ 361.46)*

*Statute:* WIOA amends section 102(b)(4) of the Act to require that the description of the specific employment goal chosen by the eligible individual, required as a mandatory component of the individualized plan for employment, be consistent with the general goal of competitive integrated employment.

*Current Regulations:* Current § 361.46(a)(1) establishes the content requirements for the individualized plan for employment and requires that the plan include a specific employment goal based upon the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual. The regulation does not contain the new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.46(a)(1) to require that the vocational goal selected by the individual in accordance with this section be consistent with the general goal of competitive integrated employment.

*Reasons:* The proposed revision to current § 361.46(a)(1) is necessary to implement the statutory requirements under WIOA, and is consistent with the purpose of the VR program, which is to assist individuals with disabilities, including those with significant disabilities, to prepare for and engage in competitive integrated employment.

**Transition of Students and Youth With Disabilities**

The Act, as amended by WIOA, places heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. To that end, the Act expands not only the population of students with disabilities who may receive services but also the kinds of services that the VR agencies may provide to youth and students with disabilities who are transitioning from secondary school to postsecondary education and employment.

Most notably, section 110(d) of the Act, as amended by WIOA, requires States to reserve 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. Section 113 of the Act, as added by WIOA, outlines the services that must be provided with these reserved funds. These services are designed to be an early start at job exploration.

With the addition of these pre-employment transition services, and expansion of services to youth, the VR program can be characterized as providing a continuum of VR services, especially for students and youth with disabilities. Specifically, it can provide pre-employment transition services to any student with a disability who needs these services, regardless of whether the student has applied for or been determined eligible for VR services. In addition, section 103(b) of the Act permits the VR agency to provide transition services to groups of youth with disabilities, regardless of whether they have applied for or been determined eligible for services. If either a student or youth with a disability requires more intensive services, he or she would apply for VR services. Once determined eligible, an individualized plan for employment would be developed, which would outline the specific services that he or she may need in order to achieve an employment outcome. In sum, the VR program provides a range of services, from most basic to the most individualized and intensive service, thereby meeting the evolving needs of a student or a youth with a disability who is transitioning from school to post-school life.

This portion of the NPRM will describe the key regulatory changes we propose to implement statutory amendments related to transition services. The major substantive changes relate to certain key definitions and the provision of pre-employment transition services and transition services to groups of youth with disabilities. Throughout this section of the NPRM, we will provide additional guidance for those areas that we expect will generate significant comments. The proposed changes are presented by relevant section of the regulations.

*Transition-Related Definitions (§ 361.5(c))*

*Statute:* Section 7 of the Act includes several new definitions related to transition services. In particular, section 7 adds new definitions for the terms: ''pre-employment transition services'' in section 7(30); ''student with a disability'' in section 7(37); and ''youth with a disability'' in section 7(42). WIOA also deleted the term, ''transition services,'' which had been defined previously in section 7(37).

*Current Regulations:* Current § 361.5(b) contains definitions for terms relevant to the VR program, but does not define ''pre-employment transition services,'' student with a disability, or youth with a disability since these are new statutory terms.

*Proposed Regulations:* We propose to add new definitions to current § 361.5(c), as redesignated elsewhere in this NPRM, for ''pre-employment transition services'' in proposed § 361.5(c)(42); ''student with a disability'' in proposed § 361.5(c)(51); and ''youth with a disability'' in proposed § 361.5(c)(59). We also propose to retain the current definition for ''transition services'' in § 361.5(c)(55), despite its removal from the statute as a defined term, since it is still used throughout the Act and the regulations in part 361. In retaining this definition, we propose to clarify that this particular service is available to both students and youth with disabilities.

*Reasons:* These changes are necessary to implement the amendments to the Act. Given the heightened emphasis throughout the Act on students and youth with disabilities, especially with regard to the provision of pre-employment transition services and other transition-related services, it is essential that stakeholders understand the definitions for these terms and how they can be distinguished from other terms commonly used.

For example, pre-employment transition services are those specific services specified in section 113 of the Act and implemented in proposed § 361.48(a). These services, paid for with a percentage of funds reserved from the State's VR allotment, are available only to those individuals who meet the definition of a student with a disability. On the other hand, other transition-related services, including those that could be similar to pre-employment transition services, may be provided to students or youth with disabilities and do not require a specific reservation of funds (*e.g.,* either as an individualized VR service pursuant to section 103(a) or as a service to groups pursuant to section 103(b) of the Act).

It also is important to distinguish between the terms ''student with a disability'' and ''youth with a disability'' because, as just described, different services are available for different populations. A student with a disability is an individual with a disability in school who is (1) 16 years old, or younger, if determined appropriate under the Individuals with Disabilities Education Act (IDEA), unless the State elects to provide pre-employment transition services at a younger age, and no older than 21, unless the State provides transition services under IDEA at an older age; and (2) receiving transition services pursuant to IDEA, or is a student who is an individual with a disability for the purposes of section 504 of the Act (29 U.S.C. 794). However, it is important to note that we have interpreted a student with a disability, given the plain meaning of the statutory definition, as not including an individual with a disability in postsecondary education. A youth with a disability, on the other hand, is anyone who has a disability as defined in section 7(20) of the Act and is aged 14 to 24, regardless of whether they are in school. The terms ''student with a disability'' and ''youth with a disability'' do not affect coverage under section 504. All individuals with disabilities regardless of whether they meet the definition of ''student with a disability'' and ''youth with a disability'' continue to be covered under section 504.

Therefore, all students with disabilities would meet the definition of a youth with a disability, but not all youth with disabilities would satisfy the definition of a student with a disability. For example, an 18-year-old individual with a disability who is in secondary school and receiving services under IDEA meets both the definition of a student with a disability as well as the definition of a youth with a disability. However, an 18-year-old with a disability who is not in school would meet only the definition of a youth with a disability.

The distinctions between these two terms are critical for purposes of the various authorities for providing transition-related services. For example, pre-employment transition services provided under proposed § 361.48(a) are only available to students with disabilities; whereas transition services provided for the benefit of a group of individuals may be provided to both students and youth with disabilities under proposed § 361.49(a).

Despite the removal of the definition of ''transition services'' from the Act, we believe it is important to retain this definition in part 361 given that the term continues to be used throughout the Act and these regulations. Therefore, we propose to retain the definition of ''transition services.'' However, we propose to clarify that this service is available to both students and youth with disabilities in order to be consistent with proposed regulations in §§ 361.48(b) and 361.49(a) governing the provision of transition services.

Specific guidance about these terms and how they relate to various transition-related services will be provided in this NPRM in conjunction with the relevant proposed regulation.

*Coordination With Education Officials (§ 361.22)*

*Statute:* Section 101(a)(11)(D) of the Act, as amended by WIOA, clarifies two points: (1) Interagency coordination between the DSUs and educational agencies must include coordination regarding the provision of pre-employment transition services; and (2) DSUs may provide consultation and technical assistance to education officials through alternative means, such as conference calls and video conferences. This section also includes other technical changes.

In addition, WIOA adds a new section 101(c) to the Act that makes clear that nothing in the Act is to be construed as reducing the responsibility of the local educational agencies or any other agencies under IDEA to provide or pay for any transition services that are also considered to be special education or related services necessary for providing a free appropriate public education to students with disabilities.

Finally, section 511 of the Act, as amended by WIOA, imposes several requirements, particularly related to documentation of services for DSUs and State and local educational agencies with regard to youth with disabilities seeking subminimum wage employment. Unlike the rest of the Act, which took effect upon enactment, section 511 does not take effect until July 22, 2016.

*Current Regulations:* Current § 361.22 requires VR agencies to develop policies and procedures for coordinating with education officials to facilitate the transition of students with disabilities from education services to the provision of VR services. However, current regulations do not reference pre-employment transition services or the option of providing consultation services through alternative means since these are new statutory requirements. Current regulations also do not reference the statutory construction clause or the statutory requirements contained in section 511, as these are new statutory requirements.

*Proposed Regulations:* We propose to amend current § 361.22(a) to incorporate reference to pre-employment transition services as an area that must be included during inter-agency coordination of transition services.

We propose to amend current § 361.22(b)(1) to clarify that VR agencies may use alternative means, such as video conferences and conference calls, for providing consultation and technical assistance to education officials. We also propose to amend current § 361.22(b) by adding new clauses (5) and (6) to incorporate, by reference, certain requirements from section 511 into the formal interagency agreement between the DSU and the State educational agency.

Finally, we propose to add a new paragraph (c) under § 361.22 to incorporate the construction clause in section 101(c) of the Act.

We also propose other technical or conforming changes throughout this section.

*Reasons:* The proposed changes to current § 361.22 are necessary to implement the amendments to the Act made by WIOA. While most of the proposed changes are self-explanatory, we believe additional guidance is necessary to clarify a few of the proposed provisions.

First, section 511 of the Act, as added by WIOA, imposes certain requirements on DSUs and State and local educational agencies with regard to youth with disabilities seeking subminimum wage employment. Specifically, DSUs and local educational agencies must provide these youth with disabilities documentation demonstrating that the youth completed certain activities, such as receipt of transition services under IDEA and pre-employment transition services under the VR program, as applicable. Section 511 also requires the DSU, in consultation with the State educational agency, to develop a process, or utilize an existing process, to document completion by youth with disabilities of the required activities, as applicable, under section 511. We believe the formal interagency agreement that is required by section 101(a)(11)(D) of the Act, and current § 361.22(b) is the appropriate mechanism for ensuring the consultation necessary to develop and implement the documentation process required by section 511 and 34 CFR 397.10.

Second, section 511(b)(2) of the Act prohibits a State or local educational agency from entering into a contract or other arrangement with an entity for purposes of operating a program in which youth with disabilities are employed at subminimum wage. Again, we believe the formal interagency agreement, required by section 101(a)(11)(D) of the Act, and current § 361.22(b), between the State educational agency and the DSU, is the appropriate mechanism whereby State and local educational agencies will assure that they will comply with the prohibition imposed by section 511(b)(2) of the Act and proposed 34 CFR 397.31. We believe that incorporating both of these requirements from section 511, and proposed part 397, into an existing formal interagency agreement will reduce burden on the States so new mechanisms for requirements are unnecessary.

Third, we want to provide additional clarification regarding proposed § 361.22(c) given questions that have arisen over the years as to which entity, the local educational agency or DSU, is responsible for providing transition services to students with disabilities (who are also VR consumers) when such services fall under the purview of both entities. The following examples illustrate the types of scenarios that have been at the heart of questions posed by DSUs in the past:

1. A VR-eligible student who is blind is participating in a work-experience placement after school hours as part of her individualized education program. Because that activity takes place in a location outside of school, the student needs travel training in order to travel independently from school to work and then home.

2. A VR-eligible student is enrolled in an apprenticeship program in construction trades as part of his individualized education program under IDEA. The program requires the student to have special gloves, clothing, equipment, and footwear to attend the program.

3. A VR-eligible student is participating in a work experience activity during school hours as part of her individualized education program. The school has arranged for several IDEA-eligible students to participate in this same work activity and is providing a school bus to transport the IDEA-eligible students to and from the worksite. The VR-eligible student needs transportation to the worksite and a uniform.

While neither the Act nor IDEA is explicit as to which entity, the VR agency or the local education agency, is financially responsible for providing transition services, which are not considered solely special education or related services under IDEA, both proposed § 361.22(c) and current 34 CFR 300.324(c)(2)) make clear that neither the local educational agency nor the VR agency may shift the burden for providing a service, for which it otherwise would be responsible, to the other entity. We want to make clear that the Act and IDEA, along with their implementing regulations in proposed § 361.22(c) and 34 CFR 300.324(c)(2), are to be read in concert.

Therefore, we believe decisions related to which entity will be responsible for providing transition or pre-employment transition services that

can be considered both a special education and a VR service must be made at the State and local level as part of the collaboration between the VR agencies, State educational agencies, and local educational agencies. This coordination and collaboration is crucial to successful transition planning and service delivery. Both the IDEA and the Rehabilitation Act require State educational agencies and VR agencies to plan and coordinate transition services for students with disabilities. This occurs through an interagency agreement or other mechanism for interagency coordination, such as described in section 612(a)(12) of IDEA (20 U.S.C. 1412(a)(12))). Coordination, including clearly articulated roles and responsibilities for the provision of transition services and for activities under section 511 of the Act, as well as mechanisms to resolve disputes between the State educational agencies and the VR agencies ensures a seamless delivery of transition services that enable eligible students with disabilities to make a smooth transition from school to post-school education and employment. Moreover, under IDEA, this interagency coordination may be necessary to ensure the provision of transition services that are necessary for the provision of a free appropriate public education to students with disabilities (see section 612(a)(12) of IDEA and 34 CFR 300.154). States have the flexibility to include local educational agencies as parties to the State-level agreement.

Since the ultimate decisions related to financial responsibility for the provision of transition services must be established at the State and local level during the collaboration and coordination of transition and pre-employment transition services, a State's formal interagency agreement or other mechanism for interagency coordination can provide a foundation for addressing these issues by including criteria to be used by the VR agencies and local educational agencies when considering and assigning the financial responsibility of each agency for the provision of transition services to students with disabilities on an individualized basis. For example, the criteria could include:

1. The purpose of the service—Is it related more to an employment outcome or education (*i.e.,* is it considered a special education or related service (*e.g.,* rehabilitation counseling that is necessary for the provision of a free appropriate public education))?

2. Customary Services—Is the service one that the school customarily provides under IDEA part B? For example, if the school ordinarily provides job exploration counseling to its eligible students with disabilities, the mere fact that such a service is now authorized under the Rehabilitation Act as a pre-employment transition service does not mean the school should cease providing that service and refer those students to the VR program.

3. Eligibility—Is the student with a disability eligible for transition services under IDEA? As stated earlier, the definition of a ''student with a disability,'' for purposes of the VR program, is broader than that under IDEA because the definition in the Rehabilitation Act includes those students who are individuals with a disability under section 504 of the Rehabilitation Act. It is possible that these students do not have an individualized education program under IDEA and, therefore, would not be eligible for or receiving special education and related services under IDEA. As a result, VR agencies are authorized to provide transition services under the VR program to a broader population than local educational agencies are authorized to provide under IDEA.

We believe that criteria such as these could be beneficial as DSUs and local educational agencies and State educational agencies collaborate and coordinate the provision of transition services, including pre-employment transition services to students with disabilities, and resolve disputes related to the provision of these services.

*Cooperation and Coordination With Other Entities (§ 361.24)*

*Statute:* Section 101(a)(11) of the Act makes several changes that highlight the importance of transition and other matters affecting students and youth with disabilities with regard to the coordination of services between the VR program and other non-educational programs.

*Current Regulations:* Current regulations in § 361.24 address only the cooperation and coordination between the State VR agency and Federal, State and local agencies that are not carrying out activities through the workforce development system. Current regulations do not address the coordination that must occur with the section 121 projects in a State, if applicable, with regard to the provision of pre-employment transition services or non-educational agencies serving out-of-school youth because these are new statutory requirements.

*Proposed Regulations:* Proposed § 361.24(a) would incorporate non-educational agencies serving out-of-school youth as another entity with which the VR agency must coordinate.

We also propose to amend current § 361.24(c) and (d), which govern coordination between the DSUs and employers and section 121 projects, respectively, to include transition services among the matters that must be included in coordination efforts.

*Reasons:* These changes are necessary to implement the amendments to the Act made by WIOA, all of which are designed to improve relationships and coordination between the VR agencies, employers, and all other agencies (*e.g.,* workforce development, child welfare and juvenile justice agencies) serving individuals with disabilities, especially youth with disabilities, to ensure they have meaningful opportunities to achieve employment outcomes in competitive integrated employment. While DSUs have been required to coordinate with American Indian Vocational Rehabilitation Services projects in the State, if any, the coordination now must also include pre-employment transition services.

*Statewide Assessment; Estimates; State Goals and Priorities; Strategies; and Progress Reports (§ 361.29)*

*Statute:* Section 101(a)(15) of the Act, as amended by WIOA, requires the comprehensive needs assessments to include: a review of the needs of youth and students, especially with regard to pre-employment transition services and the coordination of services with educational agencies; and the methods used to improve the provision of VR services, especially transition services.

*Current Regulations:* Current § 361.29 requires that the State plan include the results of a statewide assessment, but does not contain new statutory requirements related to transition and pre-employment transition services.

*Proposed Regulations:* Proposed § 361.29(a)(1)(i)(D) reflects the addition of the new statutory requirement for the statewide needs assessment to identify the vocational rehabilitation needs of youth and students with disabilities, including their need for pre-employment transition services as defined under proposed § 361.5(c)(42) or other transition services. Proposed § 361.29(a)(1)(i)(D)(2) would require that the State plan include an assessment of the needs for transition services and pre-employment transition services and the extent to which VR services are coordinated with services provided under IDEA in order to meet the needs of individuals with disabilities. The proposed § 361.29(d)(4) would require that the State plan include strategies to

provide pre-employment transition services.

*Reasons:* These proposed changes are necessary to implement the amendments to the Act made by WIOA. These proposed changes reflect the Act's emphasis on transition-related issues affecting students and youth with disabilities.

*Development of the Individualized Plan for Employment (§ 361.45)*

*Statute:* None.

*Current Regulations:* Current § 361.45(d)(9) requires that an individualized plan for employment be developed in consideration of a student with a disability's individualized education program under IDEA. There is no reference to 504 services in this context.

*Proposed Regulations:* We propose to amend current § 361.45(d)(9)(i) to incorporate consideration of a student's section 504 services.

*Reasons:* This proposed change is necessary to implement the amendments to the Act made by WIOA with regard to the addition of a definition of ''student with a disability.'' Because a student with a disability could be an individual who is receiving services under section 504 rather than under an individualized education program pursuant to IDEA, we believe this proposed change is essential to ensure consistent implementation of all requirements affecting students with disabilities.

*Content of the Individualized Plan for Employment (§ 361.46)*

*Statute:* As amended by WIOA, section 102(b)(4)(A) of the Act permits an individualized plan for employment to contain a specific post-school employment outcome or a more general, projected outcome. Section 102(b)(4)(B) requires the individualized plan for employment for a student with a disability to include the specific transition services needed by the student for the achievement of the employment goal.

*Current Regulations:* Current § 361.46 outlines the components of an individualized plan for employment, but does not contain specific requirements related to transition since these are new statutory requirements.

*Proposed Regulations:* We propose to revise current § 361.46(a)(1) to permit, in lieu of a specific employment goal, a description of an eligible student's or youth's projected post-school employment outcome.

Proposed § 361.46(a)(2)(ii) would require that the description of the specific VR services under proposed § 361.48 include the specific transition services and supports needed for an eligible student with a disability or youth with disability to achieve an employment outcome or projected post-school employment outcome.

*Reasons:* These changes are necessary to implement the amendments made to the Act by WIOA. By permitting the individualized plan for employment for a student or youth with a disability to include a projected, or generally described, rather than a specific employment goal, we recognize that some students and youth with disabilities, particularly those of a younger age, may not have formulated a specific employment goal when they begin the VR process. As a result, VR agencies may find it necessary to amend the individualized plan for employment to reflect career exploration consistent with vocational growth and development and the resulting evolution in the student's or youth's employment goal. However, VR agencies should continue to work with students and youth who have identified a specific employment goal, especially those who are older, to develop individualized plans for employment that contain a specific goal. For students and youth who have yet to identify a specific employment goal, this change would remove the need for these frequent amendments. However, the inclusion of a projected employment goal in the individualized plan for employment would not eliminate the responsibility of the VR counselor and student to amend the individualized plan for employment and the VR services needed to achieve that goal as the employment goal changes.

**Scope of Vocational Rehabilitation Services for Individuals With Disabilities (§ 361.48)**

*Pre-Employment Transition Services*

*Statute:* WIOA amends the Act by including a new section 113 that requires VR agencies to coordinate with local educational agencies in providing, or arranging for the provision of, pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services and in need of such services. Section 110(d) requires States to reserve 15 percent of their VR allotment to provide these services.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add regulations implementing the provision of pre-employment transition services in a new paragraph in proposed § 361.48(a). The current regulations will be moved to a new paragraph (b) in § 361.48.

Proposed § 361.48(a)(1) would permit pre-employment transition services to be provided to all students with disabilities regardless of whether they have applied for VR services and would clarify that similar transition services are available to youth with disabilities under proposed § 361.48(b) when specified in an individualized plan for employment.

Proposed § 361.48(a)(2) would specify the required pre-employment transition services that are provided directly to students with disabilities.

Proposed § 361.48(a)(3) would describe the authorized activities that the State may provide, if sufficient funds are available, to improve the transition of students with disabilities from school to postsecondary education or an employment outcome.

Proposed § 361.48(a)(4) would describe the responsibilities for pre-employment transition coordination to be carried out by VR agencies.

Finally, proposed § 361.48(a)(5) would support DSUs in providing pre-employment transition services, consulting with other Federal agencies, and identifying best practices of the States for the provision of transition services to students with a variety of disabilities.

*Reasons:* The proposed regulations in § 361.48(a) would implement the requirements of section 113 of the Act, which were added by WIOA. This new section presents an innovative approach to providing pre-employment transition services to students with disabilities.

The services required by this section are those that would be most beneficial to an individual in the early stages of employment exploration. These services are designed to provide job exploration and other services, such as counseling and self-advocacy training, in the early stages of the transition process. To that end, we believe Congress intended these services be provided to the broadest population of students with disabilities to ensure that as many students with disabilities as possible are given the opportunity to receive the services necessary in order to achieve an employment outcome. Therefore, the proposed regulation clarifies that pre-employment transition services would be available to all students with disabilities. However, it is important to note that a student with a disability in this instance does not mean an individual with a disability in postsecondary education. We believe this interpretation is consistent with the statutory language ''all students with disabilities who are eligible or

potentially eligible'' for VR services and intent, as well as the definition of a ''student with a disability.'' As an individual with a disability, every student with a disability satisfies at least one of the eligibility criteria for VR services in current § 361.42(a)(1).

In so doing, we would ensure that the broadest possible group of students with disabilities is able to receive the services they need to better identify and prepare for post-school activities, including postsecondary education and competitive integrated employment. We do not believe that a student with a disability would have to apply for, or be determined eligible for, VR services prior to receiving pre-employment transition services under proposed § 361.48(a). However, if the student does apply for VR services, he or she would be subject to all relevant requirements for eligibility and order of selection, as applicable, for purposes of receiving other VR services.

It is important to point out, in this context, that the definition in proposed § 361.5(c)(51) of a ''student with a disability,'' for purposes of the VR program, is broader than the definition used under IDEA. For that reason, the VR agency may provide pre-employment transition services under this section to a broader group of students than could receive such services under IDEA since VR agencies may provide these services to students eligible for or receiving section 504 services, not all of whom may be eligible for or receiving special education or related services under IDEA.

We are particularly interested in receiving comments and alternative suggestions about the interpretation of ''potentially eligible'' as used in section 113(a) of the Act to mean all students with disabilities as defined under proposed § 361.5(c)(51).

In providing pre-employment transition services, a DSU may consider providing these services to students with disabilities in group settings or on an individual basis. When provided in group settings, these services are general in nature and are not typically customized to an individual student's disability-related or vocational needs. For example, job exploration counseling provided in group settings may include the presentation of general local labor market composition and information, administration of vocational interest inventories, and instruction regarding self-advocacy and self-determination. On the other hand, job exploration counseling provided on an individual basis might include discussion of the student's vocational interest inventory results and discussion of local labor market information that applies to those interests.

The manner in which pre-employment transition services are delivered (*e.g.,* either in a group setting or on an individual basis) will most likely depend on the amount of information the DSU has available regarding the student with a disability at the time services are provided. As a student progresses through the VR process by applying, and being determined eligible, for VR services, the DSU would obtain the information necessary to provide individually tailored services that address the student's particular disability-related and vocational needs. This aspect of pre-employment transition services, the fact that they can be either generalized or individualized, further highlights the continuum of services available under the VR program.

We want to make clear that if a student with a disability requires services that are beyond the limited scope of pre-employment transition services, the student would have to apply for and be determined eligible for VR services and develop an individualized plan for employment for the receipt of those services as would be true for any other applicant. To that end, we encourage DSUs to work with the local educational agencies and State educational agencies to develop a process whereby individuals expressing interest in VR services are able to access the program and apply for services in a timely manner. VR agencies are encouraged to develop a referral process that is simple and engaging, especially for students with disabilities and their families who could become discouraged or disinterested in VR services by needlessly complex and prolonged procedures. An individual may initiate the application process by requesting individualized pre-employment transition services and other VR services. Current § 361.41(b)(2) permits a student or the student's representative, as appropriate, to apply for VR services through a variety of means, including a simple request for VR services, such as submitting a form consenting to the provision of VR services or even a telephone call, so long as the request contains the limited demographic and other information necessary to begin an assessment for the determination of eligibility and the student is available to participate in the assessment.

*Services for Individuals Who Have Applied for or Been Determined Eligible for VR Services (§ 361.48(b))*

*Statute:* Section 103(a)(15) of the Act, as amended by WIOA, adds pre-employment transition services among the scope of VR services that may be provided in accordance with an individual's individualized plan for employment.

*Current Regulations:* Current § 361.48 includes transition services among the list of authorized activities. Pre-employment transition services are not specifically mentioned because this is a result of statutory changes.

*Proposed Regulations:* As discussed earlier, we propose to reorganize current § 361.48 so that all current provisions are retained in proposed § 361.48(b). We also propose to incorporate along with those transition services already provided for, pre-employment transition services among the authorized list of individualized services a VR agency may provide under proposed § 361.48(b)(18).

*Reasons:* This change is necessary to implement the amendments to the Act made by WIOA. Under the VR program, any allowable service may be provided as a transition service to an individual transitioning from secondary school to postsecondary education or employment, who has been determined eligible and for whom an individualized plan for employment has been developed and approved. Services most commonly provided as transition services to students with disabilities under an individualized plan for employment include, but are not limited to, assessments, counseling and guidance, assistive technology, job coaching, orientation and mobility training, vocational counseling and guidance, and vocational and other training services, such as personal and vocational adjustment training.

It is important to note that many of the services described as pre-employment transition services in proposed § 361.48(a) were previously provided as transition services, as defined in proposed § 361.5(c)(55), or other individualized services, including community-based work experiences and other career exploration services, even though no specific category of pre-employment transition services was mentioned in the Act or current § 361.48.

*Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities (§ 361.49)*

*Statute:* Section 103(b)(7) of the Act expands the scope of allowable services

for the benefit of groups of individuals with disabilities to include transition services for youth and students with disabilities. Other technical changes were made in section 103(b)(6).

*Current Regulations:* Current § 361.49(a) includes allowable services for the benefit of groups of individuals with disabilities, but does not include transition services since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.49(a)(6) to clarify that educational agencies referenced in current regulations mean State or local educational agencies.

We also propose to add a new § 361.49(a)(7) to incorporate transition services to students and youth with disabilities as a permissible service for the benefit of groups of individuals with disabilities. This service would be provided in coordination with other relevant agencies and providers.

*Reasons:* These changes are necessary to implement the amendments to the Act made by WIOA. Under this new provision, VR agencies would be able to engage in transition activities with some entities that have not typically been involved in transition planning. As a service to groups, these transition services would be provided in group settings in a manner that benefits a group of students or youth with disabilities, rather than being customized for any one individual. Individualized transition services are provided under proposed § 361.48(b).

Examples of group transition services may include, but are not limited to, class tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development systems and employers where students and youth participate in resume writing classes and mock interviews. Additionally, these services are not limited to those individuals who are still in school since section 103(b)(7) of the Act includes youth with disabilities between the ages of 14–24 who may or may not be enrolled in secondary education.

DSUs will need to be mindful of the authority they are using when providing these services since requirements differ for those transition services provided under services to groups (see proposed § 361.49) or pursuant to an individualized plan for employment (see proposed § 361.48(b)) or as a pre-employment transition service under proposed § 361.48(a).

**Services for Individuals Who Have Applied for and Been Determined Eligible for Vocational Rehabilitation Services (§ 361.48(b))**

*Scope of Vocational Rehabilitation Services for Individuals With Disabilities*

*Statute:* WIOA amends section 103(a) of the Act by adding customized employment to the list of VR services that may be provided to eligible individuals under an individualized plan for employment. The amendments also encourage qualified individuals who are eligible for VR services to pursue advanced training in specified fields.

*Current Regulations:* Current § 361.48 provides a non-exhaustive list of VR services available to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome. Neither customized employment nor advanced training is specified in this list because these are new statutory requirements.

*Proposed Regulations:* We propose to reorganize current § 361.48. Proposed § 361.48(a) incorporates new regulations governing pre-employment transition services to students with disabilities, which are required by section 113 of the Act. Proposed § 361.48(b) contains all of the services that are listed in current § 361.48 and that are available to an eligible individual under an individualized plan for employment.

Proposed § 361.48(b)(6) would specify that advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business may be provided to an eligible individual receiving vocational and other training services under an individualized plan for employment.

Finally, we propose to include customized employment as an available VR service in proposed § 361.48(b)(20).

We also propose to make other conforming changes throughout this section.

*Reasons:* These changes are necessary to implement amendments to section 103(a) of the Act made by WIOA. It has been our long-standing policy that VR services are available to individuals with disabilities to enable them to advance in employment and that financial support for the graduate-level degrees specified in proposed § 361.48(b)(6), may be provided to eligible individuals when necessary to achieve employment. The specific mention of this service in section 103(a) of the Act and the proposed regulation underscores the importance of advanced training when preparing individuals with disabilities for high demand careers in today's economy.

Prior to enactment of WIOA, customized employment was an available service under the VR program when necessary to assist the eligible individual to achieve an employment outcome. See the discussion of customized employment in the Applicable Definitions section for further information.

*Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities (§ 361.49(a))*

*Statute:* Section 103(b) of the Act makes several changes with regard to the services to groups that VR agencies may provide, including those related to technical assistance to businesses, assistive technology, and advanced training in specific fields of study.

*Current Regulations:* Current § 361.49(a) describes the services that VR agencies may provide for the benefit of groups, but they do not specifically address services related to assistive technology or advanced training, or other changes made by WIOA.

*Proposed Regulations:* We propose to amend current § 361.49(a)(1), regarding the establishment, development, or improvement of a community rehabilitation program, to clarify that services provided under this authority must be used to promote competitive integrated employment, including customized and supported employment.

We propose to amend current § 361.49(a)(4) to incorporate statutory changes that expand a VR agency's authority to provide technical assistance to all businesses who are considering hiring individuals with disabilities.

We propose to add new § 361.49(a)(8) and (9) regarding services related to assistive technology and advanced training, respectively, to reflect new statutory authorities for these services.

We also propose to make other conforming changes throughout this section.

*Reasons:* These changes are necessary to implement statutory changes, which both expand the types of services that a VR agency may provide for the benefit of groups of individuals with disabilities and provide clarification as needed.

The proposed changes in § 361.49(a)(1) regarding the establishment, development, or improvement of a community rehabilitation program are primarily for clarification purposes. Services provided under this authority have always been for the purpose of promoting integration into the community with respect to

employment. However, the proposed changes highlight the statute's heightened emphasis on competitive integrated employment, supported employment, and customized employment.

Proposed changes to current § 361.49(a)(4) would permit VR agencies to provide technical assistance to all businesses who are considering hiring individuals with disabilities. This technical assistance could assist businesses with recruitment, hiring, employment, and retention, including resources and tools to help with accessing and use of assistive technology, workplace accessibility, and accommodations for individuals with disabilities. VR agencies can work with businesses to develop systems for the matching and training of qualified workers with job requirements. Previously, a VR agency could provide such services only to those businesses that are not subject to title I of the Americans with Disabilities Act of 1990. This proposed change is also consistent with the heightened emphasis throughout WIOA on employer engagement, especially with regard to assisting individuals with disabilities to enter competitive integrated employment.

Proposed new § 361.49(a)(8) would incorporate a new statutory authority for VR agencies to provide assistive technology-related services for the benefit of groups of individuals with disabilities. VR agencies may now establish, develop, or improve assistive technology programs. This new authority would expand access to assistive technology for individuals with disabilities and employers in recognition of the critical role it plays in the vocational rehabilitation and employment of individuals with disabilities. However, we believe that this authority should be implemented in a manner that is consistent with the authority to establish, develop, or improve a community rehabilitation program in proposed § 361.49(a)(1) in that the services provided under this authority should be limited to applicants and eligible individuals receiving VR services. In so doing, this authority would be used in coordination with, rather than to supplant, the activities otherwise provided under the Assistive Technology Act.

We also want to make clear that the assistive technology services provided under this authority would be distinguished from those provided under proposed § 361.48(b), which are individualized and provided pursuant to an individual's plan for employment. The assistive technology services provided under proposed § 361.49(a)(8) are for the benefit of a group of individuals and are not tied to the individualized plan for employment of any one individual. For example, a DSU may, in coordination with the State's assistive technology grant program, use VR funds to support an assistive technology lending library in proportion to the benefit received by applicants and eligible individuals. Once an eligible individual needs a specific assistive technology device to participate in VR services or the employment outcome, the DSU could provide the device as an individualized service under an individualized plan for employment pursuant to proposed § 361.48(b).

Proposed § 361.49(a)(9) would implement a new authority for VR agencies to provide support for advanced training in a manner that benefits groups of eligible individuals. Before WIOA was enacted, a DSU could provide this service only on an individualized basis, pursuant to an individual's individualized plan for employment, in accordance with proposed § 361.48(b), which remains unchanged in this context. This new authority is in addition to that provided under proposed § 361.48(b) and is not intended to replace such services as being provided on an individualized basis.

Under this new authority, VR agencies may provide support services to eligible individuals who meet specific criteria and are pursuing advanced training in specific fields, as a service for the benefit of a group of individuals with disabilities. Examples of when a DSU may consider providing such support services, not directly related to an individualized plan for employment, could include the enrollment of multiple students determined eligible for VR services in the same training, or the development and implementation of specific programming for eligible individuals with an institution of higher education or community provider. Furthermore, VR agencies could consider establishing a scholarship fund for advanced training in science, technology, engineering or mathematics (STEM) or other fields as described in section 103(b)(9) of the Act. These funds may support the costs of graduate level training not covered by any other source for those services, including support provided by the VR program under proposed § 361.48(b). If a DSU establishes such scholarships, it should consider establishing criteria governing the receipt of such support, including merit and other competitive criteria.

We want to make clear that DSUs should continue to provide any individualized advanced training support that an eligible individual requires in order to achieve an employment outcome in competitive integrated employment, and that is consistent with the individual's plan for employment, under proposed § 361.48(b), not under the services to groups authority discussed here. For that reason, we believe there would only be limited circumstances in which it would be appropriate for a DSU to provide support for advanced training under proposed § 361.49(a)(9). Given that this service may be provided as either an individualized service under proposed §§ 361.48(b) or 361.49(a)(9), DSUs would have to keep in mind the distinctions between the two different authorities to ensure proper implementation and record-keeping for reporting purposes.

*Comparable Services and Benefits (§ 361.53)*

*Statute:* Section 101(a)(8) of the Act clarifies that accommodations and auxiliary aids and services are included in the requirement to determine whether comparable services and benefits are available prior to the DSU providing most VR services. In addition, section 101(a)(8)(B) is amended to clarify that interagency agreements for coordination of services between the DSU and other public entities in the State, including institutions of higher education, should specifically address accommodations and auxiliary aids and services among the services to be coordinated.

*Current Regulations:* Current § 361.53 sets forth the requirements related to comparable services and benefits, as well as requirements related to interagency agreements, without specifically identifying accommodations and auxiliary aids and services.

*Proposed Regulations:* We propose to add language to §§ 361.53(a) and 361.53(d)(1) and (3) that would include accommodations and auxiliary aids and services among the VR services that would require the determination of the availability of comparable services and benefits prior to the provision of such services to an eligible individual. The proposed changes also would address interagency coordination of the provision of these services.

*Reasons:* The proposed changes reflect the clarifications in section 101(a)(8) of the Act made by WIOA. WIOA reinforces the Department's longstanding position that accommodations and auxiliary aids and services are considered to be part of the

determination of the availability of comparable services and benefits and the services to be coordinated through the required interagency agreements with public entities should include accommodations and auxiliary aids and services. The changes to section 101(a)(8) of the Act and proposed § 361.53 make this interpretation explicit.

The need for the DSU to coordinate the provision of accommodations and auxiliary aids and services often occurs when serving eligible individuals attending institutions of higher education for postsecondary training and education. Both DSUs and public institutions of higher education must adhere to the requirements of title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act to ensure access to their services for individuals with disabilities. Additionally, private institutions of higher education must adhere to requirements of section 504 of the Act to ensure access to their services for individuals with disabilities. Accordingly, the responsibilities of each entity for the provision of accommodations and auxiliary aids and services to individuals served by each must be determined at the State level. Therefore, the interagency agreement under proposed § 361.53(d) would ensure interagency coordination and describe the responsibilities of the DSU and the institutions of higher education for the provision of VR services, including accommodations and auxiliary aids and services, and would provide a vehicle for resolving interagency disputes. To that end, Governors could assist the DSUs and institutions of higher education, in accordance with section 101(a)(8)(B) of the Act, to develop these agreements to ensure they are sufficient for ensuring individuals with disabilities receive the services they need, including accommodations and auxiliary aids and services, to enable them to achieve competitive integrated employment. The Rehabilitation Act requires DSUs to enter into interagency agreements for coordination of services (including each agency's financial responsibilities) with institutions of higher education, as well as other public entities. DSUs have experienced difficulty engaging with institutions of higher education, and other public agencies, for the purpose of developing the required interagency agreements. In addition, DSUs and institutions of higher education have often executed interagency agreements that do not clearly describe the manner in which services will be coordinated, particularly the accommodations and auxiliary aids and services that each agency will be responsible to provide. The lack of specificity in these agreements, in turn, does not provide adequate guidance to higher education or VR personnel responsible for carrying out their responsibilities to provide such aids and devices to assist individual students with disabilities. Such guidance is crucial when a particular service could be provided by either the DSU or institution of higher education in accordance with their mutual obligations under the Americans with Disabilities Act and section 504 of the Act to ensure the ability of individuals with disabilities to participate in educational programs and activities, and the timely delivery of VR services.

We believe that the terms of the interagency agreement should take into account State laws and the resources of each party. For example, an interagency agreement could include a term that could require institutions of higher education to provide auxiliary aids and services (*e.g.*, interpreters) to VR eligible individuals in the classroom and the DSUs could provide these aids and services during educational activities outside the classroom. In States where students who are deaf or blind and attend a State university tuition-free, the interagency agreement could specify that the DSU provide auxiliary aids and services, such as reader and interpreter services, both in and out of the classroom, since the school is responsible for the full cost of tuition. Greater specificity in the terms of the interagency agreements at the State level will promote consistency across the State in the coordination of services and in the provision of accommodations and auxiliary aids and services to eligible individuals attending institutions of higher education.

Finally, we want to make clear that accommodations and auxiliary aids and services, for purposes of implementing the requirements of section 101(a)(8) and these proposed regulations, do not include personally prescribed devices, such as eye glasses, hearing aids, wheelchairs, or other such individually-prescribed devices and services.

*Semi-Annual Review of Individuals in Extended Employment and Other Employment Under Special Certificate Provisions of the Fair Labor Standards Act (§ 361.55)*

*Statute:* Section 101(a)(14) of the Act, as amended by WIOA, increases the frequency of reviews that the DSUs must conduct when individuals with disabilities, who have been served by the VR program, obtain subminimum wage employment or extended employment.

*Current Regulations:* Current § 361.55 requires the DSU to conduct an annual review and re-evaluation annually for the first two years after an individual obtains subminimum wage employment or extended employment.

*Proposed Regulations:* We propose to amend § 361.55 to incorporate the new statutory requirement that these reviews be conducted semi-annually for the first two years of the individual's employment and annually thereafter. We also propose to make other technical and conforming changes throughout.

*Reasons:* The proposed changes are necessary to implement new statutory requirements and ensure individuals with disabilities do not languish in subminimum wage employment or extended employment. Prior to the passage of WIOA, DSUs conducted these reviews annually for two years. With the amendments made by WIOA, DSUs must conduct these reviews twice a year for two years and then annually thereafter for as long as the individual remains employed at the subminimum wage level or in extended employment. These changes are consistent with the heightened emphasis throughout WIOA that individuals with disabilities, including those with the most significant disabilities, be given every opportunity to achieve competitive integrated employment.

*Matching Requirements (§ 361.60)*

*Statute:* Section 101(a)(3) of the Act requires the State to pay a non-Federal share in carrying out the VR program. Section 7(14) of the Act defines ''Federal share'' as 78.7 percent. These statutory provisions remain unchanged by WIOA.

*Current Regulations:* Current regulations in § 361.60(b) outline the requirements for satisfying the non-Federal share requirement under the VR program.

*Proposed Regulations:* We propose to amend current (b)(3) to clarify that non-Federal expenditures, for match purposes under the VR program, from private contributions must be made from cash contributions that have been deposited in the VR agency's account prior to their use for this purpose. We also propose to make conforming changes throughout current § 361.60 to refer to 2 CFR part 200, as applicable and to new terms, such as the ''vocational rehabilitation services portion of the Unified or Combined State Plan'' and ''subaward.''

*Reasons:* Proposed § 361.60(b)(3) makes no substantive changes but

would clarify existing regulatory requirements pertaining to expenditures made from private contributions and used for match purposes under the VR program. Specifically, we would clarify that contributions by private entities must be in cash and that the funds must be deposited into the State agency's account before they are used for match purposes under the VR program. In so doing, we make two points clear: (1) Certified expenditures made by private entities or individuals may not be used by the VR agency for match purposes under the VR program; and (2) a contract, budgeted projection, or any other promise by a private entity or individual to make a contribution may not be used, on its face, by the VR agency for satisfying its match requirement. The VR agency must actually receive the cash contribution before it may be used for match purposes under the VR program. We believe these clarifications are necessary to ensure VR agencies have a better understanding of, and comply with these existing requirements. Finally, other revisions proposed throughout this section are necessary to conform to other changes proposed throughout part 361.

*Maintenance of Effort Requirements (§ 361.62)*

*Statute:* Section 111(a)(2)(B) of the Act, as amended by WIOA, requires the Secretary to reduce a grant in a fiscal year for any prior fiscal year's Maintenance of Effort (MOE) shortfall.

*Current Regulations:* Current § 361.62(a) requires the Secretary to reduce the grant in the fiscal year immediately following the fiscal year with the MOE deficit. In the event that the MOE deficit is discovered after the next fiscal year's grant was awarded, the Secretary is required to seek a remedy for the MOE violation pursuant to the disallowance process.

*Proposed Regulations:* We propose to amend current § 361.62(a) in four ways: (1) By amending current § 361.62(a)(1) to require the Secretary to reduce a grant in any fiscal year by the amount of any prior fiscal year's MOE shortfall; (2) by removing the example in current § 361.62(a)(1) as it is no longer applicable, given statutory amendments; (3) by removing current § 361.62(a)(2) since it is no longer necessary given new statutory requirements t; and (4) by redesignating current § 361.62(a) to reflect the removal of current § 361.62(a)(2).

We propose to amend current § 361.62(b) by removing the requirement for the Secretary to recover the MOE deficit through an audit disallowance process.

We propose to amend the current § 361.62(d)(3) to clarify that a request for a waiver or modification of the MOE requirement must be submitted as soon as the State has determined that it has failed to satisfy the requirement due to an exceptional or uncontrollable circumstance. Finally, we propose to make conforming changes throughout current § 361.62 to reflect the restructuring of paragraph (a).

*Reasons:* The proposed changes to current § 361.62(a) are necessary to implement the amendments to the Act made by WIOA. Previously, the Secretary could reduce the State's VR award to satisfy a MOE deficit only in the fiscal year immediately following the fiscal year in which the MOE deficit occurred. In the event the MOE deficit was discovered after the next fiscal year's grant was awarded, the Secretary was required to seek recovery for the MOE deficit pursuant to a disallowance process, whereby, the State was required to make payment for that recovery action with non-Federal funds. Under the proposed regulations the Secretary would no longer be limited to reducing only the next fiscal year's grant, but rather could reduce any subsequent fiscal year's grant to satisfy the MOE deficit. Therefore, in the event that a MOE shortfall is revealed after the next fiscal year's grant has been awarded, the Secretary would reduce the Federal grant in another subsequent fiscal year. Consequently, it is no longer necessary for the Secretary to seek recovery through a disallowance process and for a State to use non-Federal funds to satisfy the deficit. The proposed change to current § 361.62(b) is necessary to ensure consistency with paragraph (a) for purposes of satisfying a MOE deficit.

The change in proposed § 361.62(d)(3) is necessary for clarification purposes. The proposed change would not substantively revise the requirements related to submitting a request for a MOE waiver or modification, but rather would add clarifying language to existing requirements. Some States have interpreted the existing regulation as meaning that the request should be submitted as soon as they anticipate that they would be unable to satisfy the MOE requirement, even if that was years in advance. We have always interpreted paragraph (d)(3) as meaning that the request should be submitted as soon as the State has determined it has not satisfied the MOE requirement. The proposed change provides further clarification.

*Program Income (§ 361.63)*

*Statute:* None.

*Current Regulations:* Current § 361.63 defines program income and lists potential sources of program income and uses for purposes of the VR program.

*Proposed Regulations:* We propose to amend current § 361.63(a) to make the definition of program income consistent with 2 CFR 200.80.

We propose to amend current § 361.63(b) by providing additional examples of common sources of program income generated by the VR program.

We propose to amend current § 361.63(c)(1) to clarify that program income must be disbursed during the period of performance of the award to be consistent with 2 CFR 200.77, which defines the period of performance of the award as the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

We propose to amend current § 361.63(c)(2) to reflect statutory restructuring of title VI of the Act.

Finally, we propose to amend current § 361.63(c)(3) to be consistent with 2 CFR 200.307(e)(1) and (2).

*Reasons:* The proposed changes to current § 361.63 are necessary for clarification purposes and to ensure consistency with other relevant requirements, especially those contained in 2 CFR part 200.

*Allotment and Payment of Federal Funds for Vocational Rehabilitation Services (§ 361.65)*

*Statute:* Section 110(d) of the Act, as amended by WIOA, requires VR agencies to reserve not less than 15 percent of the State's VR allotment for the provision of pre-employment transition services, in accordance with section 113 of the Act. Section 110(d)(2) of the Act prohibits a State from using these reserved funds to pay for administrative costs or any other VR service.

*Current Regulations:* Current § 361.65 specifies the process the Secretary uses to allot and reallot Federal funds, but does not address the reservation by States of funds for the provision of pre-employment transition services since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend current § 361.65(a) by adding a new paragraph (3) to implement the new statutory requirement for a State to reserve not less than 15 percent of its VR allotment for the provision of pre-employment transition services. The proposed provision would make clear

that such reserved funds must be used only for services authorized in proposed § 361.48(a), and must not be used to pay for administrative costs associated with the provision of such services or for any other VR service.

We propose to amend current § 361.65(b)(2) by revising the language to clarify that reallotment would occur in the fiscal year the funds were appropriated; however, the funds may be obligated or expended during the period of performance, provided matching requirements are met. We propose to add a new paragraph (b)(3) to current § 361.65 that would give the Secretary the authority to determine the criteria to be used to reallot funds when the amount requested exceeds the amount of funds relinquished.

Finally, we propose other technical and conforming changes throughout this section.

*Reasons:* The proposed changes to current § 361.65(a) are necessary to implement new statutory requirements related to the reservation of Federal funds for the provision of pre-employment transition services. We make clear that the funds to be reserved are those awarded to the State pursuant to section 110 of the Act and do not refer to an allotment of State funds awarded by the State.

None of the funds reserved for the provision of pre-employment transition services in accordance with section 110(d) may be used to pay for administrative costs or any other VR service. These funds must be used solely for the provision of services described in § 361.48(a) of this part. We want to make clear that States must use the entire amount reserved solely for the provision of pre-employment transition services in accordance with section 113 of the Act and § 361.48(a) of this part.

The proposed change to current § 361.65(b)(2) is necessary to ensure consistency with 2 CFR 200.77.

The change in proposed § 361.65(b) is necessary to inform grantees about the reallotment process in the event there are more requests for reallotment funds than are available to satisfy those requests.

## Part 363—The State Supported Employment Services Program

Proposed substantive changes to part 363 are presented in a format that highlights topical areas in the order that the relevant sections appear in this part.

*Competitive Integrated Employment (§ 363.1)*

*Statute:* Section 7(38) of the Act, as amended by WIOA, revises the definition of ''supported employment'' to mean, in pertinent part, employment with supports in competitive integrated employment or, if not in competitive integrated employment, employment in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis, not to exceed six months. Other key relevant statutory provisions include section 7(5), which defines competitive integrated employment; section 602, which makes clear the purpose of the Supported Employment program is to enable individuals with the most significant disabilities, including youth with the most significant disabilities, to achieve supported employment in competitive integrated employment; and section 604, which authorizes the services to be provided under the Supported Employment program to enable individuals to achieve supported employment in competitive integrated employment. Title VI contains references to this requirement throughout.

*Current Regulations:* Current § 363.1 sets out the purpose of the Supported Employment program, which is to assist States in developing and implementing collaborative programs with entities to provide supported employment services for individuals with the most severe disabilities who require such services to enter or retain competitive employment. Current regulations do not reference competitive integrated employment or working towards competitive integrated employment since these are new statutory requirements.

*Proposed Regulations:* We propose to amend current § 363.1 to reflect the revised statutory definition of ''supported employment,'' namely that the employment be in competitive integrated employment or, if it is not, that the employment be in an integrated setting in which the individual with a most significant disability is working toward competitive integrated employment on a short-term basis.

As proposed, the regulations would make clear that the purpose of the Supported Employment program is to enable individuals with the most significant disabilities, with on-going supports, to achieve competitive integrated employment (*i.e.,* employment in an integrated setting that is compensated at or above the minimum wage).

The proposed definition of ''supported employment'' would take into account that under some circumstances an individual's employment, which must always be in an integrated setting, may not meet all of the criteria for competitive integrated employment initially. In those circumstances, an individual with a most significant disability would be considered to have achieved an employment outcome of supported employment if he or she is working in an integrated setting, on a short-term basis, toward competitive integrated employment. In the proposed definition, we would interpret ''short-term basis'' in this context to mean within six months of the individual entering supported employment.

We also propose to amend current § 363.50(b)(3) and (b)(4) to state that the collaborative agreements developed with other relevant entities for providing supported employment services and extended services may include efforts to increase opportunities for competitive integrated employment for individuals with the most significant disabilities, including youth with the most significant disabilities.

Finally, we propose to amend the balance of current § 363.50 to reflect in the States' required collaborative agreements the new scope and purpose of supported employment, as well as the new time limits for providing services that are discussed in detail under the sections ''Services to Youth with the Most Significant Disabilities'' and ''Extension of Time for the Provision of Supported Employment Services.''

*Reasons:* The proposed revisions are necessary to implement in part 363 the statutory changes made by WIOA. We believe these proposed changes are consistent with the purpose of the Supported Employment program, as expressed throughout title VI of the Act. The proposed changes are also consistent with proposed changes to part 361, which governs the vocational rehabilitation (VR) program, since the supported employment program is supplemental to that program. In particular, we propose to establish a specific time frame—*e.g.,* six months—for ''short term basis'' in the context of ''supported employment,'' because we believe it is necessary to limit the time allowed for individuals to work in non-competitive employment in order to be consistent with the clear intention of the Act, as amended by WIOA, which places heightened emphasis on competitive integrated employment throughout.

*Services to Youth With the Most Significant Disabilities (§§ 363.6 and 363.54)*

*Statute:* Section 603(d) of the Act, as amended by WIOA, requires each State to reserve and use 50 percent of its allotment under the Supported

Employment program to provide supported employment services, including extended services, to youth with the most significant disabilities. Other relevant statutory provisions are found in section 602, which highlights services to youth with the most significant disabilities in the purpose section of title VI; section 604, which authorizes services specifically for youth with the most significant disabilities; section 605, which identifies youth with the most significant disabilities as eligible for supported employment services; and section 606, which establishes certain State plan requirements specific for services to youth with the most significant disabilities.

*Current Regulations:* None.

*Proposed Regulations:* We propose to amend multiple sections in part 363 to incorporate these new requirements for providing supported employment services, including extended services, to youth with the most significant disabilities.

We propose to amend current § 363.1 to state that a purpose of the Supported Employment program is to provide individualized supported employment services, including extended services in an integrated setting, to youth with the most significant disabilities in order to assist them in achieving supported employment in competitive integrated employment.

We propose to amend current § 363.3 to clarify that youth with the most significant disabilities are eligible to receive supported employment services. It is important to note that youth have always been eligible to receive supported employment services; however, amendments made by WIOA emphasize this population in the context of the Supported Employment program.

In proposed § 363.4(a) and (b), we would implement new statutory provisions permitting the expenditure of supported employment program funds, reserved for the provision of supported employment services to youth with the most significant disabilities on extended services to youth with the most significant disabilities for up to four years following the transition from support from the designated State unit (DSU). We propose to amend current § 363.4(c) to clarify that nothing in this part is to be construed as prohibiting the VR program from providing extended services to youth with the most significant disabilities with funds allotted under part 361.

In proposed § 363.4(d), we would set out the statutory requirement that a State must coordinate its supported employment services with its VR services provided under part 361 in order to avoid duplication.

We propose to amend current § 363.11 to incorporate supported employment services, including extended services, for youth with the most significant disabilities into the existing requirements for the VR services portion of the Unified or Combined State Plan supplement.

We propose a new § 363.22, which would implement the new statutory requirement that a State must reserve and use half of its allotment under the supported employment program for the provision of supported employment services, including extended services, to youth with the most significant disabilities.

We propose changes throughout part 363 to conform to new statutory nomenclature, such as referring to ''the vocational rehabilitation services portion of the Unified or Combined State Plans'' in §§ 363.10 and 363.11, instead of just ''the State plan,'' and ''the most significant disabilities'' instead of ''severe disabilities.''

*Reasons:* The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since the Supported Employment program is supplemental to that program. Specifically, the proposed changes are consistent with the heightened emphasis throughout the Act, as amended by WIOA on the provision of services to youth with disabilities, especially those with the most significant disabilities, to ensure they receive the services and supports necessary to achieve competitive integrated employment. Accordingly, the proposed changes would implement the statutory requirement that States must reserve half of their supported employment allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities. This new statutory requirement reflects the fact that this particular population may need more intensive services for a longer period of time in order to achieve competitive integrated employment. It is important to note that, prior to the passage of WIOA, States were not permitted to use supported employment and/or VR program funds to provide extended services under any circumstance. States still are prohibited from providing extended services to individuals who are not youth with the most significant disabilities.

*Extension of Time for the Provision of Supported Employment Services (§§ 363.6 and 363.54)*

*Statute:* Section 7(39) of the Act, as amended by WIOA, revises the definition of ''supported employment services'' to mean those on-going supports provided for a period of time not to exceed 24 months.

*Current Regulations:* Current § 363.6 defines ''supported employment services'' as ongoing services provided by the DSU for a limited period of time to achieve job stabilization and assist an individual with the most severe disability before the transition to extended services. The current regulations do not reference the 24-month time limit for the provision of services since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend the definition of ''supported employment services'' in part 361, which will be incorporated by reference throughout part 363. The proposed definition would extend the time allowed for the provision of supported employment services from 18 months to 24 months.

We also propose to update and streamline current § 363.6 by removing the current set of definitions and inserting, instead, cross-references to relevant definitions from other parts of the Department's regulations.

We propose to amend current § 363.53 to require that an individual must transition to extended services within 24 months of starting to receive supported employment services unless a longer time period is agreed to in the individualized plan for employment. The proposed regulation would specify conditions that must be met before a DSU assists an individual in transitioning to extended services, such as ensuring the individual is engaged in supported employment that is in competitive integrated employment, or in an integrated work setting in which the individual is working on a short-term basis toward competitive integrated employment, and the employment is customized for the individual consistent with his or her strengths, abilities, interests, and informed choice. Administratively, the State unit would also have to identify the source of extended services and meet all requirements for case closure.

*Reasons:* The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since

the Supported Employment program is supplemental to that program.

*Match Requirements for Funds Reserved for Serving Youth With the Most Significant Disabilities (§ 363.23)*

*Statute:* Section 606(b)(7)(I) of the Act, as amended by WIOA, requires that a State provide non-Federal contributions in an amount not less than 10 percent of the costs of providing supported employment services, including extended services, to youth with the most significant disabilities. States are also authorized to leverage public and private funds.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a new § 363.23 to implement these new statutory requirements. In the event that a designated State agency uses more than 50 percent of its allotment to provide supported employment services to youth with the most significant disabilities as required by § 363.22, there is no requirement that a designated State agency provide non-Federal expenditures to match the excess Federal funds spent for this purpose. In this proposed new section, we would clarify, to ensure consistency with part 361, that third-party in-kind contributions are not permitted, but contributions by private entities are permitted, for match purposes under the Supported Employment program.

We propose to amend § 363.4(a)(3) to implement the new statutory provision authorizing States to use funds reserved for youth with the most significant disabilities to leverage other public and private funds to increase resources for extended services and expand supported employment opportunities for youth with the most significant disabilities.

We also propose to amend § 363.11(g)(9) to incorporate both the new match requirement and the description of the activities surrounding how the State will leverage funds reserved for youth with the most significant disabilities into the assurances that a State must submit as part of its supported employment State plan supplement.

*Reasons:* The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361 governing the VR program since the Supported Employment program is supplemental to that program. Given the new statutory requirement that States provide a 10 percent match on the funds reserved for providing supported employment services to youth with the most significant disabilities, coupled with the fact that States may use VR funds to supplement the provision of supported employment services, we believe it is important to ensure the match requirements under the Supported Employment program are consistent with those under the VR program. To that end, we propose that third-party in-kind contributions would not be a permissible source of match under the Supported Employment program, since it is not permitted under the VR program. In so doing, we reduce the administrative burden on States from having to distinguish whether a match source is applicable to the supported employment funds verses the VR funds.

*Program Income (§ 363.24)*

*Statute:* Section 19 of the Act governs the carryover of funds, including program income, received by the Supported Employment program. In addition, section 108 of the Act permits the VR program to transfer payments received by the Social Security Administration under part 361 to the Supported Employment program. These statutory provisions remained substantively unchanged by WIOA.

*Current Regulations:* None.

*Proposed Regulations:* We propose to create a new § 363.24 that would define program income, identify its uses, and clarify that program income may be treated as either an addition or deduction to the award.

In addition, we propose including requirements related to the carry-over of program income in proposed § 363.25. This provision would clarify that program income may be carried over into the succeeding fiscal year.

*Reasons:* These regulations are necessary to govern the use and treatment of program income, consistent with sections 19 and 108 of the Act. Although statutory requirements governing program income have always applied to the Supported Employment program, we have found, through monitoring, that confusion exists among States as to how and when program income should be reported under the Supported Employment program as opposed to under the VR program. We believe this proposed change would minimize such confusion and result in more accurate reporting of program income. Furthermore, these proposed changes are consistent with those proposed in part 361, which governs the VR program, since the Supported Employment program is supplemental to that program.

*Carryover (§ 363.25)*

*Statute:* Section 19 of the Act permits States to carry funds over to a succeeding fiscal year to the extent the State has satisfied any applicable match requirements.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a new § 363.25 that mirrors the carryover requirements under part 361, which governs the VR program. Although section 19 of the Act has always applied to the Supported Employment program, the amendments made by WIOA change the effect of this requirement since States, for the first time, have a match requirement under this program. Therefore, a State would be permitted to carry over the 50 percent of the allotment reserved for serving youth with the most significant disabilities only if it has met the 10 percent match for those funds in the fiscal year in which the funds were awarded. A State would be able to continue to carry over the other half of the allotment, to serve all other individuals, without having to satisfy a match requirement since the statute does not impose a match requirement on that portion of the supported employment allotment.

*Reasons:* The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since the Supported Employment program is supplemental to that program.

*Limitations on Administrative Costs (§ 363.51)*

*Statute:* Section 603(c) of the Act, as amended by WIOA, reduces the limit allowed for administrative costs from 5 percent of the allotment to 2.5 percent. In addition, section 606(b)(7)(H) requires the State to assure in its State plan supplement for the Supported Employment program within the VR section of the Unified or Combined State Plan, that it will not expend more than 2.5 percent of the allotment for administrative costs.

*Current Regulations:* Current § 363.51(b) contains a 5 percent limit. The current regulations do not reference the 2.5 percent limit since this is a new statutory requirement.

*Proposed Regulations:* We propose to amend § 363.51(b) to implement the reduced administrative cost limit of 2.5 percent. We also propose to amend the State plan requirements in § 363.11 accordingly.

*Reasons:* The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA.

*Miscellaneous Changes for Clarity*

*Statute:* Section 603 of the Act, as redesignated by WIOA, sets forth the procedures for allotting and reallocating funds under the Supported Employment program. This statutory provision remained substantively unchanged by WIOA.

*Current Regulations:* Current §§ 363.20 and 363.21 merely cross-reference to statutory provisions regarding procedures for allocating and reallocating funds that are obsolete given revisions made to title VI of the Act by WIOA.

*Proposed Regulations:* We propose to amend §§ 363.20 and 363.21 to mirror the statutory text regarding procedures for allocating and reallocating supported employment funds.

*Reasons:* The proposed changes are necessary to conform to statutory amendments made by WIOA that restructure title VI. The proposed changes would also outline the procedures for allocating and reallocating funds, rather than merely cross-referencing the Act, thereby making the proposed sections more user-friendly.

**Limitation on Use of Subminimum Wages (Proposed 34 Part 397)**

Our discussion of part 397 is presented by subject in the order in which relevant sections appear in this part.

*Purpose and the Department's Jurisdiction*

*Statute:* Section 511 of the Act, as added by WIOA, imposes limitations on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at subminimum wage. Section 511 of the Act also establishes the roles and responsibilities of the designated State units (DSU) for the vocational rehabilitation (VR) program and State and local educational agencies, in assisting individuals with disabilities, including youth with disabilities, who are considering employment, or who are already employed, at a subminimum wage, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the local educational agencies.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 397.1 establishes the purpose of the regulations in this part, which is to set forth requirements the DSUs and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.

This proposed section also states that these regulations should be read in concert with: Part 300, which implements requirements under part B of the Individuals with Disabilities Education Act; part 361, which implements requirements for the VR program; and part 363, which implements the State Supported Employment Services program. We believe this clarification is necessary to ensure all stakeholders understand that nothing in this part is to be construed as altering any requirement under parts 300, 361, or 363.

Other relevant proposed regulations in this part include: § 397.2, regarding the Department's jurisdiction; § 397.3, regarding rules of construction; § 397.4, regarding other applicable regulations; and § 397.5, regarding applicable definitions.

*Reasons:* These proposed regulations are necessary to ensure stakeholders understand the purpose of section 511 of the Act, as added by WIOA, and the Department's authority and jurisdiction under this section, as well as the inter-relationship of these requirements with those under the Individuals with Disabilities Education Act and the VR program and Supported Employment program.

*Coordinated Documentation Process*

*Statute:* Section 511(d) of the Act, as added by WIOA, requires the DSU and the State educational agency to develop a coordinated process, or use an existing process, for providing youth with disabilities documentation demonstrating completion of the various actions required by section 511 of the Act. Other relevant statutory provisions include section 511(a) of the Act, regarding the actions that a youth must complete prior to beginning subminimum wage employment, and section 511(c) of the Act, regarding the actions that individuals with disabilities of any age must complete in order to continue employment at subminimum wage.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 397.10 would require the DSU, in consultation with the State educational agency, to develop a process that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511 of the Act, such as, to name a few, the receipt of transition services by eligible children with disabilities under the Individuals with Disabilities Education Act and pre-employment transition services under section 113 of the Act, as appropriate.

Proposed §§ 397.20 and 397.30 would establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate completion of the various activities, required by section 511(a)(2) of the Act, by a youth with a disability. These would include completing pre-employment transition services under proposed § 361.48(a) and the determination of eligibility or ineligibility for VR services under proposed § 361.42 and § 361.43.

Proposed § 397.40 would establish the documentation that the DSUs must provide to individuals with disabilities of any age who are employed at a subminimum wage upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act.

*Reasons:* These proposed regulations are necessary to implement new statutory requirements. In so doing, these proposed regulations would inform DSUs, State, and local educational agencies of their specific responsibilities related to documentation required under section 511 of the Act and would ensure that individuals with disabilities have sufficient information available to make informed choices.

*Contracting Prohibition*

*Statute:* Section 511(b)(2) of the Act, as added by WIOA, prohibits a local or State educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) from entering into a contract or other arrangement with an entity, which holds a special wage certificate under 14(c) of the FLSA for the purpose of operating a program for a youth under which work is compensated at a subminimum wage.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 397.31 would prohibit a local educational agency or a State educational agency from entering into a contract with an entity that employs individuals at subminimum wage for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. Although section 511(b)(2) of the Act refers to youth in general, the

proposed regulation is limited to youth with disabilities in order to be consistent with all other provisions of section 511 of the Act.

*Reasons:* This proposed section is necessary to implement new statutory requirements. In so doing, this proposed regulation is consistent with the heightened emphasis in the Act, as amended by WIOA, on ensuring that individuals with disabilities, especially youth with disabilities, are given the opportunity to train for and obtain work in competitive integrated employment. While some State and local educational agencies contract with employers who hold special wage certificates under FLSA, others contract with employers who pay minimum wage, to create job training and other work experiences for students with disabilities. Through these training and work experience programs, students with disabilities gain knowledge and skills that transfer into eventual jobs similar to those in which they receive their training, not only with regard to the type of duties performed, but also the wages earned. In the context of this proposed regulation, State and local educational agencies are not employers, but rather partners that facilitate entry of students with disabilities into training programs that are implemented by employers holding special wage certificates under the FLSA. We believe this statutory prohibition, which is contained in the proposed regulations, will result in fewer students with disabilities, participating in training programs at the subminimum wage level. As a result, we believe more students with disabilities, especially those with the most significant disabilities, will have the opportunity to gain work experiences in competitive integrated employment settings which, in turn, will lead to eventual employment outcomes in those settings rather than at the subminimum wage level. With regard to this proposed provision, the Secretary specifically seeks comments regarding the Department's role and jurisdiction with respect to these provisions.

*Review of Documentation Process*

*Statute:* Section 511(e)(2)(B) of the Act, as added by WIOA, permits DSUs, along with the Department of Labor, to review individual documentation held by entities holding special wage certificates under the FLSA to ensure the required documentation for individuals with disabilities, including youth with disabilities, who are employed at the subminimum wage level, is maintained.

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 397.50 would authorize a DSU to review individual documentation, required by this part, for all individuals with disabilities who are employed at the subminimum wage level, that is maintained by employers, who hold special wage certificates under the FSLA.

*Reasons:* This proposed provision is necessary to implement new statutory requirements. In this context, the DSU's role is one of review not enforcement. The Department of Labor retains enforcement authority with respect to these employers under the FLSA.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

*Need for Regulatory Action*

Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' The Department's goal in regulating is to

incorporate the provisions of the Act, as amended by WIOA, into the Department's regulations governing the VR program and Supported Employment program at parts 361 and 363, respectively, as well as to clarify, update and improve these regulations. This regulatory action is also necessary to establish a new part 397 to implement specific the provisions of section 511 of the Act, as added by WIOA, which places limitations on the use of subminimum wages for individuals with disabilities.

*Summary of Potential Costs and Benefits*

The Secretary believes that the proposed changes would substantially improve the programs covered in this NPRM, and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary believes that the proposed regulations represent the least burdensome way to implement the amendments to the Act made by WIOA. Due to the number of proposed regulatory changes, our analysis focuses solely on new requirements imposed by WIOA, organized in the following manner. First, we discuss the potential costs and benefits related to the VR program under section A that specifically address: competitive integrated employment and employment outcomes, pre-employment transition services and transition services, and additional VR program provisions. Second, we discuss the potential costs and benefits related to the Supported Employment program under section B. Finally, we discuss the costs and benefits pertaining to the establishment of proposed part 397 under section C.

Where possible The Department derived estimates by comparing the existing program regulations against the benefits and costs associated with implementation of provisions contained in this WIOA-required NPRM. The Department also made an effort, when feasible, to quantify and monetize the benefits and costs of the NPRM. When we were unable to quantify them—for example, due to data limitations—we describe the benefits and costs qualitatively. In accordance with the regulatory analysis guidance contained in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to individuals with disabilities) of the WIOA-required NPRM. In this analysis, the Department also considers the transfer of benefits from one group to another that do not affect total resources available to the VR program and Supported Employment program. However, in a number of service records the Department is unable to quantify these transfers due to limitations of the data it currently collects. In estimating costs, we used wage rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for State employees.

**A. Vocational Rehabilitation Program Competitive Integrated Employment and Employment Outcomes**

The Act, as amended by WIOA, places heightened emphasis on the achievement of competitive integrated employment by individuals with disabilities, including those with the most significant disabilities. In so doing, Congress added a new term and accompanying definition to the Act—''competitive integrated employment.'' While this is a new statutory term, it represents, in general, a consolidation of two existing regulatory definitions—''competitive employment'' and ''integrated setting.'' As a result of the statutory amendments, we propose to replace the existing regulatory definition of ''competitive employment,'' with the new term ''competitive integrated employment,'' by mirroring the statute and incorporating critical criteria from the existing regulatory definition of ''integrated setting.'' Because this proposed change is more technical than substantive, and given that the substance of the proposed definition already exists in two separate definitions, we believe this particular change will have no significant impact on the VR program.

In addition to proposing to implement the new definition of ''competitive integrated employment,'' we also believe it is necessary to propose changes to the current regulatory definition of ''employment outcome.'' While the Act, as amended by WIOA, made only technical changes to the statutory definition of ''employment outcome,'' we believe a regulatory change is necessary in light of the heightened emphasis throughout the Act on the achievement of competitive integrated employment under the VR program and Supported Employment program. To that end, we propose to define ''employment outcome'' as an outcome in competitive integrated employment or supported employment, thereby eliminating uncompensated employment (*e.g.,* homemakers and unpaid family workers) from the scope of employment outcomes for purposes of the VR program.

To date, the Department has exercised the Secretary's statutory discretion to permit types of employment not specified in the Act as ''employment outcomes'' under the VR program. In so doing, the Department has permitted uncompensated employment, such as work as homemakers and unpaid family workers, to constitute as an employment outcome under the VR program. However, given the heightened emphasis on competitive integrated employment in the Act, as amended by WIOA—from the purpose of the Act to the addition of section 511, the Secretary proposes to amend the current regulatory definition of ''employment outcome'' to include only compensated employment within its scope for purposes of the VR program. Thus, the Secretary intends to ensure that VR funds are no longer diverted for the provision of services that can be appropriately provided, in many cases, by independent living and other programs.

It is difficult to quantify the extent to which the proposed change to the definition of ''employment outcome,'' which has the effect of eliminating homemakers and unpaid family workers from its scope, will affect VR program costs nationally due to a number of highly variable factors. For example, it is not known whether individuals who previously achieved homemaker outcomes will choose to pursue competitive integrated employment through the VR program in the future, or seek out other resources, such as those available from independent living programs. Based on data reported by VR agencies through the VR Case Service Report (RSA–911) for the period beginning in FY 1980 and ending in FY 2013, the percentage of individuals exiting the VR program as homemakers nationally declined significantly from 15 percent of all individuals achieving an employment outcome in fiscal year (FY) 1980 to 1.9 percent in FY 2013 (representing 3,467 of the 182,696 total employment outcomes that year). While the national percentage of homemaker outcomes compared to all employment outcomes is small, some designated State units (DSU) have a greater percentage of homemaker outcomes than others, particularly those serving only individuals who are blind and visually impaired. In FY 2013, the 24 DSUs that only provided services to individuals who are blind and visually impaired reported that 10.5 percent of the 6,121 employment outcomes in that year were homemaker outcomes (or 645 outcomes). DSUs that serve individuals with disabilities other than those with

blindness and visual impairments reported 656 homemaker outcomes in that year, or 0.8 percent of the 84,238 employment outcomes. In addition, the 32 DSUs that serve individuals with all disabilities reported 2,166 homemaker outcomes in FY 2013, representing 2.3 percent of their total 92,337 employment outcomes.

The average cost per employment outcome, including the average cost per homemaker outcome, can be calculated based on data reported by DSUs in the RSA–911 on the cost of purchased services for individuals exiting the VR program with an employment outcome. In FY 2013, the average cost per homemaker outcome for the VR program was $6,626, while the comparable average cost per employment outcome for all individuals exiting the VR program with an employment outcome that year was $5,672. It is possible that this higher average cost is because individuals obtaining a homemaker outcome generally require more intensive services or costly equipment because the nature or severity of their disabilities have prevented them from pursuing competitive integrated employment. However, there may be other factors that drive up the average cost of these outcomes. For example, it may be that some of these individuals originally had a goal of competitive employment, but after receiving services for an intensive or long period of time without obtaining such an outcome, they may have chosen to change their goal. Further analysis is needed to identify the factors that contribute to the average higher cost of homemaker closures.

Given current information reported to the Department by DSUs, we are not able to predict how many individuals who would have possibly had a homemaker outcome might now choose to seek competitive employment. However, for the purpose of providing a gross estimate of these costs, we assume that approximately one-fourth (867) of the number of individuals who exited the VR program with a homemaker outcome will choose a goal of competitive integrated employment and continue to seek services through the VR program. We also assume that obtaining competitive integrated employment for these individuals may be more expensive than the current cost for obtaining a homemaker outcome, but also assume it is unlikely that the average costs for providing services to these individuals would exceed more than 150 percent of their current costs (or approximately 175 percent of the average cost per employment outcome for all agencies in FY 2013). As such, we estimate the additional cost to DSUs to provide VR services to those individuals who previously would have exited the program with a homemaker outcomes would not exceed $3,313 per outcome, or about $2,872,370 per year. Alternatively, assuming that about 75 percent of the number of individuals who would have otherwise attained a homemaker outcome no longer seek services from DSUs (2,600) at an average cost of $6,626, there would be a net savings of $17,227,600 to the VR program. Based on these assumptions, we estimate an overall savings to the VR program of approximately $14,355,230.

We recognize that the proposed change in the definition of employment outcome could potentially increase the demand for services from independent living and other programs that can provide services similar to those that such individuals would have previously sought from the VR program and that some of these savings for the VR program could result in a cost transfer to other Federal, State, and local programs. The Department plans to provide guidance and technical assistance to: (1) Facilitate the transition to the new definition of employment outcome; and (2) minimize the potential disruption of services to current VR program consumers who do not currently have a competitive integrated employment or supported employment goal reflected in their individualized plan for employment. The Department also plans to provide guidance and technical assistance to assist both VR agencies and potential service providers in the referral and acquisition of services for individuals with disabilities seeking services for outcomes other than those covered under the proposed revised definition of employment outcome.

Finally the Department plans to work with other Federal agencies, such as the Administration for Community Living at the Department of Health and Human Services, in identifying any impact of the proposed change on independent living and other related programs and developing strategies to address potential problems.

*Pre-Employment Transition Services and Transition Services*

The Act, as amended by WIOA, places heightened emphasis on the provision of pre-employment transition services and other transition services to students and youth with disabilities, as applicable. As a result, the Secretary proposes to make numerous amendments to the VR program regulations to implement new statutory requirements. A few of those proposed changes are relevant to this regulatory impact analysis discussion.

Foremost among these proposed changes is the requirement that DSUs reserve at least 15 percent of the State's VR allotment for the provision of pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. Additionally, States may not include administrative costs associated with the provision of pre-employment transition services in the calculation of that 15 percent.

The proposed regulation would require DSUs to dedicate resources to: (1) Ensure that the 15 percent is reserved from the State's VR allotment; (2) track the provision of pre-employment transition services to ensure funds were spent solely on authorized services and not on administrative costs; and (3) provide for administrative costs related to pre-employment transition services with non-reserved VR funds.

Second, section 113 of the Act, as added by WIOA, requires VR agencies to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. We propose to interpret the term ''potentially eligible'' to mean all students with disabilities, as defined in proposed § 361.5(c)(51). Prior to the enactment of WIOA, VR agencies were only permitted to provide pre-employment transition services or any other transition services to individuals who had been determined eligible for the VR program and who had an approved individualized plan for employment. In developing the proposed regulation, the Department considered limiting the provision of pre-employment transition services to those students with disabilities who have applied for VR services. However, this alternative interpretation is not proposed because we believe that Congress intended these services to reach a broader group of individuals than those who are eligible under current VR program regulations. The Department's proposed interpretation, which is the broadest possible given the plain meaning of the statute, is consistent with Congressional intent and the stated desires of some VR agencies and other stakeholders.

Although pre-employment transition services are a new category of services identified in the Act, many of these services historically were provided under a more general category of transition services. Therefore, the provision of these services is not new to VR agencies. However, until the enactment of WIOA, all such services

were provided only to those students with disabilities who had been determined eligible for the VR program. Consequently, providing pre-employment transition services to all students with disabilities could increase staff time and resources spent on the provision of these services.

We are unable to estimate the potential increase in DSU administrative costs that may arise from implementation of new section 113 of the Act or the required 15 percent reservation of funds at this time. However, we have attempted to estimate the impact that this 15 percent reservation could have on the VR program as a whole.

Assuming that States are able to match all of the funds provided for the VR program in the FY 2015 VR appropriation, $3,052,453,598, the total aggregate amount of VR funds that would be required to be reserved for pre-employment transition services from all 80 State VR agencies would be $457,868,040. Because each State VR agency must reserve a portion of its allotment, it will now have fewer funds available to use for all other authorized activities, thereby reducing the available resources for services other than pre-employment transition services. The extent of the impact of the reservation on a particular State will depend largely on the extent to which it has been providing transition services to students with disabilities that are now specified under section 113 as pre-employment transition services. States that currently provide extensive transition services to students with disabilities, including services that would meet the definition of pre-employment transition services, are likely to see less transfer of benefits among eligible individuals served by their agency. For States that have not provided such services or have only provided such services to this population to a small extent, there may be more extensive transfers of services and benefits of the VR program among individuals (*i.e.,* to students with disabilities and away from other individuals who otherwise would have been served).

Ultimately, the total value of the benefits transfer is equivalent to the difference between the amount reserved by States under this provision (we assume here $457,868,040) and the cost of providing pre-employment transition services to students with disabilities who have such services outlined in their individualized plan for employment (*i.e.,* those who would receive such services in the absence of the mandated reservation).

Based on data reported through the RSA–911 for FY 2013, the service records for 206,050 transition-age youth (individuals ages 14 to 24 at the time of application) were closed, of which 123,119 received services. A portion of those served may qualify as students with a disability that would be able to receive pre-employment transition services. In FY 2013, of the 123,119 transition-age individuals who received services, 98,212 were aged 16 through 21, and most closely represent the population of ''students with a disability'' as defined under proposed regulations. DSUs expended a total of $503,208,438 on the purchase of VR services for these individuals, for an average cost of $5,124 per individual. Recognizing that the 98,212 students include only those who have applied for VR services and that under proposed regulations DSUs would provide pre-employment transition services to students with disabilities prior to their application for VR services, we anticipate that DSUs will be providing these services to a potentially larger number of students with disabilities with the reserved funds.

We emphasize that this is an estimate based on assumptions and that we cannot more definitively project the transfer of benefits across the VR program related to the provision of pre-employment transition services due to both the unknown number of students in each State and nationally who may receive these services and the specific services that will be provided.

Third, section 103(b)(7) of the Act, as added by WIOA, permits VR agencies to provide transition services to groups of youth and students with disabilities. To that end, we propose to add § 361.49(a)(7) to implement this requirement. In so doing, DSUs would be permitted to provide transition services to groups of students and youth with disabilities, who may not have applied, or been determined eligible, for VR services.

The proposed regulation benefits VR agencies in two significant ways: (1) It would give them the ability to serve groups of youth and students with disabilities simultaneously, who may need only basic generalized services, thereby reducing the amount of cost expended per individual; and (2) it would reduce administrative burden on the VR agencies, as well as the burden on students or youth with disabilities and their families, by not having to engage in processes for determining eligibility, conducting assessments, and developing individualized plans for employment. However, we have not attempted to quantify the impact of this provision due to the variability in the number of individuals that may seek out these services nationally, the degree to which individuals would require these services within each State, and the services that would be provided in each State.

*Additional Vocational Rehabilitation Program Provisions*

*VR Services Portion of the Unified or Combined State Plan*

WIOA requires the VR State plan, which has been a stand-alone State plan, to be submitted as a VR services portion of a State's Unified or Combined State Plan for all six core programs of the workforce development system. Requirements related to the submission of Unified or Combined State Plans do not take effect until July 2016.

In preparing for the transition to the submission of Unified or Combined State Plans every four years, with modifications submitted every two years, we propose to amend regulations governing the annual submissions of certain reports and updates. In so doing, we would no longer require the submission of these particular reports and updates annually, but rather, they would be included in the VR services portion of the Unified or Combined State Plan and would be submitted at such time and in such manner as determined by the Secretary. This flexibility would allow for VR program-specific reporting to be done in a manner consistent with those for the Unified or Combined State Plan under sections 102 or 103 of WIOA, thus avoiding additional burden or costs to DSUs through the submission of separate reports annually or whenever updates are made.

Section 101(a) of the Act, as amended by WIOA, requires DSUs to include additional descriptive information in the VR services portion of the Unified or Combined State Plan. Therefore, we propose to amend part 361 by requiring that DSUs describe in the VR services portion of the Unified or Combined State Plan the results of the comprehensive statewide needs assessment with respect to the needs of students and youth with disabilities for pre-employment transition services and other transition services, as appropriate; to identify goals and priorities to address these needs; and to describe strategies for the achievement of these goals. We also propose that the VR services portion of the Unified or Combined State Plan include a description of how the DSU will work with employers to identify competitive integrated employment opportunities

and career exploration opportunities, in order to facilitate the provision of VR services, and transition services for youth with disabilities and students with disabilities, such as pre-employment transition services. We also propose that the VR services portion of the Unified or Combined State Plan contain a description of collaboration with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act, the State agency responsible for providing services for individuals with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable. As a result, DSUs would be required to expend additional effort in the development of these descriptions beyond the 25 hours currently estimated for the development and submission of the entire State plan, now the VR services portion of the Unified or Combined State Plan. We estimate that DSUs will require an additional five hours for the development of these descriptions, for a total of 30 hours per agency. At an average hourly rate of $39.78 (based on data obtained from the Bureau of Labor Statistics for State government management occupations), a rate more consistent with State rates of pay than the $22.00 per hour used to calculate current costs, each DSU would expend $1,193 in the development of and submission of the VR services portion of the Unified or Combined State Plan, resulting in a total of $95,472 for all 80 DSUs. Although these costs are significantly higher than the current estimate of $2,000 incurred by all 80 DSUs in the development and submission of the State plan, we believe that the additional burden is more accurate and outweighed by the benefit to the public through a more comprehensive understanding of the activities DSUs engage in to assist individuals with disabilities to obtain the skills necessary to achieve competitive integrated employment in job-driven careers.

*Order of Selection*

Section 101(a)(5) of the Act, as amended by WIOA, permits DSUs, at their discretion, to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are receiving VR services under an order of selection or their assignment to a priority category. Therefore, we propose to amend part 361 to implement this new statutory requirement. It is important to note that DSUs implementing an order of selection are not required to use this authority; rather, they may choose to do so based upon agency policy, or the availability of financial and staff resources. DSUs implementing an order of selection would be required to state in the VR services portion of the Unified or Combined State Plan whether they have elected to exercise this discretion, thereby signaling a decision to serve eligible individuals who otherwise might have been placed on a waiting list under the State's order of selection, and who are at risk of losing their employment. This proposed change would increase flexibility for a State managing its resources. If a State were to implement this flexibility, it could prevent an individual from losing employment by avoiding a delay in services. On the other hand, DSUs that elect to implement this option would potentially need to reallocate resources to cover expenditures for services or equipment for individuals who meet the qualifications of this provision, and fall outside the open priority category of a DSU's order of selection.

For FY 2015, the State Plans of 34 of the 80 DSUs documented that the agency had established an order of selection, one agency more than in FY 2014. This total includes 8 percent of the 24 DSUs serving only individuals who are blind and visually impaired and 57 percent of the 56 other DSUs. Based on data reported through the RSA–911 in FY 2013, 17 percent of the individuals whose service records were closed and who received services were employed at application, with an average cost of purchased services $4,744. In addition, according to data reported through the VR program Cumulative Caseload (RSA–113) report, 33,856 individuals were on a waiting list for VR services at the close of FY 2013 due to the implementation of an order of selection. Assuming that 17 percent of the 33,856 individuals on the waiting list could potentially benefit from the provision of services and equipment to maintain employment, a possible 5,756 individuals could benefit from the proposed regulatory change for a total cost of $27,306,464. This figure represents the potential reallocation of resources to cover the cost of services for individuals who, prior to enactment of WIOA, may have not received them, and away from eligible individuals who would have received services based on a VR agency's order of selection policy.

However, the implementation of an order of selection by individual DSUs may differ from year to year, as well as within a given fiscal year. In fact, not all DSUs that indicate they have established an order of selection as part of their State Plan actually implement that order or report that they had individuals on a waiting list during the year. In addition, we are unable to predict which DSUs on an order of selection would choose this option. The degree to which individuals will be referred for this service will also vary widely, as will the level of services or equipment that an individual could need to maintain employment.

*Reports, Standards, and Indicators*

As a result of amendments to the Act made by WIOA, we propose to revise § 361.40 to reflect changes to reporting requirements in section 116(b) in title I of WIOA and amendments to section 101(a)(10) of the Act. Section 361.40, as proposed, does not list the actual data to be reported, but rather requires the collection and reporting of the information specified in sections 13, 14, and 101(a)(10) of the Act. New requirements under section 101(a)(10) include the reporting of data on the number of: Individuals with open service records and the types of services these individuals are receiving (including supported employment); students with disabilities receiving pre-employment transition services; and individuals referred to State VR programs by one-stop operators and individuals referred to such one-stop operators by State VR programs. The RSA–911 would be revised as described in the information collection published for comment elsewhere in this issue of the **Federal Register**, consistent with the requirements in proposed § 361.40.

Proposed 361.40 also would require States to report the data necessary to assess VR agency performance on the standards and indicators subject to the performance accountability provisions described in section 116 of WIOA. The common performance accountability measures apply to all core programs of the workforce development system and will be implemented in joint regulations set forth in subpart E of part 361. The impact analysis of these regulations are addressed in the joint regulations.

We estimate that each DSU will need an additional 15 minutes per VR counselor to collect the new VR-specific data required by Section 101(a)(10) of the Act. Estimating an average of 125 counselors per DSU, the number of hours per DSU would increase by 31.25 for a total increase of 2,500 hours for all 80 DSUs. The estimated cost per DSU, using an hourly wage of $22.27 (based on data from the Bureau of Labor Statistics for State-employed VR counselors), would result in an increase

of $695.94 per DSU and a total increase of $55,675 for all 80 DSUs.

In addition, we estimate the burden hours for submission of the entire RSA–911 data file per DSU would increase from 50 hours per agency to 100 hours per agency, representing an increase of 50 hours due to the need to report all open case data on a quarterly basis (rather than only data for closed service records on an annual basis). The total number of hours needed for the submission of the data file for 80 agencies would increase from 4,000 to 8,000 hours. Using an average hourly wage rate of $33.63 (based on data from the Bureau of Labor Statistics State-employed database administrators), the estimated cost per DSU would be $3,363, and the estimated cost for all 80 DSUs would be $269,040. The total burden hours for both collection and submission would be 131.25 hours per DSU or a total of 10,500 hours for all 80 DSUs. The estimated total burden cost for both collection and submission per DSU would be $4,059, with a total burden cost of $324,715 for all 80 DSUs.

Finally, DSUs will incur expenses related to programming and modifications of data retrieval systems as a result of the revisions to the RSA–911 and its instructions due to the new VR-specific data required under section 101(a)(10) of the Act. The costs are one-time, first-year costs. The burden on the DSUs related to the programming of their case management systems as a result of the redesigned RSA–911 will vary widely because agencies themselves range in size and the sophistication of their information technology systems. Roughly half of the 80 DSUs use case management and reporting systems purchased from software providers who are responsible for maintaining and updating software. We estimate those DSUs would experience no or minimal increases in cost burden. The remaining DSUs have developed their own case management systems for which changes will be made by their information technology staff or outside contractors. Approximately, half of these DSUs would make the changes internally and half would contract for the changes to be made.

We estimate those 20 DSUs that own, maintain, and update internal case management and reporting systems will expend an average of 240 hours at $44.72 (based on data from the Bureau of Labor Statistics for State-employed computer and information systems managers), for a total of $10,732.80 per DSU. The estimated total burden hours for all 20 DSUs would be 4,800 hours and at a cost of $214,656. We estimate that contractors who provide maintenance and system updates to the 20 DSUs with internal case management systems would need 500 hours per DSU to accomplish the reprogramming of these systems, for a total of 10,000 hours, as a result of the proposed changes to the RSA–911 data file. Using an average hourly wage rate of $39.21 × 100 hours for private sector computer programmers, and a wage rate $67.32 × 400 hours for private sector computer and information system managers (based on Bureau Labor Statistics data for 2013), we estimate these 20 DSUs will incur expenses of $30,849.00 per DSU, or a total cost of $616,980.00.

We believe that these costs are outweighed by the benefits to the VR program because the new information to be reported and having access to more timely information on individuals currently participating in the VR program will better enable the Department and its partners to assess the performance of the program and monitor the implementation of WIOA, particularly as it relates to key policy changes, such as pre-employment transition services and its integration in the workforce development system.

*Extended Evaluation*

In implementing amendments to the Act made by WIOA, we propose to amend current §§ 361.41 and 361.42 by removing requirements related to extended evaluation. Instead, a DSU would be required to use trial work experiences when conducting an exploration of an individual with a significant disability's abilities, capabilities, and capacity to perform in work situations. These proposed revisions would streamline the eligibility or ineligibility determination process for all applicants whose ability to benefit from VR services is in question.

VR program data collected by the Department do not distinguish between individuals who had a trial work experience and those that had an extended evaluation. However, data show that 5,205 individuals exited from the VR program during or after trial work experiences or extended evaluations in FY 2013. DSUs expended a total of $4,385,963 on the provision of services to these individuals for an average cost of $843 per individual. Because we are unable to estimate how many of the 5,205 individuals were in extended evaluation, we cannot quantify either the current or the potential change in costs for this specific group of individuals. Based on the monitoring of VR agencies, it should be noted that the use of these services varies among DSUs, mainly due to variations in opportunities for individuals to participate in trial work experiences, and the extent to which DSUs historically utilized extended evaluation. We believe that the benefits of streamlining the eligibility determination process for applicants whose ability to benefit from VR services is in question and ensuring that ineligibility determinations are based on a full assessment of the capacity of an applicant to perform in realistic work settings outweighs the costs of removing the limited exception to trial work experiences.

*Timeframe for Completing the Individualized Plan for Employment*

Section 102(b) of the Act, as amended by WIOA, requires DSUs to develop individualized plans for employment within 90 days of date of eligibility determination. Consequently, we propose to amend § 361.45 to implement this 90-day requirement. Due to variations in current DSU timelines for the development of the individualized plan for employment, the establishment of a 90-day timeframe by WIOA would ensure consistency across the VR program nationally and the timely delivery of services, thereby improving DSU performance and successful employment outcomes for individuals with disabilities.

We are unable to quantify potential additional costs to DSUs nationwide due to the variance in timelines currently in place. It is likely that States with prolonged timelines beyond 90 days could experience an increase in outlays. For example, an increase in outlays could occur as a result of larger numbers of individuals, with approved individualized plans for employment, beginning to receive VR services at an earlier time than had historically been the case. However, while the overall cost per individual served are not likely to be affected by this proposed provision, the average time before some DSUs incur expenses related to the development of, and provision of services under, individualized plans for employment may be shortened, resulting in a shift of VR program outlays for services sooner than has been experienced. Therefore, in any given fiscal year outlays for these DSUs could be higher. While costs over the life of the service record should not be affected, some VR agencies could find it necessary to implement an order of selection due to the shifting of cost that would have been incurred in a subsequent fiscal year to a prior fiscal year as the result of a larger number of individuals with individualized plans for employment developed within 90

days. As always, DSUs are encouraged to conduct planning that incorporates programmatic and fiscal elements to make projections and assessments of VR program resources and the number of individuals served, utilizing management tools including order of selection, as appropriate.

*Services to Groups of Individuals With Disabilities*

Section 103(b)(8) of the Act, as added by WIOA, permits a DSU to establish, develop, or improve assistive technology demonstration, loan, reutilization, or financing programs designed to promote access to assistive technology. To that end, we propose to amend § 361.49 to implement this new authority. In so doing, we propose to limit the population to be served to individuals with disabilities who have applied, or been determined eligible, for VR services, thereby maintaining consistency with the authority to establish, develop, or improve a community rehabilitation program. We anticipate that this provision will benefit individuals with disabilities and employers through expanded access to assistive technology, reflecting the integral role assistive technology plays in the vocational rehabilitation and employment of individuals with disabilities. However, by limiting the use of this authority to services and activities that benefit applicants and eligible individuals, we ensure that this authority is used in coordination with, rather than to supplant, services and activities provided under the Assistive Technology Act. We have not attempted to quantify additional costs associated with this provision due to the variable nature of the specific assistive technology needs of VR program participants, and the availability of assistive technology demonstration, loan, reutilization, or financing programs within each State.

*Maintenance of Effort Requirements*

Section 111(a) of the Act, as amended by WIOA, requires the Secretary to reduce any subsequent fiscal year VR award to satisfy a maintenance of effort (MOE) deficit in a prior year. As a result, we propose to amend § 361.62 to implement this new requirement. Prior to the enactment of WIOA, the Secretary could only reduce the subsequent year's grant to satisfy an MOE deficit from the preceding fiscal year. If a MOE deficit was discovered after it was too late to reduce the succeeding years grant, the Secretary was required to seek recovery through an audit disallowance, whereby the State repaid the deficit amount with non-Federal funds.

Because the Secretary is now able to reduce any subsequent year's VR grant for any prior year's MOE deficit, DSUs benefit as they are no longer required to repay MOE shortfalls with non-Federal funds, thereby increasing the availability of non-Federal funds, in those instances, for obligation as match under the VR program. Since FY 2010, two States were required to pay a total of $791,342 in non-Federal funds related to MOE penalties because their MOE shortfall was not known at the time the reduction in Federal funds would have been authorized. As a result, these funds were unavailable to be used as matching funds for the VR program in the year they were paid. On the other hand, the new authority could have resulted in the deduction of the $791,342 MOE penalties from a future Federal award.

**B. The Supported Employment Program Services To Youth With the Most Significant Disabilities in Supported Employment**

Section 603(d) of the Act, as amended by WIOA, requires DSUs to reserve 50 percent of their supported employment State grant allotment to provide supported employment services, including extended services, to youth with the most significant disabilities. This new statutory requirement is consistent with the heightened emphasis throughout the Act on the provision of services to youth with disabilities, especially those with the most significant disabilities. To that end, we propose to amend part 363 to implement this new requirement. The proposed changes are consistent with proposed changes to the VR program regulations, since the Supported Employment program is supplemental to that program.

After setting aside funds to assist in carrying out section 21 of the Act, the FY 2015 Federal appropriation provides $27,272,520 for distribution to DSUs under the Supported Employment State Grants. Assuming that States are able to provide the required 10 percent non-Federal match for the available Supported Employment formula grant funds in FY 2015, the 50 percent reservation would result in the dedication of $13,636,260 for supported employment services to youth with the most significant disabilities. Conversely, the reserved funds would not be available for the provision of supported employment services to individuals who are not youth with the most significant disabilities.

*Match Requirements for Funds Reserved for Serving Youth With the Most Significant Disabilities in Supported Employment*

Section 606(b) of the Act, as amended by WIOA, requires States to provide a ten percent match for the 50 percent of the supported employment allotment reserved for providing supported employment services, including extended services, to youth with the most significant disabilities. We propose to implement this requirement in part 363. To date, the supported program has not had a match requirement.

As stated above, $27,272,520 is available for formula grants to States under the Supported Employment program for FY 2015. The 10 percent match requirement would generate $1,515,140 in non-Federal funds for supported employment services that will benefit youth with the most significant disabilities. In addition, if the appropriation increases in future years, the match requirement would result in additional supported employment resources for youth with the most significant disabilities. However, States will have to identify additional non-Federal resources in order to match the Federal funds reserved for this purpose.

*Extended Services*

Title VI of the Act, as amended by WIOA, permits DSUs to provide extended services to youth with the most significant disabilities, using the funds reserved for the provision of supported employment services to this population. These services may be provided for a period up to four years. To that end, we propose to amend part 363 to implement this requirement. Prior to the enactment of WIOA, DSUs were not permitted to provide extended services to individuals of any age. Under the Act, as amended by WIOA, DSUs still may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities. Since extended services have not previously been an authorized activity with the use of VR or supported employment funds, this proposed change could have significant impacts on States.

Nonetheless, we want to make clear that DSUs are not required to provide extended services to youth with the most significant disabilities, but rather are permitted to do so, thereby creating a funding source for the services that previously was not available.

*Extension of Time for the Provision of Supported Employment Services*

We propose to amend the definition of supported employment services in § 361.5(c)(54) to implement the statutory change made by WIOA that extends the provision of supported employment services from 18 to 24 months. The definition of supported employment services applies to both the VR program and Supported Employment program. In addition, under both current and proposed regulations, DSUs have the authority to exceed this time period under special circumstances if jointly agreed to by the individual and the rehabilitation counselor.

The statutory change implemented in these proposed regulations would benefit individuals with the most significant disabilities who require ongoing support services for a longer period of time to achieve stability in the employment setting, prior to full transition to extended services. This provision could result in DSUs using more resources under both the VR program and Supported Employment program to provide ongoing services.

DSUs typically have not provided ongoing support services for a full 18 months. In FY 2013, 15,458 individuals achieved supported employment outcomes within 21 months following the development of the individualized plans for employment, which period we assume could include the provision of supported employment services for a full 18 months and a minimum period of 90 days prior to case closure. Of these individuals, 10,608, or approximately 69 percent, achieve supported employment outcomes within 12 months. While we anticipate that most individuals may not need supported employment services for the full period of 24 months, in FY 2013, 1,759 individuals achieved supported employment outcomes within a period ranging from 21 months to 27 months of the development of the individualized plan for employment. DSUs expended $13,257, 816 on purchased services for these individuals, or an average of $7,537 per individual. Assuming this period includes the provision of supported employment services for a full 24 months and a minimum period of 90 days prior to case closure we estimate that an approximate number of individuals would benefit from the provision of supported employment services for an additional six months and that DSUs would incur similar costs for the provision of these services as a result of the proposed regulatory change.

*Limitations on Supported Employment Administrative Costs*

We propose to amend part 363 to implement a new requirement in the Act, as amended by WIOA, that reduces the maximum amount of a State's grant allotment under the Supported Employment program that can be used for administrative costs from 5 percent of the State's grant allotment to 2.5 percent. As a result, a larger portion of Federal supported employment funds must be spent on the provision of supported employment services, including extended services to youth with the most significant disabilities, rather than administrative costs. However, any administrative costs incurred beyond the 2.5 percent limit on the use of Supported Employment funds may be paid for with VR program funds.

Based upon the $27,272,520 available for formula grants to States under the Supported Employment program in FY 2015, the total allowable amount of these Federal funds that can be used to support administrative costs would be reduced by half, from $1,363,626 to $681,813. Thus, for those DSUs that have typically used more than 2.5 percent of their allotment to cover program administrative costs, the new requirement would provide a small increase in the amount of funds available for the provision of services to individuals with the most significant disabilities pursuing a supported employment outcome. DSUs will be able to shift these excess costs to the VR State grants program since it does not have a cap on the amount of administrative funds that can be spent under that program.

**C. Limitations on the Use of Subminimum Wage**

The Act, as amended by WIOA, imposes limitations on the payment of subminimum wages by employers who hold special wage certificates under the Fair Labor Standards Act. The requirements imposed by section 511 and thus proposed in part 397, do not take effect until July 22, 2016.

Pursuant to statutory requirements contained in section 511 of the Act, as added by WIOA, we propose to create a new § 397.10 that would require the DSU, in consultation with the State educational agency, to develop a process, or utilize an existing process, that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511. Proposed §§ 397.20 and 397.30 would establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate an individual's completion of the various activities required by section 511(a)(2) of the Act. These include completing pre-employment transition services under proposed § 361.48(a) and the determination under an application for VR services under proposed §§ 361.42 and 361.43. Proposed § 397.40 would establish the documentation that the DSUs must provide to individuals with disabilities upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act. We have not attempted to quantify the costs to the DSUs related to the provision of this required documentation because the number of youth and other individuals who potentially could receive services under proposed part 397 will vary widely from State to State. In addition, there exists no reliable national data on which to base a calculation of costs. However, DSUs generate documentation throughout the vocational rehabilitation process that may meet the requirements of §§ 397.20 and 397.30, including written notification of a consumer's eligibility or ineligibility, copies of individualized plans for employment and subsequent amendments, and written notification when the consumer's case record is closed. As a result, the utilization of this documentation to meet section 511 requirements should not result in significant additional burden to DSUs.

*Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading: For example, § 361.1 Purpose.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of

this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The 80 entities that administer the VR program and Supported Employment program are State agencies, including those in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

*Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The following sections contain information collection requirements:

• Sections 361.10, 361.12, 361.13, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.23, 361.24, 361.25, 361.26, 361.27, 361.29, 361.30, 361.31, 361.32, 361.34, 361.35, 361.36, 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55, as well as §§ 363.10 and 363.11, pertaining to the VR services portion of the Unified or Combined State Plan and Supplement for Supported Employment Services; and

• Sections 361.40 and 363.52, related to the VR program Case Service Report.

As a result of the amendments to the Act made by WIOA, we propose changes to some of these sections and their corresponding information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the OMB control numbers assigned by OMB to any information collection requirement proposed in this NPRM and adopted in the final regulations, including: 1820–0013 (Cumulative Case Report), 1820–0017 (Annual Vocational Rehabilitation Program/Cost Report), 1820–0500 (VR State Plan), 1820–0508 (VR Case Service Report), 1820–0563 (Annual Report of Appeals), 1820–0693 (Program Improvement Plan), and 1820–0694 (VR Program Corrective Action Plan).

*VR Services Portion of the Unified or Combined State Plan and Supplement for Supported Employment Services (1820–0500)*

Section 101(a) of the Act, as amended by WIOA, adds new content requirements to the State plan, which is now to be submitted as the vocational rehabilitation services portion of the Unified or Combined State Plan under section 102 or 103 of title I of WIOA. As a result, proposed §§ 361.10, 361.18, 361.24, 361.29, and 361.36, along with proposed §§ 363.10 and 363.11, would cause substantive changes to the active and OMB-approved data collection under 1820–0500 (VR State Plan). In addition, the VR State Plan form includes previously approved information collection requirements related to a number of current regulations that remain unchanged as a result of the amendments to the Act. There are also several proposed regulations related to this data collection that necessitate primarily conforming or technical changes to the form.

These current and proposed sections that contain already approved information collection requirements or that do not cause substantive changes to the form include: §§ 361.12, 361.13, 361.15, 361.16, 361.17, 361.19, 361.20, 361.21, 361.22, 361.23, 361.25, 361.26, 361.27, 361.30, 361.31, 361.34, 361.35, 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55. The proposed regulations and other adjustments described here would change the current OMB-approved annual aggregate burden of 1,002,000 hours at $22.00 per hour and estimated total annual costs of $22,044,000.00 for all 80 respondents.

The currently OMB-approved estimated annual burden of 1,002,000 hours for all 80 VR agencies includes a total of 2,000 hours (25 hours per agency) for the preparation and submission of the VR State Plan and a total of 1,000,000 hours (12,500 hours per agency) for record keeping associated with the case management of the individuals who apply for and receive services from the VR program, and Supported Employment program. However, we have determined that the time associated with this record keeping (1,000,000 hours annually for all 80 respondents) is part of the customary and usual business practices carried out by VR agencies, and thus, should not be included in the estimated annual burden for this form.

As previously stated there are a number of proposed regulations in parts 361 and 363 that necessitate substantive changes to the State plan. The most significant of these changes is in proposed § 361.10 and would require VR agencies to submit the VR services portion of the Unified or Combined State Plan to be eligible to receive Federal VR program funds. Proposed § 361.18 would require the VR services portion of the Unified or Combined State Plan to describe the procedures and activities the State agency will take to ensure it employs qualified rehabilitation personnel, including the minimum academic and experience requirements as amended by WIOA. Proposed § 361.24 would require VR agencies to describe their coordination with employers to increase awareness and employment opportunities for individuals with disabilities, as well as coordination with non-educational agencies serving out-of-school youth, and the lead agency and implementing entity for the coordination of activities available under section 4 of the Assistive Technology Act of 1998. Proposed § 361.24 also would require VR agencies to describe in the plan their collaboration, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable, with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act, agencies providing services and supports for individuals with developmental disabilities, and the State agency responsible for providing mental health services. Proposed § 361.29 would require VR agencies to include in the VR services portion of the Unified or Combined State Plan the

results of the comprehensive statewide assessment regarding the needs of students and youth with disabilities for pre-employment transition services and other transition services. In addition, proposed § 361.29 would require the plan to include an estimate of the number of eligible individuals who are not receiving VR services due to the implementation of an order of selection. This proposed section also would require the plan to contain strategies to improve VR services for students and youth with disabilities, to address their needs as identified through the statewide needs assessment, and to provide pre-employment transition services. Proposed § 361.36 would require VR agencies implementing an order of selection to indicate in the plan if they elect to provide services or equipment to individuals with disabilities to enable them to maintain employment, regardless of whether these individuals are receiving services under the order.

There are also proposed regulations in part 363 governing the State Supported Employment Services program that necessitate changes to the VR State Plan form. Proposed § 363.10 would require the State to submit with the VR services portion of the Unified or Combined State Plan a supplement that meets the requirements of § 363.11 to receive a grant under the State Supported Employment Services program. Proposed § 363.11 would require the VR services portion of the Unified or Combined State Plan to describe the quality, scope, and extent of supported employment services to eligible individuals (including youth with the most significant disabilities), the State's goals and priorities with respect to the distribution of funds received under this section, the provision of extended services for a period not to exceed four years, and an assurance to expend no more than 2.5 percent of the award under this part for administrative costs.

The regulations proposed under these sections of parts 361 and 363 would increase the time needed by each VR agency to prepare and submit the VR services portion of the Unified or Combined State Plan and its supported employment supplement from 25 to 30 hours annually.

In addition, the total cost of this data collection may increase due to the proposed adjustment to the average hourly wage rate of State personnel used to estimate the annual burden for this data collection from $22.00 to $39.78, so that wage rates are consistent with data reported by the Bureau of Labor Statistics.

In summary, our new information collection estimate for the VR State plan reflects the removal of the burden associated with the maintenance of case management records for individuals served through the VR program and Supported Employment program, adjustment of the average hourly wage rate for State VR personnel responsible for preparing the VR State plan form, and the increase in the estimated number of hours needed to prepare and submit this data collection due to proposed regulatory changes. As a result of these changes, we estimate a total annual burden of 2,400 hours (30 hours for each of the 80 respondents), at $39.78 per hour, for a total annual cost of $95,472.00.

*VR Case Service Report 1820–0508*

The VR Case Service Report is used to collect annual individual level data on the individuals that have exited the VR program, including individuals receiving services with funds provided under the Supported Employment program. Sections 101(a)(10) and 606 of the Act contain data reporting requirements under the VR program and Supported Employment program, respectively. WIOA amends these sections to require States to report additional data describing the individuals served and the services provided through these programs. In addition, WIOA amends section 106 of the Act by eliminating the current VR evaluation standards and indicators and requiring that the standards and indicators used to assess the performance of the VR program be consistent with the performance accountability measures for the core programs of the workforce development system established under section 116 of WIOA. Consequently, we propose changes to §§ 361.40 and 363.52 that would cause substantive changes to the active and OMB-approved data collection under 1820–0508—the VR Case Service Report (RSA–911). Specifically the proposed regulations described here would change the current OMB-approved annual aggregate burden of 4,000 hours at $40.00 per hour and estimated total annual costs of $160,000.00 for all 80 respondents.

The most significant proposed change to this data collection affects the time at which data is collected as well as the frequency with which data is collected. Under the current approved form, VR agencies annually report data on each individual whose case file is closed after exiting the VR program in that fiscal year. However, new statutory requirements would necessitate the reporting of data for both current program participants (open service records), as well as individuals who have exited the program (closed records) on a quarterly basis. Specifically, proposed § 361.40 would require a State to ensure in the VR services portion of the Unified or Combined State Plan that it will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act. New reporting requirements under section 101(a)(10)(C) of the Act include data on the number of: Individuals currently receiving services (open records) and the types of services they are receiving, students with disabilities receiving pre-employment transition services, and individuals referred to the State VR program by one-stop operators and those referred to such one-stop operators by the State VR program. In addition, proposed § 363.52 would require States to report separately data regarding eligible youth receiving supported employment services under parts 361 and 363.

Proposed § 361.40 also would require States to report the data necessary to assess VR agency performance on the standards and indicators subject to the performance accountability provisions described in section 116 of WIOA. The common performance accountability measures established under section 116 of WIOA apply to all core programs of the workforce development system and will be implemented in joint regulations set forth in subpart E of part 361.

Because these new requirements would necessitate the reporting of data for both current program participants (open service records) as well as individuals who have exited the program (closed service records) on a quarterly basis, estimated data collection and reporting burden will increase. However, we propose to reduce the burden to respondents by eliminating redundant elements and reorganizing some existing elements of the form. The regulations proposed under this section will increase the total annual burden for the 80 respondents by 4,000 hours. We estimate the total annual reporting burden to be 8,000 hours at $33.63 per hour (a rate more consistent with the rate reported through the Bureau of Labor Statistics for State-employed database administrators), for a total annual cost of $269,040.00.

*Related OMB-Approved Data Collections That Remain Unchanged*

The regulations proposed through this NPRM do not cause substantive changes to the OMB-approved annual burden, respondents, or costs for the following OMB-approved data collections:

*1820–0013 Cumulative Caseload Report*

In the Cumulative Caseload Report State VR agencies report cumulative aggregate data on individuals served in the various stages of the VR process and services provided. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 320 annual burden hours at $30.00 per hour with 80 respondents reporting quarterly for a total of 320 responses, and total annual costs of $9,600.00.

*1820–0017 Annual Vocational Rehabilitation Program/Cost Report*

Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 320 annual burden hours at $30.00 per hour with 80 respondents and annual costs of $9,600.00.

*1820–0563 Annual Report of Appeals*

In this report, State VR agencies submit data on the number of individuals who have requested appeals for decisions made by the DSU pertaining to the provision of services, the types of dispute resolutions used to resolve these appeals, and the outcomes of these appeals. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 160 annual burden hours at $30.00 per hour with 80 respondents and annual costs of $4,800.00.

*1820–0693 Performance Improvement Plan (PIP)*

A Performance Improvement Plan is developed when a VR agency has failed to achieve the required performance level for the evaluation standards and indicators established under section 106 of the Act. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 125 annual burden hours at $30.00 per hour with 5 respondents reporting quarterly for a total of 20 responses, and annual costs of $3,750.00.

*1820–0694 VR Program Corrective Action Plan*

A Corrective Action Plan is required when a DSU is found to be out of compliance with the Federal requirements governing the administration of the VR program through monitoring activities engaged in pursuant to section 107 of the Act. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 975 annual burden hours at $30.00 per hour with 15 respondents reporting quarterly for a total of 60 responses, and annual costs of $29,250.00.

Note that in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published at 2 CFR 200, we require an authorized certifying official for each data collection to certify that the data is true, accurate and complete to the best of his or her knowledge or belief. This requirement does not cause any change to the estimated annual burden related to the preparation and submission of the data collections described in this section of the NPRM.

We have prepared an Information Collection Request (ICR) for these collections. If you want to review and comment on the ICR please follow the instructions listed under the **ADDRESSES** section of this notice. Please note the Office of Information and Regulatory Affairs (OMB) and the Department review all comments on an ICR that are posted at *www.regulations.gov*. In preparing your comments you may want to review the ICR in *www.regulations.gov* or in *www.reginfo.gov*. The comment period will run concurrently with the comment period of the NPRM. When commenting on the information collection requirements, we consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by May 18, 2015. This does not affect the deadline for your comments to us on the proposed regulations.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID ED–2015–OSERS–0001 or via postal mail commercial delivery, or hand delivery. Please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments if your comment relates to the information collection for this rule. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L–OM–2–2E319LBJ, Room 2E115, Washington, DC 20202–4537. Comments submitted by fax or email and those submitted after the comment period will not be accepted. **FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

**Intergovernmental Review**

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

**Assessment of Educational Impact**

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Federalism**

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in §§ 361, 363, and 397 may

have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Numbers: 84.126A State Vocational Rehabilitation Services program; and 84.187 State Supported Employment Services program)

**List of Subjects**

*34 CFR Part 361*

Administrative practice and procedure, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

*34 CFR Part 363*

Grant programs-education, Grant programs-social programs, Manpower training programs, Reporting and recordkeeping requirements, and Vocational rehabilitation.

*34 CFR Part 397*

Individuals with disabilities, Reporting and recordkeeping requirements, Students, Vocational rehabilitation, Youth.

Dated: March 6, 2015.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend title 34 of the Code of Federal Regulations as follows:

■ 1. Part 361 is revised to read as follows:

## PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM


**Subpart A—General**

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**Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services**

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361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.
361.57 Review of determinations made by designated State unit personnel.

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361.60 Matching requirements.
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361.62 Maintenance of effort requirements.
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361.64 Obligation of Federal funds.
361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

**Subpart D—[Reserved]**

**Subpart E—[Reserved]**

**Subpart F—[Reserved]**


**Authority:** Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), unless otherwise noted.

## Subpart A—General

### § 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program, the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation programs, each of which is—

(a) An integral part of a statewide workforce development system; and

(b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with

disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(Authority: Section 100(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 720(a))

**§ 361.2 Eligibility for a grant.**

Any State that submits to the Secretary a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a))

**§ 361.3 Authorized activities.**

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(b) Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Section 111(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 731(a)(1))

**§ 361.4 Applicable regulations.**

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 361.

(c) 2 CFR part 190 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) as adopted in 2 CFR part 3485.

(d) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted in 2 CFR part 3474.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 361.5 Applicable definitions.**

The following definitions apply to this part:

(a) Definitions in EDGAR 77.1.

(b) Definitions in 2 CFR part 200 subpart A.

(c) The following definitions:

(1) *Act* means the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

(2) *Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for—

(i) Quality assurance;

(ii) Budgeting, accounting, financial management, information systems, and related data processing;

(iii) Providing information about the program to the public;

(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4);

(v) The State Rehabilitation Council and other advisory committees;

(vi) Professional organization membership dues for designated State unit employees;

(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds, but not including capital expenditures as defined in 2 CFR 200.13;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;

(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with mediation and impartial due process hearings under § 361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Sections 7(1) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1) and 709(c))

(3) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(4) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(5) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

(*1*) To determine if an individual is eligible for vocational rehabilitation services; and

(*2*) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in

accordance with confidentiality requirements—

(*1*) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

(*2*) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2) and 709(c))

(6) *Assistive technology terms.*

(i) *Assistive technology* has the meaning given such term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(ii) *Assistive technology device* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term *individuals with disabilities* will be deemed to mean more than one individual with a disability as defined in paragraph (20)(A) of the Act.

(iii) *Assistive technology service* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term—

(A) *Individual with a disability* will be deemed to mean an individual with a disability, as defined in paragraph (20)(A) of the Act; and

(B) *Individuals with disabilities* will be deemed to mean more than one such individual.

(Authority: Sections 7(3) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(3) and 709(c))

(7) *Community rehabilitation program*

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Customized employment.

(P) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Q) Personal assistance services.

(R) Services similar to the services described in paragraphs (A) through (Q) of this definition.

(ii) For the purposes of this definition, *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Section 7(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(4))

(8) *Comparable services and benefits.*

(i) *Comparable services and benefits* means services and benefits, including accommodations and auxiliary aids and services, that are—

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

(9) *Competitive integrated employment* means work that—

(i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under in the applicable State or local minimum wage law;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

(10) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

(iv) The expansion, remodeling, alteration, or renovation of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the acquisition of land or existing buildings, or the and construction, expansion, remodeling, or alteration of community rehabilitation facilities;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(6) and 709(c))

(11) *Customized employment* means competitive integrated employment, for an individual with a significant disability, that is—

(i) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(ii) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(iii) Carried out through flexible strategies, such as—

(A) Job exploration by the individual; and

(B) Working with an employer to facilitate placement, including—

(*1*) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(*2*) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(*3*) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(*4*) Providing services and supports at the job location.

(Authority: Section 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(7) and 709(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated, in accordance with § 361.13(a), to administer, or supervise the local administration of, the vocational rehabilitation services portion of the Unified or Combined State Plan. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the Unified or Combined State Plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in § 361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11), 12(c), 100(a), and 102(b)(3)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 720(a), and 722(b)(4)(A))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program, as defined in paragraph (c)(17) of this section, to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a public or nonprofit community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year;

(B) 75 percent of staffing costs for the second year;

(C) 60 percent of staffing costs for the third year; and

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures and activities related to the establishment, development, or improvement of a public or nonprofit community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(19) *Extended services* means ongoing support services and other appropriate services that are—

(i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment;

(iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and

(v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.

(Authority: Sections 7(13), 12(c), and 604(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 709(c) and 795i)

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(21) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985, that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(j).

(Authority: Sections 12(c) and 102(c)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(6))

(22) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(b)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

(23) *Governor* means a chief executive officer of a State.

(Authority: Section 7(15) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(15))

(24) *Impartial hearing officer.* (i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the Unified or Combined State Plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(16))

(25) *Indian; American Indian; Indian American; Indian Tribe.*

(i) *In general.* The terms ''Indian'', ''American Indian'', and ''Indian American'' mean an individual who is a member of an Indian tribe and include a Native and a descendant of a Native, as such terms are defined in subsections (b) and (c) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(ii) *Indian tribe.* The term ''Indian tribe'' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19))

(26) *Individual who is blind* means a person who is blind within the meaning of applicable State law.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(27) *Individual with a disability,* except as provided in paragraph (c)(28)of this section, means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

(28) *Individual with a disability,* for purposes of §§ 361.5(c)(13), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(8), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(B))

(29) *Individual with a most significant disability* means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E) and 101(a)(5)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(E) and 721(a)(5)(C))

(30) *Individual with a significant disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

(31) *Individual's representative* means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Sections 7(22) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(22) and 709(c))

(32) *Integrated setting* means—

(i) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals; and

(ii) With respect to an employment outcome, means a setting—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.,* customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(33) *Local workforce development board* means a local board, as defined in section 3 of the Workforce Innovation and Opportunity Act.

(Authority: Section 7(25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(25))

(34) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

*(i)Examples:* The following are examples of expenses that would meet the definition of *maintenance.* The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

*Example 1:* The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

*Example 2:* The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

*Example 3:* The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(ii) [Reserved]

(35) *Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in § 361.57(d) by a qualified and impartial mediator as defined in § 361.5(c)(43).

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(36) *Nonprofit,* with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(26))

(37) *Ongoing support services,* as used in the definition of *supported employment,* means services that—

(i) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(ii) Are identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment;

(iii) Are furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(iv) Include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(v) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(27) and 709(c))

(38) *Personal assistance services* means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are—

(i) Designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability;

(ii) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(iii) Necessary to the achievement of an employment outcome; and

(iv) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 12(c), 102(b)(4)(B)(i)(I)(bb), and 103(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(28), 709(c), 722(b)(4)(B)(i)(I)(bb), and 723(a)(9))

(39) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(6))

(40) *Physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

(41) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(20))

Note to paragraph(c)(41): Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited

in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.,* the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment, or the individual requires assistive technology to maintain the employment; to regain employment, *e.g.,* the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.,* the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(42) *Pre-employment transition services* means the required activities and authorized activities specified in § 361.48(a).

(Authority: Sections 7(30) and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 7(30) and 733)

(43) *Qualified and impartial mediator.* (i) *Qualified and impartial mediator* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings.

(ii) An individual is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(44) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sections 7(32) and (12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32) and 709(c))

(45) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(32) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32))

(46) *Reservation* means a Federal or State Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(Authority: Section 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(e))

(47) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Section 7(24) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24))

(48) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(34) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34))

(49) *State workforce development board* means a State workforce development board, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(35) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(35))

(50) *Statewide workforce development system* means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(36) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(36))

(51) *Student with a disability.* (i) *Student with a disability* means, in general, an individual with a disability who—

(A)(*1*) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(*2*) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(*1*) Is not older than 21 years of age; or

(*2*) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), is not older than that maximum age; and

(C)(*1*) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*); or

(*2*) Is a student who is an individual with a disability, for purposes of section 504.

(ii) *Students with disabilities* means more than one student with a disability.

(Authority: Section 7(37) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37))

(52) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

(53) *Supported employment.* (i) *Supported employment* means—

(A) Competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(*1*) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(*2*) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the designated State unit, in order to perform this work; or

(B) Transitional employment, as defined in paragraph (c)(56) of this section, for individuals with the most significant disabilities due to mental illness, including youth with the most significant disabilities, constitutes supported employment.

(ii) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment.

(Authority: Sections 7(38), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 709(c), and 795g)

(54) *Supported employment services* means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(39), 12(c), and 103(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), and 723(a)(16))

(55) *Transition services* means a coordinated set of activities for a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's needs, taking into account the student's preferences and interests;

(iii) That includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation; and

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(15) and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(15) and (b)(7))

(56) *Transitional employment,* as used in the definition of *supported employment,* means a series of temporary job placements in competitive integrated employment with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(38)(B) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38)(B) and 709(c))

(57) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(8))

*(i) Examples.* The following are examples of expenses that would meet the definition of *transportation.* The examples are purely illustrative, do not address all possible circumstances, and are not intended as substitutes for individual counselor judgment.

*Example 1:* Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

*Example 2:* The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

*Example 3:* Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(ii) [Reserved]

(58) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, means those services listed in § 361.49.

(Authority: Sections 7(40) and 103 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40) and 723)

(59) *Youth with a disability.* (i) *Youth with a disability* means an individual with a disability who is not—

(A) Younger than 14 years of age; and

(B) Older than 24 years of age.

(ii) *Youth with disabilities* means more than one youth with a disability.

(Authority: Section 7(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42))

## Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

### § 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* (1) To be eligible to receive funds under this part for a fiscal year, a State must submit, and have approved, a vocational rehabilitation services portion of a Unified or Combined State Plan in accordance with sections 102 or 103 of the Workforce Innovation and Opportunity Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must satisfy all requirements set forth in this part.

(b) *Separate part relating to the vocational rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the vocational rehabilitation services portion of the Unified or Combined State Plan relating to the vocational rehabilitation of individuals who are blind, that part of the vocational rehabilitation services portion of the Unified or Combined State Plan must separately conform to all applicable requirements under this part.

(c) *Public participation.* Prior to the adoption of any substantive policies or procedures specific to the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of § 361.20.

(d) *Submission, approval, disapproval, and duration.* All requirements regarding the submission, approval, disapproval, and duration of the vocational rehabilitation services portion of the Unified or Combined State Plan are governed by joint regulations set forth in subpart D of this part.

(e) *Submission of policies and procedures.* The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on July 22, 2014.

(f) *Due process.* If the Secretary disapproves the vocational rehabilitation services portion of the Unified or Combined State Plan, the Secretary will follow these procedures:

(1) *Informal resolution.* Prior to disapproving the vocational rehabilitation services portion of the Unified or Combined State Plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(a) and (b) and 107(d) of the Rehabilitation Act of 1973, as amended; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b) and 727(d))

### § 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111 or 603(a) of the Act, as provided by section 107(c) of the Act, if the Secretary determines that—

(1) The vocational rehabilitation services portion of the Unified or Combined State Plan, including the supported employment supplement, has been so changed that it no longer conforms with the requirements of this part or part 363; or

(2) In the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 106 of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 12(c), 101(b), 107(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(b), 727(c) and (d))

## Administration

### § 361.12 Methods of administration.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for

carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Sections 12(c) and 101(a)(6) and (a)(10)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6) and (a)(10)(A))

**§ 361.13 State agency for administration.**

(a) *Designation of State agency.* The vocational rehabilitation services portion of the Unified or Combined State Plan must designate a State agency as the sole State agency to administer the vocational rehabilitation services portion of the Unified or Combined State Plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) *American Samoa.* In the case of American Samoa, the vocational rehabilitation services portion of the Unified or Combined State Plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.* (1) *General.* If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the vocational rehabilitation services portion of the Unified or Combined State Plan;

(ii) Has a full-time director who is responsible for the day-to-day operations of the vocational rehabilitation program;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit;

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency; and

(v) Has the sole authority and responsibility described within the designated State agency in paragraph (a) of this section to expend funds made available under the Act in a manner that is consistent with the purpose of the Act.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.* (1) *Required activities.* At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the one-stop service delivery system established under title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) *Non-delegable responsibility.* The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Authority: Section 101(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2))

**§ 361.14 Substitute State agency.**

(a) *General provisions.* (1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 727(c)(3))

**§ 361.15 Local administration.**

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in § 361.5(c)(47) that is responsible for the administration of the

program within the political subdivision that it serves; and

(2) Develop methods that each local agency will use to administer the vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Sections 7(24) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24) and 721(a)(2)(A))

**§ 361.16 Establishment of an independent commission or a State Rehabilitation Council.**

(a) *General requirement.* Except as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must contain one of the following two assurances:

(1) An assurance that the designated State agency is an independent State commission that—

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(iii) Includes family members, advocates, or other representatives of individuals with mental impairments; and

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

(i) The State has established a State Rehabilitation Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(iv) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under this part to be submitted to the Secretary;

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The vocational rehabilitation services portion of the Unified or Combined State Plan, and any revision to the vocational rehabilitation services portion of the Unified or Combined State Plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in § 361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including its reasons for rejecting any input or recommendation of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency under § 361.13(a)(3) to administer the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

(Authority: Sections 101(a)(21) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(21))

**§ 361.17 Requirements for a State Rehabilitation Council.**

If the State has established a Council under § 361.16(a)(2) or (b), the Council must meet the following requirements:

(a) *Appointment.* (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

(2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) *Composition.* (1) *General.* Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

(iii) At least one representative of the Client Assistance Program established under part 370 of this chapter, who must be the director of or other individual recommended by the Client Assistance Program;

(iv) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the Council if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) In a State in which one or more projects are funded under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects in such State;

(x) At least one representative of the State educational agency responsible for the public education of students with

disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce development board; and

(xii) The director of the designated State unit as an ex officio, nonvoting member of the Council.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council. This provision does not apply to the representative appointed pursuant to paragraph (b)(1)(iii) of this section.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* (1) A majority of the Council members must be individuals with disabilities who meet the requirements of § 361.5(c)(28) and are not employed by the designated State unit.

(2) In the case of a separate Council established under § 361.16(b), a majority of the Council members must be individuals who are blind and are not employed by the designated State unit.

(d) *Chairperson.* (1) The chairperson must be selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) *Terms of appointment.* (1) Each member of the Council must be appointed for a term of no more than three years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council must, after consulting with the State workforce development board—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with § 361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with § 361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the Unified or Combined State Plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

(4) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

(5) Prepare and submit to the Governor and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under chapter 1, title VII of the Act, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

(7) Provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living

Council and centers for independent living within the State; and

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) *Resources.* (1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council must, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 725)

**§ 361.18 Comprehensive system of personnel development.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) *Personnel and personnel development data system.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include the State agency's policies and describe—

(i) Standards that are consistent with any national or State-approved or recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) The establishment and maintenance of education and experience requirements, to ensure that the personnel have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities, including requirements for—

(A)(*1*) Attainment of a baccalaureate degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work, psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with consumers and employers; and

(*2*) Demonstrated paid or unpaid experience, for not less than one year, consisting of—

(*i*) Direct work with individuals with disabilities in a setting such as an independent living center;

(*ii*) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or

(*iii*) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities; or

(B) Attainment of a master's or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment sector, in a disability field, or in both business-related and rehabilitation-related fields; and

(2) As used in this section—

(i) *Profession or discipline* means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State unit; and

(C) Has a specified scope of responsibility.

(ii) *Ensuring that personnel have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities* means that personnel have specialized training and experience that enables them to work effectively with individuals with disabilities to assist them to achieve competitive integrated employment and with employers who hire such individuals. Relevant personnel skills include, but are not limited to—

(A) Understanding the medical and psychosocial aspects of various disabilities;

(B) Assessing an individual's skills and abilities to obtain and retain competitive integrated employment and establishing a plan to meet the individual's career goals;

(C) Counseling, case management, and advocacy to modify environmental and attitudinal barriers;

(D) Understanding the effective utilization of rehabilitation technology;

(E) Developing effective relationships with employers in the public and private sectors and

(F) Delivering job development and job placement services that respond to today's labor market.

(d) *Staff development.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology, including training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003);

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources; and

(iii) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained.

(2) The specific training areas for staff development should be based on the needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Innovation and Opportunity Act and the amendments it made to the Rehabilitation Act of 1973;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

(e) *Personnel to address individual communication needs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit includes among its personnel, or obtains the services of—

(1) Individuals able to communicate in the native languages of applicants and eligible individuals who have limited English proficiency; and

(2) Individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Coordination with personnel development under the Individuals with Disabilities Education Act.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

(Authority: Sections 12(c) and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(7))

**§ 361.19 Affirmative action for individuals with disabilities.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

(Authority: Section 101(a)(6)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(6)(B))

**§ 361.20 Public participation requirements.**

(a) *Conduct of public meetings.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the Unified or Combined State Plan, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(2) For purposes of this section, substantive changes to the policies or procedures governing the provision of vocational rehabilitation services that would require the conduct of public meetings are those that directly impact the nature and scope of the services provided to individuals with disabilities, or the manner in which individuals interact with the designated State agency or in matters related to the delivery of vocational rehabilitation services. Examples of substantive changes include, but are not limited to—

(i) Any changes to policies or procedures that fundamentally alter the rights and responsibilities of individuals

with disabilities in the vocational rehabilitation process;

(ii) Organizational changes to the designated State agency or unit that would likely affect the manner in which services are delivered;

(iii) Any changes that affect the nature and scope of vocational rehabilitation services provided by the designated State agency or unit;

(iv) Changes in formal or informal dispute procedures;

(v) The adoption or amendment of policies instituting an order of selection; and

(vi) Changes to policies and procedures regarding the financial participation of eligible individuals.

(3) Non-substantive, *e.g.,* administrative changes that would not require the need for public hearings include:

(i) Internal procedures that do not directly affect individuals receiving vocational rehabilitation services, such as payment processing or personnel procedures;

(ii) Changes to the case management system that only affect vocational rehabilitation personnel;

(iii) Changes in indirect cost allocations, internal fiscal review procedures, or routine reporting requirements;

(iv) Minor revisions to vocational rehabilitation procedures or policies to correct production errors, such as typographical and grammatical mistakes; and

(v) Changes to contract procedures that do not affect the delivery of vocational rehabilitation services.

(b) *Notice requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) *Summary of input of the State Rehabilitation Council.* The vocational rehabilitation services portion of the Unified or Combined State Plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the vocational rehabilitation services portion of the Unified or Combined State Plan and any amendment to that portion of the plan, in accordance with § 361.16(a)(2)(v).

(d) *Special consultation requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(e) *Appropriate modes of communication.* The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Sections 12(c), 101(a)(16)(A) and 105(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16)(A) and 725(c)(3))

**§ 361.21 Consultations regarding the administration of the vocational rehabilitation services portion of the Unified or Combined State plan.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that, in connection with matters of general policy arising in the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Authority: Sections 101(a)(16)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(16)(B))

**§ 361.22 Coordination with education officials.**

(a) *Plans, policies, and procedures.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services, including pre-employment transition services, in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.

(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with § 361.45 as early as possible during the transition planning process and not later than the time a student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) *Formal interagency agreement.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance, which may be provided using alternative means for meeting participation (such as video conferences and conference calls), to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and implementation of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services;

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition

services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals;

(5) Coordination necessary to satisfy documentation requirements set forth at 34 CFR part 397 with regard to students and youth with disabilities who are seeking subminimum wage employment; and

(6) Assurance that, in accordance with 34 CFR 397.31, neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity, as defined in 34 CFR 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.

(c) *Construction.* Nothing in this part will be construed to reduce the obligation under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) of a local educational agency or any other agency to provide or pay for any transition services that are also considered special education or related services and that are necessary for ensuring a free appropriate public education to children with disabilities within the State involved.

(Authority: Sections 101(a)(11)(D), 101(c), and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721 (a)(11)(D), 721(c), and 794g)

**§ 361.23 Requirements related to the statewide workforce development system.**

As a required partner in the one-stop service delivery system (which is part of the statewide workforce development system under title I of the Workforce Innovation and Opportunity Act), the designated State unit must satisfy all requirements set forth in joint regulations in subpart F of this part.

(Authority: Section 101(a)(11)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(11)(A); Section 121 (b)(1)(B)(iv) of the Workforce Innovation and Opportunity Act; 29 U.S.C. 3151)

**§ 361.24 Cooperation and coordination with other entities.**

(a) *Interagency cooperation.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including the State programs carried out under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), programs carried out by the Under Secretary for Rural Development of the Department of Agriculture, noneducational agencies serving out-of-school youth, and State use contracting programs, to the extent that such Federal, State, and local agencies and programs are not carrying out activities through the statewide workforce development system.

(b) *Coordination with the Statewide Independent Living Council and independent living centers.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit, the Statewide Independent Living Council established under title VII, chapter 1, part B of the Act, and the independent living centers established under title VII, Chapter 1, Part C of the Act have developed working relationships and coordinate their activities.

(c) *Coordination with Employers.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit will work with employers to identify competitive integrated employment opportunities and career exploration opportunities, in order to facilitate the provision of—

(1) Vocational rehabilitation services; and

(2) Transition services for youth with disabilities and students with disabilities, such as pre-employment transition services.

(d) *Cooperative agreement with recipients of grants for services to American Indians.* (1) *General.* In applicable cases, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) *Contents of formal cooperative agreement.* The agreement required under paragraph (d)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living on or near a reservation or tribal service area are provided vocational rehabilitation services;

(iii) Strategies for the provision of transition planning by personnel of the designated State unit, the State educational agency, and the recipient of funds under part C of the Act, that will facilitate the development and approval of the individualized plan for employment under § 361.45; and

(iv) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(e) *Reciprocal referral services between two designated State units in the same State.* If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(f) *Cooperative agreement regarding individuals eligible for home and community-based waiver programs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit has entered into a formal cooperative agreement with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and the State agency with primary responsibility for providing services and supports for individuals with intellectual disabilities and individuals with developmental disabilities, with respect to the delivery of vocational rehabilitation services, including extended services, for individuals with the most significant disabilities who have been determined to be eligible for home and community-based services under a Medicaid waiver, Medicaid State plan amendment, or other authority related to a State Medicaid program.

(g) *Interagency cooperation.* The vocational rehabilitation services portion of the Unified or Combined State Plan shall describe how the designated State agency will collaborate with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), the State

agency responsible for providing services with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable.

(h) *Coordination with assistive technology programs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit, and the lead agency and implementing entity (if any) designated by the Governor of the State under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), have developed working relationships and will enter into agreements for the coordination of their activities, including the referral of individuals with disabilities to programs and activities described in that section.

(i) *Coordination with ticket to work and self-sufficiency program.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit will coordinate activities with any other State agency that is functioning as an employment network under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19).

(Authority: Sections 12(c) and 101(a)(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11))

**§ 361.25 Statewideness.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that services provided under the vocational rehabilitation services portion of the Unified or Combined State Plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

**§ 361.26 Waiver of statewideness.**

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its vocational rehabilitation services portion of the Unified or Combined State Plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

**§ 361.27 Shared funding and administration of joint programs.**

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the designated State agency to share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary for approval a plan that describes its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

(c) If a proposed joint program does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2)(A))

**§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.**

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or contracting for the provision of vocational rehabilitation services with another State agency or a local public agency that is providing part or all of the non-Federal share in accordance with paragraph (c) of this section, if the designated State unit ensures that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection, will apply to all services provided under the cooperative arrangement.

(b) If a third party cooperative arrangement does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(c) The cooperating agency's contribution toward the non-Federal share required under the arrangement, as set forth in paragraph (a) of this section, may be made through:

(1) Cash transfers to the designated State unit; and

(2) Certified personnel expenditures for the time cooperating agency staff spent providing direct vocational rehabilitation services pursuant to a third-party cooperative arrangement that meets the requirements of this section. Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency

staff spent providing services under the arrangement.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.**

(a) *Comprehensive statewide assessment.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every three years. Results of the assessment are to be included in the vocational rehabilitation portion of the Unified or Combined State Plan, submitted in accordance with the requirements of § 361.10(a) and the joint regulations of this part. The comprehensive needs assessment must describe the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part;

(C) Individuals with disabilities served through other components of the statewide workforce development system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(D) Youth with disabilities, and students with disabilities, including

(*1*) Their need for pre-employment transition services or other transition services; and

(*2*) An assessment of the needs of individuals with disabilities for transition services and pre-employment transition services, and the extent to which such services provided under this part are coordinated with transition services provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) in order to meet the needs of individuals with disabilities.

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments at such time and in such manner as the Secretary determines appropriate.

(b) *Annual estimates.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include, and must assure that the State will submit a report to the Secretary (at such time and in such manner determined appropriate by the Secretary) that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under this part and under part § 363, including, if the designated State agency uses an order of selection in accordance with § 361.36, estimates of the number of individuals to be served under each priority category within the order;

(3) The number of individuals who are eligible for services under paragraph (b)(1) of this section, but are not receiving such services due to an order of selection; and

(4) The costs of the services described in paragraph (b)(2) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) *Goals and priorities.* (1) *In general.* The vocational rehabilitation services portion of the Unified or Combined State Plan must identify the goals and priorities of the State in carrying out the program.

(2) *Council.* The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) *Submission.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities at such time and in such manner as determined appropriate by the Secretary.

(4) *Basis for goals and priorities.* The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under § 361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) *Service and outcome goals for categories in order of selection.* If the designated State agency uses an order of selection in accordance with § 361.36, the vocational rehabilitation services portion of the Unified or Combined State Plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) *Strategies.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) The methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to postsecondary life, including the receipt of vocational rehabilitation services under the Act, postsecondary education, employment, and pre-employment transition services;

(3) Strategies developed and implemented by the State to address the needs of students and youth with disabilities identified in the assessments described in paragraph (a) of this section and strategies to achieve the goals and priorities identified by the State to improve and expand vocational rehabilitation services for students and youth with disabilities on a statewide basis;

(4) Strategies to provide pre-employment transition services.

(5) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(6) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(7) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act and section 116 of Workforce Innovation and Opportunity Act; and

(8) Strategies for assisting other components of the statewide workforce development system in assisting individuals with disabilities.

(e) *Evaluation and reports of progress.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary a report that contains the information described in paragraph (e)(1) of this section at such time and in such manner the Secretary determines appropriate.

(Authority: Section 101(a)(15) and (25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(15) and (25))

**§ 361.30 Services to American Indians.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Authority: Sections 101(a)(13) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(13) and 741(b)(3))

**§ 361.31 Cooperative agreements with private nonprofit organizations.**

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Authority: Section 101(a)(24)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(24)(B))

**§ 361.32 Provision of training and services for employers.**

The designated State unit may expend payments received under this part to educate and provide services to employers who have hired or are interested in hiring individuals with disabilities under the vocational rehabilitation program, including—

(a) Providing training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and other employment-related laws;

(b) Working with employers to—

(1) Provide opportunities for work-based learning experiences (including internships, short-term employment, apprenticeships, and fellowships);

(2) Provide opportunities for pre-employment transition services;

(3) Recruit qualified applicants who are individuals with disabilities;

(4) Train employees who are individuals with disabilities; and

(5) Promote awareness of disability-related obstacles to continued employment.

(c) Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive technology, and facilities and workplace access through collaboration with community partners and employers, across States and nationally, to enable the employers to recruit, job match, hire, and retain qualified individuals with disabilities who are recipients of vocational rehabilitation services under this part, or who are applicants for such services; and

(d) Assisting employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

(Authority: Section 109 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 728A)

**§ 361.33 [Reserved]**

**§ 361.34 Supported employment State plan supplement.**

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State has an acceptable plan under part 363 of this chapter that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed revisions, must be submitted as a supplement to the vocational rehabilitation services portion of the Unified or Combined State Plan submitted under this part.

(Authority: Sections 101(a)(22) and 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(22) and 795k)

**§ 361.35 Innovation and expansion activities.**

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, including transition services for students and youth with disabilities and pre-employment transition services for students with disabilities, consistent with the findings of the comprehensive statewide assessment of the rehabilitation needs of individuals with disabilities under § 361.29(a) and the State's goals and priorities under § 361.29(c);

(2) To support the funding of the State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in § 361.17(i); and

(3) To support the Statewide Independent Living Council, consistent with the Statewide Independent Living Council resource plan prepared under title VII, chapter 1 of the Act. The State

and the Statewide Independent Living Council may determine in the Statewide Independent Living Council resource plan that other sources of available funding may be used instead of funding under this section.

(b) The vocational rehabilitation services portion of the Unified or Combined State Plan must—

(1) Describe how the reserved funds will be used; and

(2) Include a report describing how the reserved funds were used.

(Authority: Sections 12(c) and 101(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(18))

**§ 361.36 Ability to serve all eligible individuals; order of selection for services.**

(a) *General provisions.* (1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and § 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the vocational rehabilitation services portion of the Unified or Combined State Plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who apply for the services, the vocational rehabilitation services portion of the Unified or Combined State Plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under § 361.29(c)(5);

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under § 361.37; and

(v) State whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

(b) *Basis for assurance that services can be provided to all eligible individuals.* (1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) A demonstration that circumstances have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year.

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) *Determining need for establishing and implementing an order of selection.* (1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (a)(2) of this section.

(3) If a designated State unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the

order of selection by closing one or more priority categories.

(d) *Establishing an order of selection.* (1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of *individual with a significant disability* in section 7(21)(A) of the Act and § 361.5(c)(29).

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, sex, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual's family.

(e) *Administrative requirements.* In administering the order of selection, the designated State unit must—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) Ensure that its funding arrangements for providing services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) *State Rehabilitation Council.* The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most significant disabilities; and

(4) Administration of the order of selection.

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

**§ 361.37 Information and referral programs.**

(a) *General provisions.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system.

(b) The designated State unit must refer to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program, as defined in § 361.5(c)(15). Before making the referral required by this paragraph, the State unit must—

(1) Consistent with § 361.42(a)(4)(i), explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome as defined in § 361.5(c)(15);

(2) Consistent with § 361.52, provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, to assist the individual to achieve an appropriate employment outcome;

(3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

(4) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as defined in § 361.5(c)(15), he or she can seek services from the designated State unit at a later date if, at that time, he or she chooses to pursue an employment outcome; and

(5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(c) *Criteria for appropriate referrals.* In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce development system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(d) *Order of selection.* In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and § 361.40, the number of eligible individuals who did not meet the agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Authority: Sections 7(11), 12(c), 101(a)(5)(D), 101(a)(10)(C)(ii), and 101(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(5)(D), 721(a)(10)(C)(ii), and 721(a)(20))

**§ 361.38 Protection, use, and release of personal information.**

(a) *General provisions.* (1) The State agency and the State unit must adopt

and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with § 361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

**§ 361.39 State-imposed requirements.**

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulation, or guideline.

(Authority: Section 17 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 714)

**§ 361.40 Reports; Evaluation standards and performance indicators.**

(a) *Reports.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency

will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(i) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services, including students receiving pre-employment transition services in accordance with § 361.48(a); and

(ii) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(A) Permit the greatest possible cross-classification of data; and

(B) Protect the confidentiality of the identity of each individual.

(2) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(b) *Evaluation standards and performance indicators.*

(1) *Standards and indicators.* The evaluation standards and performance indicators for the vocational rehabilitation program carried out under this part are subject to the performance accountability provisions described in section 116(b) of the Workforce Innovation and Opportunity Act and implemented in joint regulations set forth in subpart E of this part.

(2) *Compliance.* A State's compliance with common performance measures and any necessary corrective actions will be determined in accordance with joint regulations set forth in subpart E of this part.

(Authority: Sections 12(c), 101(a)(10)(A) and (F), and 106 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(10)(A) and (F), and 726)

## Provision and Scope of Services

### § 361.41 Processing referrals and applications.

(a) *Referrals.* The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under section 121 of the Workforce Innovation and Opportunity Act. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with § 361.42(e).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate—

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a one-stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.

(Authority: Sections 12(c), 101(a)(6)(A) and 102(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6)(A) and 722(a)(6))

### § 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements.* (1) *Basic requirements.* The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment;

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

(iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.

(2) *Presumption of benefit.* The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome.

(3) *Presumption of eligibility for Social Security recipients and beneficiaries.* (i) Any applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(c)(29).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(4) *Achievement of an employment outcome.* Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits

under title II or title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) *Interim determination of eligibility.* (1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in § 361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(c) *Prohibited factors.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State. The designated State unit may not require the applicant to demonstrate a presence in the State through the production of any documentation that under State or local law, or practical circumstances, results in a duration of residency.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

(i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(ii) The eligibility requirements are applied without regard to the—

(A) Age, sex, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services;

(D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(E) Applicants' employment history or current employment status; and

(F) Applicants' educational status or current educational credential.

(d) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) *Trial work experiences for individuals with significant disabilities.* (1) Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences, which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is sufficient evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) *Data for determination of priority for services under an order of selection.* If the designated State unit is operating under an order of selection for services, as provided in § 361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(2), 12(c), 101(a)(12), 102(a), 103(a)(1), 103(a)(9), 103(a)(10) and 103(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2), 709(c), 721(a)(12), 722(a), 723(a)(1), 723(a)(9), 723(a)(10) and 723(a)(14))

*Note to § 361.42: Clear and convincing evidence* means that the designated State unit has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The

term *clear* means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of ''clear and convincing evidence'' must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37–38 (1992))

**§ 361.43 Procedures for ineligibility determination.**

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual—

(1) To other programs that are part of the one-stop service delivery system under the Workforce Investment Act that can address the individual's training or employment-related needs; or

(2) To Federal, State, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in § 361.5(c)(15).

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Sections 12(c) and 102(a)(5) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(a)(5) and (c))

**§ 361.44 Closure without eligibility determination.**

The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 361.45 Development of the individualized plan for employment.**

(a) *General requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) An individualized plan for employment meeting the requirements of this section and § 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with § 361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the individualized plan for employment.

(b) *Purpose.* (1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

(2) The individualized plan for employment must be designed to achieve a specific employment outcome, as defined in § 361.5(c)(15), that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) *Required information.* The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) *Options for developing an individualized plan for employment.* Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit;

(C) A disability advocacy organization; or

(D) Resources other than those in paragraph (c)(1)(ii)(A) through (C) of this section.

(2) *Additional information.* Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including—

(i) Information describing the full range of components that must be included in an individualized plan for employment;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an individualized plan for employment;

(B) Information on the availability of assistance in completing State unit forms required as part of the individualized plan for employment; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the

development of the individualized plan for employment;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in § 361.57; and

(iv) A description of the availability of a client assistance program established under part 370 of this chapter and information on how to contact the client assistance program.

(3) *Individuals entitled to benefits under title II or XVI of the Social Security Act.* For individuals entitled to benefits under title II or XVI of the Social Security Act on the basis of a disability or blindness, the State unit must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

(d) *Mandatory procedures.* The designated State unit must ensure that—

(1) The individualized plan for employment is a written document prepared on forms provided by the State unit;

(2) The individualized plan for employment is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with § 361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The individualized plan for employment is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the individualized plan for employment and a copy of any amendments to the individualized plan for employment are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The individualized plan for employment is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The individualized plan for employment is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the individualized plan for employment do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit;

(8) The individualized plan for employment is amended, as necessary, to include the postemployment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(9) An individualized plan for employment for a student with a disability is developed—

(i) In consideration of the student's individualized education program or 504 services, as applicable; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under § 361.22.

(e) *Standards for developing the individualized plan for employment.* The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed.

(f) *Data for preparing the individualized plan for employment.* (1) *Preparation without comprehensive assessment.* To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's individualized plan for employment must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the individualized plan for employment of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of § 361.5(c)(5)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment, including information—

(A) Available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Provided by the individual and the individual's family; and

(C) Obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B), 101(a)(9), 102(b), and 103(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2)(B), 721(a)(9), 722(b), and 723(a)(1))

**§ 361.46 Content of the individualized plan for employment.**

(a) *Mandatory components.* Regardless of the approach in § 361.45(c)(1) that an eligible individual selects for purposes of developing the individualized plan for employment, each individualized plan for employment must—

(1) Include a description of the specific employment outcome, as defined in § 361.5(c)(15), that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome);

(2) Include a description under § 361.48 of—

(i) These specific rehabilitation services needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) In the case of a plan for an eligible individual that is a student or youth with a disability, the specific transition services and supports needed to achieve the individual's employment outcome or projected post-school employment outcome.

(3) Provide for services in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(4) Include timelines for the achievement of the employment outcome and for the initiation of services;

(5) Include a description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(6) Include a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(7) Include the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in § 361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(b) *Supported employment requirements.* An individualized plan for employment for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

(5) Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) *Post-employment services.* The individualized plan for employment for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(d) *Coordination of services for students with disabilities.* The individualized plan for employment for a student with a disability must be coordinated with the individualized education program or 504 services, as applicable, for that individual in terms of the goals, objectives, and services identified in the education program.

(Authority: Sections 101(a)(8), 101(a)(9), and 102(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(8), 721(a)(9), and 722(b)(4))

**§ 361.47 Record of services.**

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.

(2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under § 361.42(e) and (f).

(6) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under § 361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment

setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that an individual's individualized plan for employment provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(c)(9)(i).

(10) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(c)(15) or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the annual reviews required under § 361.55, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce development system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's individualized plan for employment contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 12(c), 101(a)(6), (9), (14), and (20) and 102(a), (b), and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), (9), (14), and (20) and 722(a), (b), and (d))

**§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.**

(a) *Pre-employment transition services.* Each State must ensure that the designated State unit, in collaboration with the local educational agencies involved, provide, or arrange for the provision of, pre-employment transition services for all students with disabilities, as defined in § 361.5(c)(51), in need of such services, without regard to the type of disability, from funds reserved in accordance with § 361.65 and any funds made available from State, local, or private funding sources.

(1) *Availability of services.* Pre-employment transition services may be provided to all students with disabilities, regardless of whether an application for services has been submitted.

(2) *Required activities.* The designated State unit must provide the following pre-employment transition services:

(i) Job exploration counseling;

(ii) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(iv) Workplace readiness training to develop social skills and independent living; and

(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(3) *Authorized activities.* Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(i) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(iii) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(iv) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(v) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*);

(vi) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(vii) Developing model transition demonstration projects;

(viii) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(ix) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

(4) *Pre-employment transition coordination.* Each local office of a designated State unit must carry out responsibilities consisting of—

(i) Attending individualized education program meetings for students with disabilities, when invited;

(ii) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(iii) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under this section;

(iv) When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*); and

(b) *Services for individuals who have applied for or been determined eligible for vocational rehabilitation services.* As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(1) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.

(4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, in accordance with §§ 361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) In accordance with the definition in § 361.5(c)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(c)(10)).

(6) Vocational and other training services, including personal and vocational adjustment training, advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in § 361.5(c)(35).

(8) Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(c)(57).

(9) Vocational rehabilitation services to family members, as defined in § 361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(13) Supported employment services in accordance with the definition of that term in § 361.5(c)(54).

(14) Personal assistance services in accordance with the definition of that term in § 361.5(c)(39).

(15) Post-employment services in accordance with the definition of that term in § 361.5(c)(42).

(16) Occupational licenses, tools, equipment, initial stocks, and supplies.

(17) Rehabilitation technology in accordance with the definition of that term in § 361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(18) Transition services for students and youth with disabilities, that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or pre-employment transition services for students.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in § 361.5(c)(11).

(21) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(Authority: Sections 7(37), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 704(37), 723(a), and 733)

**§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.**

(a) The designated State unit may provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program as defined in §§ 361.5(c)(10), 361.5(c)(16) and 361.5(c)(17). Examples of special circumstances include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate

media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) *Management services and supervision* includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) *Initial stocks and supplies* includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students and youth with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities who may not have yet applied or been determined eligible for vocational rehabilitation services, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the State to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an individualized plan for employment goal. Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities who are applicants of or have been determined eligible for vocational rehabilitation services and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title demonstrates—

(i) Such Eligibility;

(ii) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such a degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that—

(A) No training provided at an institution of higher education may be paid for with funds under this program unless maximum efforts have been made by the designated State unit to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(B) Nothing in this paragraph prevents any designated State unit from providing similar support to individuals with disabilities within the State who are eligible to receive support under this title and who are not served under this section.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

**§ 361.50 Written policies governing the provision of services for individuals with disabilities.**

(a) *Policies.* The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) *Payment for services.* (1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Authority: Sections 12(c) and 101(a)(6) of the Rehabilitation Act of 1973, as amended and 29 U.S.C. 709(c) and 721(a)(6))

**§ 361.51 Standards for facilities and providers of services.**

(a) *Accessibility of facilities.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that community rehabilitation programs that receive assistance under part B of title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English proficiency; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

**§ 361.52 Informed choice.**

(a) *General provision.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit and including youth with disabilities), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives, in acquiring information that enables them to exercise informed choice in the development of their individualized plans for employment with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the individualized plan for employment, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(5) Opportunities for individuals to visit or experience various work and service provider settings.

(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

**§ 361.53 Comparable services and benefits.**

(a) *Determination of availability.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(c)(8), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.* (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce development system, to ensure the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services, (other than those services listed in paragraph (b) of this section) that are included in the individualized plan for employment of an eligible individual, including the provision of those vocational rehabilitation services (including, if appropriate, accommodations or auxiliary aids and services) during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the designated State unit and other public entities for the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services, and accommodations or auxiliary aids and services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public

entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services, and accommodations or auxiliary aids and services, other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.* (1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Innovation and Opportunity Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (*e.g.,* interpreter services under § 361.48(j)), and, if appropriate, accommodations or auxiliary aids and services other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

**§ 361.54 Participation of individuals in cost of services based on financial need.**

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under § 361.48(b)(1), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under § 361.42(e).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b)(2).

(C) Vocational rehabilitation counseling and guidance under § 361.48(b)(3).

(D) Referral and other services under § 361.48(b)(4).

(E) Job-related services under § 361.48(b)(12).

(F) Personal assistance services under § 361.48(b)(14).

(G) Any auxiliary aid or service (*e.g.,* interpreter services under § 361.48(b)(10), reader services under § 361.48(b)(11)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), or regulations implementing those laws, in order for the individual to participate in the vocational rehabilitation program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 361.55 Semi-annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.**

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit conducts a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this part—

(1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(c)(15) or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Semi-annually review and reevaluate the status of each individual for two years after the individual's record of services is closed (and annually thereafter) to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive integrated employment;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with § 361.47(a)(10),

with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive integrated employment as defined in § 361.5(c)(9).

(Authority: Sections 12(c) and 101(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(14))

**§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.**

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) *Employment outcome achieved.* The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with § 361.46(a)(1) and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) *Employment outcome maintained.* The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) *Satisfactory outcome.* At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) *Post-employment services.* The individual is informed through appropriate modes of communication of the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

**§ 361.57 Review of determinations made by designated State unit personnel.**

(a) *Procedures.* The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.* (1) *Notification.* Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) *Timing.* Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the individualized plan for employment is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.* Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(ii) Allow an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) *Impact on provision of services.* The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and individualized plan for employment development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) *Ineligibility.* Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) *Informal dispute resolution.* The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) *Mediation.* (1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum,

whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) of this section must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in § 361.5(c)(43), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; or

(C) In accordance with a procedure established in the State for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) *Impartial due process hearings.* The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) *Selection of impartial hearing officers.* The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative.

(g) *Administrative review of hearing officer's decision.* The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under § 361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual's representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) *Implementation of final decisions.* If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) *Civil action.* (1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(c)(21) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.* (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Secretary copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the Secretary to those records for the purposes described in this section.

(Authority: Section 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 722(c))

## Subpart C—Financing of State Vocational Rehabilitation Programs

### § 361.60 Matching requirements.

(a) *Federal share.* (1) *General.* Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the vocational rehabilitation services portion of the Unified or Combined State Plan, including expenditures for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share.* (1) *General.* Except as provided in paragraph (b)(2) and (b)(3) of this section, expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan to meet the non-Federal share under this section must be consistent with the provisions of 2 CFR 200.306(b).

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from those cash contributions provided by private organizations, agencies, or individuals and that are deposited in the State agency's account or, if applicable, sole local agency's account, in accordance with State law prior to their expenditure and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, provided the expenditures do not benefit in any way the donor, employee, officer, or agent, any member

of his or her immediate family, his or her partner, an individual with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial or other interest. The Secretary does not consider a donor's receipt from the State unit of a subaward or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the subaward or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(14), 721(a)(3), 721(a)(4) and 724)

*Example for paragraph (b)(3):* Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (*e.g.,* rehabilitation technology services); serving individuals with certain types of disabilities (*e.g.,* individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (*e.g.,* students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan in accordance with the requirements in § 361.60(b)(3)(ii).

**§ 361.61 Limitation on use of funds for construction expenditures.**

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17)(A))

**§ 361.62 Maintenance of effort requirements.**

(a) *General requirements.* The Secretary reduces the amount otherwise payable to a State for any fiscal year by the amount by which the total expenditures from non-Federal sources under the vocational rehabilitation services portion of the Unified or Combined State Plan for any previous fiscal year were less than the total of those expenditures for the fiscal year two years prior to that previous fiscal year.

(b) *Specific requirements for construction of facilities.* If the State provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the vocational rehabilitation services portion of the Unified or Combined State Plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section is determined based on the total amount of a State's non-Federal expenditures under both parts of the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for any fiscal year under each part of the plan in direct proportion to the amount by which non-Federal expenditures under each part of the plan in any previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to that previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary for consideration as soon as the State has determined that it has failed to satisfy its maintenance of effort requirement due to an exceptional or uncontrollable circumstance, as described in paragraphs (d)(1) and (2) of this section.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17) and 731(a)(2))

**§ 361.63 Program income.**

(a) *Definition.* For purposes of this section, program income means gross income received by the State that is directly generated by a supported activity under this part.

(b) *Sources.* Sources of program income include, but are not limited to: Payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes; payments received from workers' compensation funds; payments received by the State agency from insurers, consumers, or others for services to defray part or all of the costs of services provided to particular individuals; and income generated by a State-operated community rehabilitation program for activities authorized under this part.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan. Program income—

(i) Is considered earned in the fiscal year in which it is received; and

(ii) Must be disbursed during the period of performance of the award, prior to requesting additional cash

payments, in accordance with 2 CFR 200.305(b)(5).

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of title I of the Act (client assistance), title VI of the Act (supported employment), and title VII of the Act (independent living).

(3) The State is authorized to treat program income using the deduction or addition alternative in accordance with 2 CFR 200.307(e)(1) and (2).

(4) Program income cannot be used to meet the non-Federal share requirement under § 361.60.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; 2 CFR part 200)

**§ 361.64 Obligation of Federal funds.**

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 716)

**§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.**

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the vocational rehabilitation services portion of the Unified or Combined State Plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(3) *Reservation for pre-employment transition services.* (i) Pursuant to section 110(d) of the Act, the State must reserve at least 15 percent of the State's allotment, received in accordance with section 110(a) of the Act for the provision of pre-employment transition services, as described at § 361.48(a) of this part.

(ii) The funds reserved in accordance with paragraph (3)(i) of this section—

(A) Must only be used for pre-employment transition services authorized in § 361.48(a); and:

(B) Must not be used to pay for administrative costs associated with the provision of such services or any other vocational rehabilitation services.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the period of performance of the award, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) In the event more funds are requested by agencies than are available, the Secretary will determine the process for allocating funds available for reallotment.

(4) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 12(c), 110 and 111 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 730, and 731)

## Subpart D—[Reserved]

## Subpart E—[Reserved]

## Subpart F—[Reserved]

■ 2. Part 363 is revised to read as follows:

# PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

### Subpart A—General

Sec.
363.1 What is the State Supported Employment Services Program?
363.2 Who is eligible for an award?
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363.4 What are the authorized activities under the State Supported Employment Services program?
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### Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
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### Subpart D—[Reserved]

### Subpart E—[Reserved]

### Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
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363.52 What are the information collection and reporting requirements?
363.53 What requirements must a State meet before it provides for the transition of an individual to extended services?
363.54 When will an individual be considered to have achieved an employment outcome in supported employment?
363.55 What notice requirements apply to this program?

**Authority:** Sections 602–608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795g–795m, unless otherwise noted.

## Subpart A—General

**§ 363.1 What is the State Supported Employment Services Program?**

(a) Under the State supported employment services program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve an employment outcome of supported employment in competitive integrated employment. Grants made under the State supported employment services program supplement a State's vocational rehabilitation program grants under 34 CFR part 361.

(b) For purposes of this part, ''supported employment'' means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals with the most significant disabilities are working

on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the unique strengths, abilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

(1)(i) For whom competitive integrated employment has not historically occurred; or

(ii) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(2) Who, because of the nature and severity of the disability, need intensive supported employment services, and extended services after the transition from support provided by the designated State unit in order to perform the work.

(c) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined at 34 CFR 361.5(c)(9), is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of the individual entering supported employment.

(Authority: Sections 7(38), 7(39), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C., 705(38), 705(39), 709(c), and 795g)

**§ 363.2 Who is eligible for an award?**

Any State that submits the documentation required by § 363.10, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, is eligible for an award under this part.

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

**§ 363.3 Who is eligible for services?**

A State may provide services under this part to any individual, including a youth with a disability, if—

(a) The individual has been determined to be—

(1) Eligible for vocational rehabilitation services in accordance with 34 CFR 361.42; and

(2) An individual with the most significant disabilities;

(b) For purposes of activities carried out under § 363.4(a)(2) of this part, the individual is a youth with a disability, as defined at 34 CFR 361.5(c)(59), who satisfies the requirements of this section; and

(c) Supported employment has been identified as the appropriate employment outcome for the individual on the basis of a comprehensive assessment of rehabilitation needs, as defined at 34 CFR 361.5(c)(5), including an evaluation of rehabilitation, career, and job needs.

(Authority: Section 605 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795j)

**§ 363.4 What are the authorized activities under the State Supported Employment Services program?**

(a) The State may use funds allotted under this part to—

(1) Provide supported employment services, as defined at 34 CFR 361.5(c)(54);

(2) Provide extended services, as defined at 34 CFR 361.5(c)(19), to youth with the most significant disabilities, in accordance with § 363.11(f), for a period of time not to exceed four years; and

(3) With funds reserved, in accordance with § 363.22 for the provision of supported employment services to youth with the most significant disabilities, leverage other public and private funds to increase resources for extended services and expand supported employment opportunities.

(b) Except as provided in paragraph (a)(2) of this section, a State may not use funds under this part to provide extended services to individuals with the most significant disabilities.

(c) Nothing in this part will be construed to prohibit a State from providing—

(1) Supported employment services in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan submitted under 34 CFR part 361 by using funds made available through a State allotment under that part.

(2) Discrete postemployment services in accordance with 34 CFR 361.48(b) by using funds made available under 34 CFR part 361 to an individual who is eligible under this part.

(d) A State must coordinate with the entities described in § 363.50(a) regarding the services provided to individuals with the most significant disabilities, including youth with the most significant disabilities, under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: Sections 7(39), 12(c), 604, 606(b)(6), and 608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), 795i, 795k(b)(6), and 795m)

**§ 363.5 What regulations apply?**

The following regulations apply to the State supported employment services program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§ 361.5, 361.31, 361.32, 361.34, 361.35, 361.39, 361.40, 361.41, 361.42, 361.47(a), 361.48, 361.49, and 361.53.

(d) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted in 2 CFR part 3474.

(e) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted in 2 CFR part 3485.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 363.6 What definitions apply?**

The following definitions apply to this part;

(a) Definitions in 34 CFR part 361.

(b) Definitions in 34 CFR part 77.

(c) Definitions in 2 CFR part 200, subpart A.

(Authority: Sections 7 and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705 and 709(c))

## Subpart B—How Does a State Apply for a Grant?

**§ 363.10 What documents must a State submit to receive a grant?**

(a) To be eligible to receive a grant under this part, a State must submit to the Secretary, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, a State plan supplement that meets the requirements of § 363.11.

(b) A State must submit revisions to the vocational rehabilitation services portion of the Unified or Combined State Plan supplement submitted under this part as may be necessary.

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

**§ 363.11 What are the vocational rehabilitation services portion of the Unified or Combined State Plan supplement requirements?**

Each State plan supplement, submitted in accordance with § 363.10, must—

(a) Designate a designated State unit or, as applicable, units, as defined in 34 CFR 361.5(c)(13), as the State agency or agencies to administer the Supported Employment program under this part;

(b) Summarize the results of the needs assessment of individuals with most significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR 361.29(a), with respect to the rehabilitation and career needs of individuals with most significant disabilities and their need for supported employment services. The results of the needs assessment must also address needs relating to coordination;

(c) Describe the quality, scope, and extent of supported employment services to be provided to eligible individuals with the most significant disabilities under this part, including youth with the most significant disabilities;

(d) Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) Demonstrate evidence of the designated State unit's efforts to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services;

(f) Describe the activities to be conducted for youth with the most significant disabilities with the funds reserved in accordance with § 363.22, including–

(1) The provision of extended services to youth with the most significant disabilities for a period not to exceed four years, in accordance with § 363.4(a)(2); and

(2) How the State will use supported employment funds reserved under § 363.22 to leverage other public and private funds to increase resources for extended services and expand supported employment opportunities for youth with the most significant disabilities;

(g) Assure that—

(1) Funds made available under this part will only be used to provide authorized supported employment services to individuals who are eligible under this part to receive such services;

(2) The comprehensive assessments of individuals with significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR part 361 will include consideration of supported employment as an appropriate employment outcome;

(3) An individualized plan for employment, as described at 34 CFR 361.45 and 361.46, will be developed and updated, using funds received under 34 CFR part 361, in order to—

(i) Specify the supported employment services to be provided, including, as appropriate, transition services and pre-employment transition services to be provided for youth with the most significant disabilities;

(ii) Specify the expected extended services needed, including the extended services that may be provided under this part to youth with the most significant disabilities in accordance with an approved individualized plan for employment for a period not to exceed four years; and

(iii) Identify, as appropriate, the source of extended services, which may include natural supports, programs, or other entities, or an indication that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed;

(4) The State will use funds provided under this part only to supplement, and not supplant, the funds received under 34 CFR part 361, in providing supported employment services specified in the individualized plan for employment;

(5) Services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent job skills training is provided, the training will be provided onsite;

(7) Supported employment services will include placement in an integrated setting based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most significant disabilities, including youth with the most significant disabilities;

(8) The designated State agency or agencies, as described in paragraph (a) of this section, will expend no more than 2.5 percent of the State's allotment under this part for administrative costs of carrying out this program; and

(9) The designated State agency or agencies will provide, directly or indirectly through public or private entities, non-Federal contributions in an amount that is not less than 10 percent of the costs of carrying out supported employment services provided to youth with the most significant disabilities with the funds reserved for such purpose under § 363.22; and

(h) Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: Section 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k)

## Subpart C—How Are State Supported Employment Services Programs Financed?

**§ 363.20 How does the Secretary allocate funds?**

(a) *States.* The Secretary will allot the sums appropriated for each fiscal year to carry out the activities of this part among the States on the basis of relative population of each State, except that—

(1) No State will receive less than $250,000, or 1/3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater; and

(2) If the sums appropriated to carry out this part for the fiscal year exceed the sums appropriated to carry out this part (as in effect on September 30, 1992) in fiscal year 1992 by $1,000,000 or more, no State will receive less than $300,000, or 1/3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater.

(b) *Certain Territories.* (1) For the purposes of this part, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands are not considered to be States.

(2) Each jurisdiction described in paragraph (b)(1) of this section will be allotted not less than 1/8 of 1 percent of the amounts appropriated for the fiscal year for which the allotment is made.

(Authority: Section 603(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(a))

**§ 363.21 How does the Secretary reallocate funds?**

(a) Whenever the Secretary determines that any amount of an allotment to a State under § 363.20 for any fiscal year will not be expended by such State for carrying out the provisions of this part, the Secretary will make such amount available for carrying out the provisions of this part to one or more of the States that the

Secretary determines will be able to use additional amounts during such year for carrying out such provisions.

(b) Any amount made available to a State for any fiscal year in accordance with paragraph (a) will be regarded as an increase in the State's allotment under this part for such year.

(Authority: Section 603(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(b))

**§ 363.22 How are funds reserved for youth with the most significant disabilities?**

A State that receives an allotment under this part must reserve and expend 50 percent of such allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities in order to assist those youth in achieving an employment outcome in supported employment.

(Authority: Sections 12(c) and 603(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795h(d))

**§ 363.23 What are the matching requirements?**

(a) *Non-Federal Share.* (1) For funds allotted under § 363.20 and not reserved under § 363.22 for the provision of supported employment services to youth with the most significant disabilities, there is no non-Federal share requirement.

(2)(i) For funds allotted under § 363.20 and reserved under § 363.22 for the provision of supported employment services to youth with the most significant disabilities, a designated State agency must provide non-Federal expenditures in an amount that is not less than 10 percent of the total expenditures made with the reserved funds for the provision of supported employment services to youth with the most significant disabilities, including extended services.

(ii) In the event that a designated State agency uses more than 50 percent of its allotment under this part to provide supported employment services to youth with the most significant disabilities as required by § 363.22, there is no requirement that a designated State agency provide non-Federal expenditures to match the excess Federal funds spent for this purpose.

(2) Except as provided under paragraphs (b) and (c) of this section, non-Federal expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement to meet the non-Federal share requirement under this section must be consistent with the provision of 2 CFR 200.306.

(b) *Third-party in-kind contributions.* Third-party in-kind contributions, as described in 2 CFR 200.306(b), may not be used to meet the non-Federal share under this section.

(c)(1) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited into the sole account of the State agency, in accordance with State law may be used as part of the non-Federal share under this section, provided the expenditures under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement, as described in § 363.11, do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor shares a financial interest.

(2) The Secretary does not consider a donor's receipt from the State unit of a contract or subaward with funds allotted under this part to be a benefit for the purpose of this paragraph if the contract or subaward is awarded under the State's regular competitive procedures.

(Authority: Sections 12(c) and 606(b)(7)(I) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795k(b)(7)(I))

**§ 363.24 What is program income and how may it be used?**

(a) *Definition.* (1) *Program income* means gross income earned by the State that is directly generated by authorized activities supported under this part.

(2) Program income received through the transfer of Social Security Administration payments from the State Vocational Rehabilitation Services program, in accordance with 34 CFR 361.63(c)(2), will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income must be used for the provision of services authorized under § 363.4. Program income earned or received during the fiscal year must be disbursed during the period of performance of the award, prior to requesting additional cash payments in accordance with 2 CFR 200.305(b)(5).

(2) States are authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728)

**§ 363.25 What is the period of availability of funds?**

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the State prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year and reserved for the provision of supported employment services to youth with the most significant disabilities, in accordance with § 363.22 of this part, remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement, as described at § 363.23, for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

## Subpart D—[Reserved]

## Subpart E—[Reserved]

## Subpart F—What Post-Award Conditions Must Be Met by a State?

**§ 363.50 What collaborative agreements must the State develop?**

(a) A designated State unit must enter into one or more written collaborative agreements, memoranda of understanding, or other appropriate mechanisms with other public agencies, private nonprofit organizations, and other available funding sources, including employers and other natural supports, as appropriate, to assist with the provision of supported employment services and extended services to individuals with the most significant disabilities in the State, including youth with the most significant disabilities, to enable them to achieve an employment outcome of supported employment in competitive integrated employment.

(b) These agreements provide the mechanism for collaboration at the State level that is necessary to ensure the smooth transition from supported employment services to extended services, the transition of which is inherent to the definition of ''supported employment'' in § 363.1(b). To that end,

the agreement may contain information regarding the—

(1) Supported employment services to be provided, for a period not to exceed 24 months, by the designated State unit with funds received under this part.

(2) Extended services to be provided to youth with the most significant disabilities, for a period not to exceed four years, by the designated State unit with the funds reserved under § 363.22 of this part;

(3) Extended services to be provided by other public agencies, private nonprofit organizations, or other sources, including employers and other natural supports, following the provision of authorized supported employment services, or extended services as appropriate for youth with the most significant disabilities, under this part; and

(4) Collaborative efforts that will be undertaken by all relevant entities to increase opportunities for competitive integrated employment in the State for individuals with the most significant disabilities, especially youth with the most significant disabilities.

(Authority: Sections 7(38), 7(39), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 705(39), 709(c), 795g, and 795k(b))

**§ 363.51 What are the allowable administrative costs?**

(a) A State may use funds under this part to pay for expenditures incurred in the administration of activities carried out under this part, consistent with the definition of administrative costs in 34 CFR 361.5(c)(2).

(b) A designated State agency may not expend more than 2.5 percent of a State's allotment under this part for administrative costs for carrying out the State supported employment program.

(Authority: Sections 7(1), 12(c), and 603(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1), 709(c), and 795h(c))

**§ 363.52 What are the information collection and reporting requirements?**

Each State agency designated in § 363.11(a) of this part must collect and report separately the information required under 34 CFR 361.40 for—

(a) Eligible individuals receiving supported employment services under this part;

(b) Eligible individuals receiving supported employment services under 34 CFR part 361;

(c) Eligible youth receiving supported employment services and extended services under this part; and

(d) Eligible youth receiving supported employment services under 34 CFR part 361 and extended services.

(Authority: Sections 13 and 607 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 710 and 795l)

**§ 363.53 What requirements must a State meet before it provides for the transition of an individual to extended services?**

A designated State unit must provide for the transition of an individual with the most significant disabilities, including youth with the most significant disabilities, to extended services no later than 24 months after the individual enters supported employment, unless a longer period is established in the individualized plan for employment. Before assisting the individual in transitioning from supported employment services to extended services, the designated State unit must ensure—

(a) The supported employment is—

(1) In competitive integrated employment, including customized employment; or

(2) In an integrated work setting in which individuals are working on a short-term basis, as described in § 363.1(c), toward competitive integrated employment;

(3) Individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual; and

(b) The source of extended services for the individual has been identified so there will be no interruption of services.

(Authority: Sections 7(13), 7(38), 7(39), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 705(38), 705(39), 709(c), 795g, and 795k(b))

**§ 363.54 When will an individual be considered to have achieved an employment outcome in supported employment?**

An individual with the most significant disabilities, including a youth with the most significant disabilities, who is receiving services under this part will be determined to have achieved an employment outcome of supported employment if the individual—

(a) Maintains supported employment for at least 90 days after the individual has—

(1) Completed all supported employment services provided under this part, as well as any other services listed on the individualized plan for employment and provided under 34 CFR part 361; and

(2) Begun extended services provided by either the designated State unit, in the case of a youth with a most significant disabilities receiving services with the funds reserved under § 363.22, or another provider for all other individuals with the most significant disabilities;

(b) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(c) Satisfies the requirement at § 363.1(c) if the individual's supported employment is in an integrated setting, but is not in competitive integrated employment, as defined in 34 CFR 361.5(c)(9).

(Authority: Sections 7(38), 7(39), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 705(39), 709(c), and 795g)

**§ 363.55 What notice requirements apply to this program?**

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, including youth with the most significant disabilities, of the availability and purposes of the Client Assistance Program, including information on seeking assistance from that program.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

■ 3. Part 397 is added to read as follows:

## PART 397—LIMITATIONS ON USE OF SUBMINIMUM WAGE

### Subpart A—General Provisions

Sec.
397.1 Purpose.
397.2 What is the Department of Education's jurisdiction under this part?
397.3 What rules of construction apply to this part?
397.4 What regulations apply?
397.5 What definitions apply?

### Subpart B—Coordinated Documentation Procedures Related To Youth With Disabilities

397.10 What documentation process must the designated State unit develop?

### Subpart C—Designated State Unit Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be considering subminimum wage employment?

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397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be considering subminimum wage employment?

397.31 Are there any contracting limitations on educational agencies under this part?

**Subpart E—Designated State Unit Responsibilities To Individuals With Disabilities During Subminimum Wage Employment**

397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at subminimum wage?

**Subpart F—Review Of Documentation Process**

397.50 What is the role of the designated State unit in the review of documentation process under this part?

**Authority:** Section 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g, unless otherwise noted.

## Subpart A—General Provisions

### § 397.1 Purpose.

(a) The purpose of this part is to set forth requirements the designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.

(b) This part requires—

(1) A designated State unit to provide youth with disabilities documentation demonstrating that they have completed certain requirements, as described in this part, prior to starting subminimum wage employment with entities holding special wage certificates under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), as defined in 397.5(d);

(2) A designated State unit to provide, at certain prescribed intervals, career counseling and information and referral services, designed to promote opportunities for competitive integrated employment, to individuals with disabilities, regardless of age, who are known to be employed at a subminimum wage level for the duration of such employment; and

(3) A designated State unit, in consultation with the State educational agency, to develop a, or utilize an existing, process to document completion of required activities under this part by a youth with a disability.

(c) The provisions in this part authorize a designated State unit, or a representative of a designated State unit, to engage in the review of individual documentation required to be maintained by these entities under this part.

(d) The provisions in this part work in concert with requirements in 34 CFR part 300, 361, and 363, and do not alter any requirements under those parts.

(Authority: Sections 12(c) and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g)

### § 397.2 What is the Department of Education's jurisdiction under this part?

(a) The Department of Education has jurisdiction under this part to implement guidelines for—

(1) Documentation requirements imposed on designated State units and local educational agencies;

(2) Requirements related to the services that designated State units must provide to individuals regardless of age who are employed at the subminimum wage level; and

(3) Requirements under § 397.31 of this part.

(b) Nothing in this part will be construed to grant to the Department of Education, or its grantees, jurisdiction over requirements set forth in the Fair Labor Standards Act, including those imposed on entities holding special wage certificates under section 14(c) of that Act, which is administered by the Department of Labor.

(Authority: Sections 12(c), 511(b)(3), and 511(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 794g(b)(3), 794g(c), and 794g(d))

### § 397.3 What rules of construction apply to this part?

Nothing in this part will be construed to—

(a) Change the purpose of the Rehabilitation Act, which is to empower individuals with disabilities to maximize opportunities for achieving competitive integrated employment;

(b) Promote subminimum wage employment as a vocational rehabilitation strategy or employment outcome, as defined in 34 CFR 361.5(c)(15); and

(c) Affect the provisions of the Fair Labor Standards Act, as amended before or after July 22, 2014.

(Authority: Sections 12(c) and 511(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(b))

### § 397.4 What regulations apply?

(a) The regulations in 34 CFR part 300 governing the definition of transition services, and the Individualized Education Program requirements related to the development of postsecondary goals and the transition services needed to assist the eligible child in reaching those goals (§§ 300.320(b), 300.321(b), 300.324(c), and 300.43).

(b) The regulations at 34 CFR part 361 governing the vocational rehabilitation program, especially those regarding eligibility determinations § 361.42; individualized plans for employment § 361.45 and § 361.46; provision of vocational rehabilitation services, including pre-employment transition services, transition services, and supported employment services § 361.48; ineligibility determinations § 361.43; and case closures § 361.56.

(c) The regulations at 29 CFR part 525 governing the employment of individuals with disabilities at subminimum wage rates pursuant to a certificate issued by the Secretary of the Department of Labor.

(d) The regulations in this part 387.

(Authority: Sections 12(c), 102(a) and (b), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(a) and (b), 723(a), and 733; sections 601(34) and 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(34) and 1414(d)); and section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c))

### § 397.5 What definitions apply?

(a) The following terms have the meanings given to them in 34 CFR § 361.5(c):

(1) Act;

(2) Competitive integrated employment;

(3) Customized employment;

(4) Designated State unit;

(5) Extended services;

(6) Individual with a disability;

(7) Individual with a most significant disability;

(8) Individual's representative;

(9) Individualized plan for employment;

(10) Pre-employment transition services;

(11) Student with a disability;

(12) Supported employment;

(13) Vocational rehabilitation services; and

(14) Youth with a disability.

(b) The following terms have the meanings given to them in 34 CFR part 300:

(1) Local educational agency (§ 300.28);

(2) State educational agency (§ 300.41); and

(3) Transition services (§ 300.43).

(c) The following terms have the meaning given to them in 29 CFR 525.3 and section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)):

(1) *Federal minimum wage* has the meaning given to that term in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)); and

(2) *Special wage certificate* means a certificate issued to an employer under section 14(c) of the Fair Labor Standards

Act (29 U.S.C. 214(c)) and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage, to workers with disabilities for the work being performed.

(d) For purposes of this part, *entity* means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

(Authority: Sections 7, 12(c), and 511(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705, 709(c), and 794g(a) and (f); sections 601 and 614(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 and 1414(d); section 901 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 7801; and sections 6(a)(1) and 14(c) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1) and 29 U.S.C. 214(c))

## Subpart B—Coordinated Documentation Procedures Related to Youth With Disabilities

### § 397.10 What documentation process must the designated State unit develop?

(a) The designated State unit, in consultation with the State educational agency, must develop a new process, or utilize an existing process, to document the completion of the actions described in § 397.20 and § 397.30 by a youth with a disability.

(b) The documentation process must ensure that—

(1) A designated State unit provides a youth with a disability documentation of completion of appropriate pre-employment transition services, in accordance with § 361.48(a) and as required by § 397.20(a)(1);

(2) In the case of a student with a disability, for actions described in § 397.30—

(i) The designated State unit will receive from the appropriate school official, responsible for the provision of transition services, documentation of completion of appropriate transition services under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VIII) (20 U.S.C. 1414(d)(1)(A)(i)(VIII));

(ii) The designated State unit must provide documentation of completion of the transition services, as documented and provided by the appropriate school official in accordance with paragraph (b)(2) of this section, to the youth with a disability.

(c) The designated State unit must provide—

(1) Documentation required by this part in a form and manner consistent with this part and in an accessible format for the youth; and

(2) Documentation required by this part to a youth as soon as possible upon the completion of each of the required actions, but no later than 90 days after completion of each of the required actions in § 397.20 and § 397.30.

(Authority: Sections 12(c) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(d))

## Subpart C—Designated State Unit Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

### § 397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be considering subminimum wage employment?

(a) A designated State unit must provide youth with disabilities documentation upon the completion of the following actions:

(1) Pre-employment transition services that are available to the individual under § 34 CFR 361.48; and

(2) Application for vocational rehabilitation services, in accordance with 34 CFR § 361.41(b), with the result that the individual was determined—

(i) Ineligible for vocational rehabilitation services, in accordance with 34 CFR § 361.43; or

(ii) Eligible for vocational rehabilitation services, in accordance with 34 CFR § 361.42; and

(A) The youth with a disability had an approved individualized plan for employment, in accordance with 34 CFR 361.46;

(B) The youth with a disability was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR 361.5(c)(15) and 361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and services, including supported employment services and customized employment services, for a reasonable period of time; and

(C) The youth with a disability's case record, which meets all of the requirements of 34 CFR 361.47, is closed.

(3)(i) Regardless of the determination made under paragraph (a)(2) of this section, the youth with a disability has received career counseling, and information and referrals to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.

(ii) The career counseling and information and referral services provided in accordance with paragraph (a)(3)(i) of this section must—

(A) Be provided in a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate; and

(B) Not be for subminimum wage employment by an entity defined in § 397.5(d), and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by such an entity.

(b) The following special requirements apply—

(1) For purposes of this part, all documentation provided by a designated State unit must satisfy the requirements for such documentation under 34 CFR part 361.

(2) The individualized plan for employment, required in paragraph (a)(3)(i) of this section, must include a specific employment goal consistent with competitive integrated employment, including supported or customized employment.

(3)(i) For purposes of paragraph (a)(2)(ii)(B) of this section, a determination as to what constitutes ''reasonable period of time'' must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment.

(ii) For an individual whose specified employment goal is in supported employment, such reasonable period of time is up to 24 months, unless under special circumstances the individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment.

(Authority: Sections 7(5), 7(39), 12(c), 102(a) and (b), 103(a), 113, and 511(a) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5), 705(39), 709(c), 722(a) and (b), 723(a), 733, and 794g(a) and (d))

## Subpart D—Local Educational Agency Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

### § 397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?

Of the documentation to demonstrate a youth with a disability's completion of the actions described in § 397.20(a) of this part, a local educational agency, as

defined in § 397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), such as transition services available to the individual under section 614(d) of that act (20 U.S.C. 1414(d)).

(Authority: Sections 511(a)(2)(A) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(a)(2)(A) and (d))

**§ 397.31 Are there any contracting limitations on educational agencies under this part?**

Neither a local educational agency, as defined in § 397.5(b)(1), nor a State educational agency, as defined in § 397.5(b)(2), may enter into a contract or other arrangement with an entity, as defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.

(Authority: Section 511(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(b)(2))

## Subpart E—Designated State Unit Responsibilities to Individuals With Disabilities During Subminimum Wage Employment

**§ 397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at a subminimum wage?**

(a) *Counseling and information services.* (1) A designated State unit must provide career counseling, and information and referral services, as described in § 397.20(a)(4) to individuals with disabilities, regardless of age, or the individual's representative as appropriate, who are known by the designated State unit to be employed by an entity, as defined in § 397.5(d), at a subminimum wage level.

(2) A designated State unit may know the identification of individuals with disabilities described in this paragraph through the vocational rehabilitation process or by referral from the client assistance program, another agency, or an entity, as defined in § 397.5(d).

(3) The career counseling and information and referral services must be provided in a manner that–

(i) Is understandable to the individual with a disability; and

(ii) Facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.

(b) *Other services.* (1) Upon a referral by an entity, as defined in 397.5(d), that has fewer than 15 employees, of an individual with a disability who is employed at a subminimum wage by that entity, a designated State unit must also inform the individual of self-advocacy, self-determination, and peer mentoring training opportunities available in the community.

(2) The services described in paragraph (c)(1) of this section must be provided by an entity that does not have a financial interest in the individual's employment outcome.

(c) Required intervals. The services required by this section must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment.

(d) *Documentation.* The designated State unit must provide timely documentation to the individual upon completion of the activities required under this section.

(e) *Provision of services.* Nothing in this section will be construed as requiring a designated State unit to provide the services required by this section directly. A designated State unit may contract with other entities, *i.e.,* other public and private service providers, as appropriate, to fulfill the requirements of this section.

(Authority: Sections 12(c) and 511(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(c))

## Subpart F–Review of Documentation Process

**§ 397.50 What is the role of the designated State unit in the review of documentation process under this part?**

The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.

(Authority: Section 511(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(e))

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Part V

## The President

Proclamation 9255—National Equal Pay Day, 2015

Federal Register
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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9255 of April 13, 2015**

## National Equal Pay Day, 2015

**By the President of the United States of America**

**A Proclamation**

In the United States, the promise of opportunity is built on the idea that everyone who works hard should have the chance to get ahead. This creed is at the core of our democracy, and it is central to our belief that America does best when all people are able to share in our Nation's prosperity and contribute to our success. Yet every day, countless women perform the same work as their male colleagues only to earn less than their fair share. On National Equal Pay Day, we mark how far into the new year women would have to work just to earn the same as men did in the previous year, and we renew our efforts to end this injustice.

On average, full-time working women earn 78 cents for every dollar earned by men, and women of color face an even greater disparity. This wage gap puts women at a career-long disadvantage, and it harms families, communities, and our entire economy. Today, in more than half of all households, women are breadwinners—49 million children depend on women's salaries. But our economy and our policies have not caught up to this reality. When women experience pay discrimination it limits their future, and it also hurts the people they provide for. It means less for their families' everyday needs, for investments in their children's futures, and for their own retirements. These effects reduce our shared prosperity and restrict our Nation's economic growth. Wage inequality affects us all, and we each must do more to make certain that women are full and equal participants in our economy.

When we take action to help women succeed, we help America succeed, and my Administration is committed to ensuring women have every opportunity to reach their fullest potential. The first bill I signed as President was the Lilly Ledbetter Fair Pay Act, and the following year—to crack down on violations of equal pay laws—I created the National Equal Pay Task Force, which to date has helped women recover millions of dollars in lost wages. If workers do not know they are underpaid, they cannot challenge the inequality; that is why we are going to require Federal contractors to submit data on employee compensation, including data by sex and race, and why last year I signed an Executive Order prohibiting Federal contractors from retaliating against employees who choose to discuss their pay. And I continue to call on the Congress to pass the Paycheck Fairness Act to protect all people's fundamental right to a fair wage.

In the last half-century, our economy has changed in many ways for the better because of the increased participation of women. But our values are not yet fully reflected in how we pay women. We tell our daughters that in America there are no limits to what they can achieve—yet their mothers face persistent barriers to equality and success. We have to do better because our daughters deserve better. If we come together, we can change the policies and attitudes that hold women back, and we can fix this. On this day, we recommit to making equal pay a reality, and we continue our work to build a world where all our children are limited only by the size of their dreams and the power of their imaginations.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2015, as National Equal Pay Day. I call upon all Americans to recognize the full value of women's skills and their significant contributions to the labor force, acknowledge the injustice of wage inequality, and join efforts to achieve equal pay.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

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