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Part VI

Department of Labor

Employment and Training Administration

20 CFR Parts 603, 651, 652, et al.

Workforce Innovation and Opportunity Act; Final Rule

For the reasons stated in the preamble, ETA amends 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 postsecondary 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 WDB, 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 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.

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■ 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.

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■ 5. Revise part 651 to read as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

Sec.

Authority: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in parts 652, 653, 654, and 658 of this chapter:

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 employer means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

Agricultural worker see *Farmworker.*

Applicant holding office means a Wagner-Peyser Act Employment Service (ES) office that is in receipt of a clearance order and has access to U.S. 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. 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(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and § 678.430 of this chapter.

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 U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES 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 ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department'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 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 ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

Employment-related laws means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service (ES) office means a site in a local WDB where staff of the State Workforce Agency, consistent with the requirements of § 652.215 of this chapter, provide Wagner-Peyser Act services as a one-stop partner program. A site must be colocated with a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.

Employment Service (ES) regulations means the Federal regulations at this part and parts 652, 653, 654, 658 of this chapter, 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 must 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) also must 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 purposes of this definition, 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 § 655.103(c) of this chapter 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 Workforce Agency personnel at agricultural worksites to which ES 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 Workforce Agency outreach personnel to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach personnel must keep records of each such visit.

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.

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).

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 ES office uses to request recruitment assistance from other ES 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 ES office uses to request recruitment assistance from other ES offices within the State.

Job development means the process of securing a job interview with a public or private employer for a specific participant for whom the ES office has no suitable opening on file.

Job information means information derived from data compiled in the normal course of ES activities from reports, job orders, applications, and the like.

Job opening means a single job opportunity for which the ES 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 a participant or group of participants 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 the Department'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 ES activities in a one-stop center.

Local Workforce Development Board or *Local WDB* 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 not reasonably able 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 physical center within the one-stop delivery system, as described in sec. 121(e)(2)(A) 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 § 678.400 of this chapter 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 ES office to monitor the delivery of services and protections afforded by ES regulations to MSFWs by the State Workforce Agency and local ES offices.

Order holding office means an ES office that has accepted a clearance order from an employer seeking U.S. 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 reportable individual who has received services other than the services described in § 677.150(a)(3) of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. (*See* § 677.150(a) of this chapter.)

(1) The following individuals are not Participants, subject to § 677.150(a)(3)(ii) and(iii) of this chapter:

(i) Individuals who only use the self-service system; and

(ii) Individuals who receive information-only services or activities.

(2) Wagner-Peyser Act participants must be included in the program's performance calculations

Placement means the hiring by a public or private employer of an individual referred by the ES 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 participant;

(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 Department of Labor Employment and Training Administration (ETA) official in each Department regional office.

Reportable individual means an individual who has taken action that demonstrates an intent to use Wagner-Peyser Act services and who meets specific reporting criteria of the Wagner-Peyser Act (*see* § 677.150(b) of this chapter), including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

Respondent means the employer, individual, 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 defined 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 ES offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines must 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 ES 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 must 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 1city 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 SWA.

State agency or *State Workforce Agency (SWA)* means the State ES 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 or *State WDB* 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. 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 that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act. These services may 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) Assistance with housing;

(5) Needs-related payments;

(6) Assistance with educational testing;

(7) Reasonable accommodations for individuals with disabilities;

(8) Referrals to health care;

(9) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(10) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(11) Payments and fees for employment and training-related applications, tests, and certifications.

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

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

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

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

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.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as defined under 38 U.S.C. 101 and sec. 3(63)(A) of WIOA.

Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES) means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a

nationwide system of one-stop centers, and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies, and funded by the United States Department of Labor.

WIOA means the Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 *et seq.*).

Workforce and Labor Market Information (WLMI) means the body of knowledge that describes the relationship between labor demand and supply. This includes identification and analysis of the socio-economic factors that influence employment, training, and business decisions, such as worker preparation, educational program offerings and related policy decisions within national, State, Substate, and local labor market areas. WLMI includes, but is not limited to:

(1) Employment numbers by occupation and industry;

(2) Unemployment numbers and rates;

(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 seeker and job posting data from the public labor exchange system;

(8) Identification of high growth and high demand industries, occupations, and jobs;

(9) Information on employment and earnings for wage and salary workers and for the self-employed;

(10) Information on work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;

(11) Information on occupation-specific requirements regarding education, training, skills, knowledge, and experience;

WLMI also may include, as either source data or as outputs of analysis of source data:

(12) Population and workforce growth and decline, classified by age, sex, race, and other demographic characteristics;

(13) Identification of emerging occupations and evolving skill demands;

(14) Business skill and hiring requirements;

(15) Workforce characteristics, which may include skills, experience, education, credential attainment, competencies, etc.;

(16) Workforce available in geographic areas;

(17) Information on regional and local economic development activity, including job creation through business start-ups and expansions;

(18) Enrollments in and completers from educational programs, training and registered apprenticeship;

(19) Trends in industrial and occupational restructuring;

(20) Shifts in consumer demands;

(21) Data contained in governmental or administrative reporting including wage records as identified in § 652.301 of this chapter;

(22) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and

(23) 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 ES 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.

■ 6. Revise part 652 to read as follows:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

Subpart A—Employment Service Operations

Sec.

Subpart B—Services for Veterans

Sec.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.

Subpart D—Workforce and Labor Market Information

Sec.

Authority: 29 U.S.C. 49l–2; Secs. 189 and 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Employment Service Operations

§ 652.1 Introduction.

These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Wagner-Peyser Act, as amended by title III of the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128. The Wagner-Peyser Act Employment Service (ES) is a core program under the WIOA, and an integral component of the one-stop delivery system. Congress intended that the States exercise broad authority in implementing provisions of the Wagner-Peyser Act.

§ 652.2 Scope and purpose of the Wagner-Peyser Act Employment Service.

The basic purpose of the ES 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, to:

(a) Assist job seekers in finding employment, including promoting their familiarity with the Department's electronic tools;

(b) Assist employers in filling jobs;

(c) Facilitate the match between job seekers and employers;

(d) Participate in a system for clearing labor among the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Wagner-Peyser Act;

(e) 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, sec. 7(a) of the Wagner-Peyser Act, 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 Wagner-Peyser 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 Wagner-Peyser Act, the Governor and the Secretary must sign a grant agreement, including a statement assuring that the State must comply with the Wagner-Peyser Act and all applicable rules and regulations. Consistent with this agreement and sec. 6 of the Wagner-Peyser 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 Wagner-Peyser Act must be expended consistent with an approved plan under §§ 676.100 through 676.145 of this chapter and § 652.211. At a minimum, each State must provide the minimum labor exchange elements listed at § 652.3.

§§ 652.6–652.7 [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 are as specified in 2 CFR parts 200 and 2900 which govern the Uniform Guidelines, cost principles, and audit requirements for Federal awards.

(b) *Management systems, reporting, and recordkeeping.* (1) The State must ensure that a financial system provides 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) of the Wagner-Peyser Act)

(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) of the Wagner-Peyser Act)

(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 Wagner-Peyser 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 parts 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 Wagner-Peyser 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 parts 200 and 2900:

(i) Work application: 3 years.

(ii) Job order: 3 years.

(6) Payments from the State's Wagner-Peyser Act 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 Wagner-Peyser Act.

(2) The information specified in sec. 3(b) and other sections of the Wagner-Peyser Act, also must be provided to officers or any employee of the Federal government or of a State government lawfully charged with administration of unemployment compensation laws, ES activities under the Wagner-Peyser 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 § 683.210 of this chapter, except that funds expended pursuant to sec. 7(b) of the Wagner-Peyser 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 Wagner-Peyser 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 §§ 683.420 through 683.440 of this chapter.

(g) *Sanctions for violation of the Wagner-Peyser Act.* (1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Wagner-Peyser 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 Wagner-Peyser 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; and

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

(2) To impose a sanction or corrective action, the Secretary must utilize the initial and final determination procedures outlined in paragraph (f)(3) of this section and specified in the administrative provisions at §§ 683.420 through 683.440 of this chapter.

(h) *Other violations.* Violations or alleged violations of the Wagner-Peyser Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination must be determined and handled in accordance with part 658, subpart H, of this chapter.

(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, including all complaints involving such matters.

(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 Wagner-Peyser Act in violation of any applicable nondiscrimination law. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable Department of Labor 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, and 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)(1)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable Department of Labor 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 Department-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 Wagner-Peyser Act, as amended by WIOA, in a one-stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in part 651 of this chapter and sec. 2 of the Wagner-Peyser Act apply to this subpart.

§ 652.201 What is the role of the State Workforce Agency in the one-stop delivery system?

(a) The role of the State Workforce Agency (SWA) in the one-stop delivery system is to ensure the delivery of services authorized under sec. 7(a) of the Wagner-Peyser Act. The SWA 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 part 678 of this chapter.

(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 Wagner-Peyser Act;

(2) Be represented on the Workforce Development Boards (WDBs) that oversee the local and State one-stop delivery system and be a party to the Memorandum of Understanding, described at § 678.500 of this chapter, 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 delivery system?

No. Local ES offices may not exist outside of the one-stop service delivery system. A State must colocate ES, as provided in §§ 678.310 through 678.315 of this chapter.

§ 652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?

The SWA retains responsibility for all funds authorized under the Wagner-Peyser 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 Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

No, sec. 7(b) of the Wagner-Peyser Act provides that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of SWA staff, and services for groups with special needs. However, these funds may flow through the one-stop delivery system.

§ 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Wagner-Peyser Act enables States to use funds authorized under sec. 7(a) or 7(b) of the Wagner-Peyser Act to supplement funding of any workforce activity carried out under WIOA.

(b) Funds authorized under the Wagner-Peyser 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 Wagner-Peyser Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Wagner-Peyser Act;

(3) The activity provides services that are coordinated with services under the Wagner-Peyser 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 Wagner-Peyser Act to provide applicable ''career services,'' as defined in the Workforce Innovation and Opportunity Act?

Yes, funds authorized under sec. 7(a) of the Wagner-Peyser 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 Wagner-Peyser 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 Wagner-Peyser Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Wagner-Peyser Act. In exercising this discretion, a State must meet the Wagner-Peyser 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 Wagner-Peyser 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 area, in at least one comprehensive physical center, staff funded under the Wagner-Peyser 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 Wagner-Peyser Act in a local area must be described in the Memorandum of Understanding (MOU) described in § 678.500 of this chapter.

§ 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 Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?

(a) In accordance with sec. 3(c)(3) of the Wagner-Peyser Act, the SWA, 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 SWA also must 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 Wagner-Peyser 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 Wagner-Peyser Act; and

(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 Wagner-Peyser 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 Wagner-Peyser Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Wagner-Peyser 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 Wagner-Peyser Act?

The ES 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 of this chapter 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 Wagner-Peyser Act?

No, the Secretary requires that labor exchange services provided under the authority of the Wagner-Peyser Act, including services to veterans, be provided by State merit-staff employees. This interpretation is authorized by and consistent with the provisions in secs. 3(a) and 5(b) of the Wagner-Peyser Act and the Intergovernmental Personnel Act (42 U.S.C 4701 *et seq.*). The Secretary has and has exercised the legal authority under sec. 3(a) of the Wagner-Peyser Act to set additional staffing standards and requirements and to conduct demonstrations to ensure the effective delivery of services provided under the Wagner-Peyser Act. No additional exemptions, other than the ones previously authorized under the Wagner-Peyser Act as amended by WIA, will be authorized.

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser 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 of this chapter, the SWA, 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 Wagner-Peyser Act, remain under the authority of the SWA. The guidance given to employees must be consistent with the provisions of the Wagner-Peyser 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 § 651.10 of this chapter. The Department also will identify parameters of continuous improvement. The Secretary will consult with the Workforce Information Advisory Council on these matters and consider the council's recommendations.

(b) With respect to data collection, analysis, and dissemination of workforce and labor market information as defined in Wagner-Peyser Act sec. 15 and § 651.10 of this chapter, 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 § 651.10 of this chapter;

(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; and

(7) Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d).

§ 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 § 603.2(k) of this chapter. 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) A significant portion of the workforce and labor market information—defined in § 651.10 of this chapter—are developed using State wage records.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and § 652.300, the Secretary of Labor will, in consultation with Federal agencies, and States, and considering recommendations from the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), 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 also may 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 part 603 of this chapter.

■ 7. Revise part 653 to read as follows:

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

Subpart A—[Reserved]

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

Sec.

Subparts C–E—[Reserved]

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

Sec.

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 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 Wagner-Peyser Act Employment Service (ES) 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 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 Workforce Agencies (SWAs) establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

(c) Established under this subpart are special services to ensure MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2).

§ 653.101 Provision of services to migrant and seasonal farmworkers.

Each one-stop center 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 one-stop centers 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 SWAs 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. One-stop centers 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 one-stop center must determine whether participants are MSFWs as defined at § 651.10 of this chapter.

(b) All SWAs will ensure that MSFWs who are English Language Learners (ELLs) 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) One-stop center staff must provide MSFWs a list of available career and supportive services in their native language.

(d) One-stop center staff must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

§§ 653.104–653.106 [Reserved]

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) *State Workforce Agency (SWA) outreach responsibilities.* (1) Each SWA must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas. SWA Administrators must ensure 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, SWAs must:

(i) Communicate the full range of workforce development services to MSFWs.

(ii) Conduct thorough outreach efforts with extensive follow-up activities in supply States.

(3) For purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with SWAs' Affirmative Action programs, SWAs must seek, through merit system procedures, qualified candidates who:

(i) Are from MSFW backgrounds;

(ii) Speak a language common among MSFWs in the State; or

(iii) Are racially or ethnically representative of the MSFWs in the service area.

(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 SWA 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 ES offices. Outreach workers' 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 and Employment-related Law Complaint System;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.

(2) Outreach workers must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must 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 ES or employment-related law complaints;

(iv) Referral of complaints to the ES office Complaint Specialist or ES office 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 (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 ES 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 § 658.419 of this chapter), the outreach worker must document and refer the information to the appropriate ES office manager.

(7) Outreach workers must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment. While sexual harassment is the primary requirement, training also may include similar issues such as sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach workers identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. They also must 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 the Employment and Training Administration (ETA). The SMA 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 ES 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 paragraph (b)(2) of this section.

(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 SWA.

(11) Outreach workers in significant MSFW local offices must conduct especially vigorous outreach in their service areas.

(c) *ES office outreach responsibilities.* Each ES office manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES office manager and/or other appropriate State office staff 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 SMA and Federal on-site review teams.

(d) *State Agricultural Outreach Plan (AOP).* (1) Each SWA must develop an AOP every 4 years as part of the Unified or Combined State Plans 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 SWA's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop center;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers; and

(v) Provide an assurance that the SWA is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers.

(3) In developing the AOP, the SWA must solicit information and suggestions from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the Department, the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment. The SWA must:

(i) Consider any comments received in formulating its final proposed AOP.

(ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

(4) The AOP must be submitted in accordance with paragraph (d) of this

section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(s) must update the Department on the SWA'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 ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA 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 SWAs must seek persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak Spanish or other languages of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must have direct, personal access, when necessary, to the State Administrator. The SMA 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 SMA must be assigned staff necessary to fulfill effectively all of the duties 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 SMA 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 SMA function can be effectively performed with part-time staffing.

(e) All SMAs and their staff must attend, within the first 3 months of their tenure, a training session conducted by the Regional Monitor Advocate. They also must attend whatever additional training sessions are required by the Regional or National Monitor Advocate.

(f) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(g) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including progress made in achieving affirmative action staffing goals). The SMA, without delay, must advise the SWA 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 SMA must advise the SWA 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 SMA 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 SMA must hold one or more wrap-up sessions with the ES office manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review the SMA must conduct an in-depth analysis of the review data. The conclusions and recommendations of the SMA must be put in writing and must be sent to the State Administrator, to the official of the SWA with authority over the ES office, and other appropriate SWA officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the ES office manager must develop and propose a written corrective action plan. The plan must be approved or revised by appropriate superior officials and the SMA. The plan must include actions required to correct or to take major steps to correct any compliance issues within 30 business days, and if the plan allows for more than 30 business days for full compliance, the length of, and the reasons for, the extended period must be specifically stated. SWAs are responsible for assuring and documenting that the ES office is in compliance within the time period designated in the plan.

(vi) SWAs must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for ES offices.

(vii) The SMA 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 SWA, if and when the State Administrator finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(3) Ensure 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 ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

(4) Review and approve the SWA'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 SMA must participate in Federal reviews conducted pursuant to part 658, subpart G, of this chapter.

(i) At the discretion of the State Administrator, the SMA may be assigned the responsibility as the Complaint Specialist. The SMA must participate in and monitor the performance of the Complaint System, as set forth at §§ 658.400 and 658.401 of this chapter. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES office manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA.

(j) The SMA must serve as an advocate to improve services for MSFWs.

(k) The SMA must establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(l) The SMA 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 ES offices or

improving the coordination of services to MSFWs. To foster such collaboration, the SMAs must establish Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farm workers as appropriate.

(m) The SMA must conduct frequent field visits to the working, living, and gathering 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 SMA 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 SMA must ensure that outreach efforts in all significant MSFW ES offices are reviewed at least yearly. This review will include accompanying at least one outreach worker from each significant MSFW ES office on field visits to MSFWs' working, living, and/or gathering areas. The SMA must review findings from these reviews with the ES office managers.

(p) The SMA must review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order:

(1) To determine the extent to which the SWA has complied with the ES regulations; and

(2) To identify the areas of non-compliance.

(q) The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices, and may interview SWA and ES office staff with respect to reporting methods. Subsequent to each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.

(r) The SMA must review and comment on proposed State ES 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 SMA 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) The SMA must prepare for the State Administrator, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided employment services to MSFWs within the State based on statistical data, reviews, and other activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the SMA pertaining to his/her responsibilities set forth in this section and other applicable regulations in this chapter.

(2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the State Administrator and that the SMA 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 the SMA devotes all of his/her time to monitor advocate functions. Or, if the SWA proposed the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing.

(4) A summary of the monitoring reviews conducted by the SMA, including:

(i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;

(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and

(iii) A summary of any technical assistance the SMA provided for the SWA and the ES offices.

(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW ES offices.

(6) A summary of the State's actions taken under the Complaint System described in part 658, subpart E, of this chapter, 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 SMA is working with WIOA sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations, in the State, and an assurance that the SMA 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 SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.

(9) A summary of the training conducted for SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(10) A summary of activities related to the AOP 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 SWA'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 SWA will take to address those deficiencies.

(11) For significant MSFW ES offices, a summary of the functioning of the State's affirmative action staffing program under § 653.111.

§ 653.109 Data collection and performance accountability measures.

SWAs must:

(a) Collect career service indicator data for the career services specified in WIOA 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 percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(6) The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(7) The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(8) The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;

(9) Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities; and

(10) Any other data required by the Department.

(c) Provide necessary training to SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(d) Collect and submit data on MSFWs required by the Unified or Combined 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 SWAs 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 ES 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 SWA performance in serving MSFWs, as reflected in on-site reviews and data collected under paragraph (b) of this section.

(2) The need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

§ 653.110 Disclosure of data.

(a) SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109, if possible within 10 business days after receipt of the request.

(b) If a request for data held by a SWA is made to the ETA national or regional office, the ETA must forward the request to the SWA for response.

(c) If the SWA cannot supply the requested data within 10 business days after receipt of the request, the SWA 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) SWA intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA 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, also may be withheld provided the reason is given to the requestor in writing.

§ 653.111 State Workforce Agency staffing requirements.

(a) The SWA must implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers, and must employ ES staff in a manner facilitating the delivery of employment 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 ELL participants; and

(2) The hiring of staff members from the MSFW community or members of community-based migrant programs.

(b) The SWA must hire sufficient numbers of qualified, permanent minority staff in significant MSFW ES offices. SWAs will determine whether a ''sufficient number'' of staff have 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 workforce in the ES office service area(s). SWAs with significant MSFW ES 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 an ES office does not have a sufficient number of qualified minority staff, the SWA must establish a goal to achieve sufficient staffing at the ES office. The SWA also must 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 SWA 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 1year after the submission of the Unified or Combined State Plan or Annual Summary, whichever is sooner. Once such goals have been achieved, the SWA 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 SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of his/her regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its affirmative action program.

Subparts C–E—[Reserved]

Subpart F—Agricultural Recruitment System for U.S. Workers (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 subpart affects all job orders for workers who are recruited through the ES intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

§ 653.501 Requirements for processing clearance orders.

(a) *Assessment of need.* No ES office or SWA may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area; or

(2) The ES office anticipates a shortage of local workers.

(b) *ES office responsibilities.* (1) Each ES office must ensure 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 workers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the ES office incorporates offices beyond the local office commuting area, the ES office must suppress the employer information in order to facilitate the orderly movement of workers within the ES.

(3) ES staff must determine, through a preoccupancy housing inspection performed by ES staff or an 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 § 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) *SWA responsibilities.* (1) SWAs must ensure intrastate and interstate clearance orders:

(i) Include the following language: ''In view of the statutorily established basic function of the ES as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the SWAs 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 ES constitute a contractual job offer to which the ETA or a SWA is in any way a party;''

(ii) Do not contain an unlawful discriminatory specification including, for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status;

(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) SWAs must ensure:

(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 ES 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) SWAs must ensure 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 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office in writing (email notification may be acceptable). The SWA must make a record of this notification and must attempt to inform referred workers of the change expeditiously.

(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 SWA 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 not reasonably able 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 SWA discovers that an employer's clearance order contains a material misrepresentation, the SWA may initiate the Discontinuation of Services as set forth in part 658, subpart F of this chapter.

(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 business 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 the Department's Wage and Hour Division for possible enforcement.

(d) *Processing clearance orders.* (1) The order-holding office must transmit an electronic copy of the approved clearance order to its SWA. The SWA

must distribute additional electronic copies of the form with all attachments (except that the SWA 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 SWAs 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 ES 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 ES 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 approval process described in paragraph (d)(3) of this section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter; such clearance orders must be sent to the processing center as directed by ETA in guidance. For non-criteria clearance orders (orders that are not attached to applications under part 655, subpart B, of this chapter), the ETA regional office must review and approve the order within 10 business 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 an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business 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 SWA must make a record of this notification.

(5) If the worker referred through the clearance system contacts an ES office (in any State) other than the order holding office, that ES 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) ES 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 SWA must contact immediately the applicant holding office which must inform immediately 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, SWAs 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 SWAs involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/(are) already en-route or at the job site. ES 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. SWAs 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 SWA accepts a clearance order, the SWA must actively recruit workers for referral. In the event a potential labor supply SWA rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the SWA. 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 SWA 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 appropriate ETA higher authority, 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 ES office serving the area in which its housing is located, a written request for its clearance orders to be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures 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 processing center designated by ETA in guidance to make determinations on applications for temporary employment certification under the H–2A program.

(3) *Assurance.* The employer's request pursuant to paragraph (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) *SWA 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 ES office must send the request to the SWA, 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 SWA and ES office. The employer must submit and the ES 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 he/she must provide written notice to the employer, the appropriate SWA, and the ES office, stating the reasons for the denial.

(e) *Inspection.* The ES 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 ES 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 ES office must immediately:

(1) Notify the RA or the NPC designated by the Regional Administrator;

(2) Remove the employer's clearance orders from intrastate and interstate clearance; and

(3) If workers have been recruited against these orders, in cooperation with the ES 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 SWA must notify the employer in writing that the SWA, through its ES 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) Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to this subpart) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. 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, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If SWA 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 SWA must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as E.O. related issues and others identified by the Department through guidance.) If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F, of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) SWAs 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 SWA 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 SWA field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(f) ES staff must keep records of all field checks.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

■ 8. 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).

■ 9. Revise subpart E of part 654 to read as follows:

Subpart E—Housing for Farmworkers

Purpose and Applicability

Sec.
654.400 Scope and purpose.
654.401 Applicability.
654.402 Variances.
654.403 [Reserved]

Housing Standards

Sec.
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 Farmworkers

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 Wagner-Peyser Act Employment Service (ES) offices, as part of the State ES agencies and in cooperation with the ES program, assist employers in recruiting farmworkers from places outside the area of intended employment. The experiences of the ES 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 ES system to deny its intrastate and interstate recruitment services to employers until the State ES 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 ES 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 this subpart, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

§ 654.401 Applicability.

(a) Employers whose housing 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.

(b) The Department will consider agricultural housing which complies with ETA transitional standards set forth in this subpart also to comply with the Occupational Safety and Health Administration (OSHA) temporary labor camp standards at 29 CFR 1910.142.

§ 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 ES 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) Adequately justify 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 ES 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 Workforce Agency (SWA) and the local ES office. The employer must submit and the local ES 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 SWA, and the local ES office. The notice also must offer the employer an opportunity to request a hearing before a Department of Labor 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 through 654.417.

§ 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; and

(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 degrees Fahrenheit (°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 2 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.

■ 10. Revise part 658 to read as follows:

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER–PEYSER ACT EMPLOYMENT SERVICE

Subpart A–D—[Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

Sec.

Complaints Filed at the Local and State Level

Sec.

When a Complaint Rises to the Federal Level

Sec.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

Sec.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

Sec.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

Sec.

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

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 Wagner-Peyser Act Employment Service (ES) 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 ES and complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, and 654 of this chapter and this part. As noted in § 658.411(d)(6), this subpart only covers ES-related complaints made within 2 years of the alleged violation.

(b) Any complaints alleging violations under the Unemployment Insurance program, under Workforce Innovation and Opportunity Act (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 and must be 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 § 651.10 of this chapter.

(d) A complainant may designate an individual to act as his/her representative.

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 ES office level the manager must be responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The manager of the ES office and the SWA Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES 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 a migrant and seasonal farmworker (MSFW);

(5) Whether the complaint concerns an employment-related law or the ES regulations; and

(6) The action taken and whether the complaint has been resolved.

(d) State agencies must ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an Employment and Training Administration (ETA)-approved Complaint System poster in each one-stop center.

(e) Each one-stop center must ensure there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any one-stop center, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local ES 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 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 ES-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 ES 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 ES 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 ES 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 must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

(n) When a complainant is an English Language Learner (ELL), all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

(o) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.

§ 658.411 Action on complaints.

(a) *Filing complaints.* (1) Whenever an individual indicates an interest in filing a complaint under this subpart with an ES 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; and

(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 the complainant (or his/her representative) submits the complaint on the Complaint/Referral Form or another complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. 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 submitting all necessary information, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such

complainants must be named. The complainant, or his/her representative, 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 submission 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, or his/her representative, 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 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 complainant has not provided 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 ES 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 ES 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); and

(B) Attempt to resolve the issue informally 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 and except in cases where informal resolution at the local level would be detrimental to the complainant(s). In cases where informal resolution at the local level would be detrimental to the complainant(s), the Complaint System Representative or SMA (depending on where the complaint was filed) must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the Complaint System 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 Complaint System representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

(D) If the ES office or SWA Complaint System representative determines that the complaint must 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 of this part. 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 (EEOC) regulations or enforced by the Department of Labor's Civil Rights Center (CRC).* (1) All complaints received by a ES office or a SWA alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, must be logged and immediately referred to either a local Equal Opportunity (EO) representative, the State EO representative, or the EEOC. The Complaint System representative must notify the complainant of the referral in writing.

(2) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(d) *Complaints regarding the ES regulations (ES complaints).* (1) When an ES complaint is filed with a ES 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 ES 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 ES 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. Additionally, the complaints must be processed as separate complaints and must be handled according to procedures in this paragraph (d).

(iii) When an ES complaint is filed against a ES office, the proper office to handle the complaint is the ES office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one ES offices 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 ES office, the ES office where the complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local ES 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 an alleged violation of the ES regulations is filed in a ES office by either a non-MSFW or MSFW, or their representative(s) (or if all necessary information has been submitted to the office pursuant to paragraph (a)(4) of this section), the appropriate ES 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, (or after all necessary information has been submitted to the ES office pursuant to paragraph (a)(4) of this section), the Complaint System representative must send the complaint to the SWA for resolution or further action.

(iii) The ES 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 ES regulations with a SWA, or when a non-MSFW complaint is referred from a ES 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 (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), whether the complaint was received directly or from a ES 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. 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 ES regulations directly with a SWA, or when a MSFW complaint is referred from a ES 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 (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5)(i) All written determinations by ES or SWA officials on complaints under the ES 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; and

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the notification.

(ii) If the SWA determines that the employer has not violated the ES 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 business 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 ES has violated the ES 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 ES 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 to a request for information under paragraph (a)(4) of this section within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate ES 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.

(f) *Reopening of case after resolution.* If the complainant or the complainant's authorized representative fails to respond pursuant to paragraph (e)(3) of this section, the complainant or the complainant's authorized representative may reopen the case within 1 year after the SWA has closed the case.

§ 658.417 State hearings.

(a) The hearing described in § 658.411(d)(5) 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; or

(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 ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the ES 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, and they may 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 SWA, ES 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 ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the ES office manager.

(b) If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the ES 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 Department of Labor officials to handle ES regulation-related complaints as follows:

(1) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under Title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal

for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(2) All complaints alleging discrimination on the basis of genetic information must be assigned to a Regional Director for Equal Opportunity and Special Review and, where appropriate, handled in accordance with procedures Coordinated Enforcement at 29 CFR part 31.

(3) All complaints other than those described in paragraphs (b)(1) and (2) 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) Except for those complaints under paragraphs (b)(1) and (2) of this section, the Regional Administrator must designate Department of Labor 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. The RMA must follow up monthly on all complaints filed by MSFWs including complaints under paragraphs (b)(1) and (2) of this section.

(d) The Regional Administrator must ensure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

§ 658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.

(a)(1) Except as provided below in paragraph (a)(2) of this section, no complaint alleging a violation of the ES regulations may 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 also must be sent to the State Administrator.

(2) If a complaint is submitted directly to the Regional Administrator and if he/she 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 he/she needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator is allowed 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator will send his/her determination in writing to the appellant within 5 days of the determination, with a notification that the appellant may request a hearing before a Department of Labor Administrative Law Judge (ALJ) by filing a hearing request in writing with the Regional Administrator within 20 working days of the appellant's receipt of the notification.

(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 ES 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) This section applies to all complaints submitted directly to the Regional Administrator or his/her representative.

(b) 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.

(c) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be logged and referred to the appropriate enforcement agency for prompt action.

(d) Upon referring the complaint in accordance with paragraphs (b) and (c) 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 § 658.421 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) that the matter will be referred to the Office of Administrative Law Judges for a hearing;

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically; and

(3) Send simultaneously one hearing file to the Department of Labor Chief Administrative Law Judge, 800 K Street NW., Suite 400N, 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, Rule of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, except where otherwise specified in this section or at § 658.425.

(c) Upon 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 notify all involved parties of the date, time, and place of the hearing.

(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. The ALJ has the authority to issue subpoenas.

(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.

(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 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 ES 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 has violated ES regulations must be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints must 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 Wagner-Peyser Act Employment Service

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant part 653 of this chapter to employers by the ETA, including SWAs.

§ 658.501 Basis for discontinuation of services.

(a) The SWA 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 for U.S. Workers at part 653, subpart F, of this chapter, 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 Department or the SWA 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 of this chapter; 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 and 658.504 must be followed.

(c) If it comes to the attention of a ES office or SWA that an employer participating in the ES 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 (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 § 655.184 or § 655.73 of this chapter 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 employment services pursuant to this part and parts 652, 653, and 654 of this chapter, 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 SWA must notify the employer in writing that all employment 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 employment services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances; or

(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 SWA must specify the basis for that determination. The employer must be notified that all employment 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 employment 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 employment 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 employment 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 employment 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 SWA 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 § 658.503(a) and (b), 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, SWA, or ETA, 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 Workforce 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 ES regulations at this part and parts 651, 652, 653, and 654 of this chapter. All recordkeeping and reporting requirements contained in this part and part 653 of this chapter have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980.

§ 658.601 State Workforce Agency responsibility.

(a) Each SWA must establish and maintain a self-appraisal system for ES 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 ES 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 or Combined State Plan (''State Plan''). The State Plan must be consistent with numerical goals contained in ES 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 State Plan goals and consideration of pertinent non-numerical factors.

(iv) Results of ES 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 ES 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 ES 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 State Plan. The State Plan must be consistent with numerical goals contained in ES 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 the Department 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 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 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 ES office activities must be conducted at least annually as follows:

(i) Each ES 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, such as 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 addressing these deficiencies as described in paragraph (a)(6) of this section must be developed.

(v) The result of ES 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 ES 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 ES 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 ES 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 ES 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 addressing 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 this part and part 653 of this chapter), are supplementary to the provisions of this section.

(ii) Each State Administrator and ES office manager must ensure 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 the SWA complies with its approved 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 ES office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

(b) [Reserved]

§ 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; and

(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 employment 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 ES system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and other Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD) task forces, and 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 SWA self-monitoring requirements at § 653.108(b) of this chapter.

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit the 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 the ES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to SWAs, 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 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 the ES, 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 also must 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 through 658.711. 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 employment 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 delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 through 765.711. 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 about 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 employment 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 Workforce Agency staff for administering the Complaint System, and any other employment services as appropriate.

(3) Recommend to the Regional 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 employment services to MSFWs, the NMA must provide to the Regional 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 Regional 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 State Plan for the SWAs within the region. In reviewing the State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

(1) State Workforce Agency compliance with ES regulations;

(2) State Workforce Agency performance against the goals and objectives established in the previous 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) SWA adherence to national program emphasis; and

(5) The adequacy and appropriateness of the 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 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 also may 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 must be documented on the Complaint/Apparent Violation Referral Form and provided to the State Workforce Agency to be handled as an apparent violation under § 658.419.

(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 employment 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. 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 § 653.108(b) of this chapter.

(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 his/her 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 SWA compliance with ES regulations as it pertains to services to MSFWs is monitored by the regional office. He/she must independently assess on a continuing basis the provision of employment 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 SWAs;

(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 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 the ES, 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 also may recommend changes in ES policy or regulations, as well as changes in the funding of State Workforce 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 §§ 658.700 *through 658.711.* He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of employment 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) Accompany selected outreach workers on their field visits;

(2) Participate in a random field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) 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) Meet with the SMA and discuss the full range of the employment 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 Workforce Agency's capability for providing the full range of 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 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 SMAs in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA also 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 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 also must 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 employment 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 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 ES offices.

§ 658.604 Assessment and evaluation of program performance data.

(a) State Workforce 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 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 Workforce Agency's responsibilities under its 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 State Plan. A SWA's failure to meet the operational objectives set forth in the State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its 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 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 Workforce Agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Workforce 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 State Workforce 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 business 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 of this part, 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 business days, may provide the SWA 10 business days for comment, and must make a determination within an additional 10 business 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 business days.

(e) If the Regional Administrator determines there is probable cause to believe 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 business days to comment on the findings, or up to 20 additional days, if the Regional Administrator determines 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 business days, written final findings which specify whether the SWA has violated ES regulations. If in the final findings the Regional Administrator determines 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 also must notify the NMA. If the Regional Administrator determines 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 the SWA's 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 business 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 more time, and must specify the additional time period. The specified time must commence with the date of signature on the registered mail receipt.

(3) When the time 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 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 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 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 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 the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears the violation will be fully corrected within a reasonable amount of time, 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 business days unless the Regional Administrator determines exceptional circumstances necessitate corrective action requiring more time. In such cases, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify that time period. The specified time commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given additional time 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 ensure 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 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 SWA 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 SWA 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 Workforce 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 (§§ 653.100 *through 653.113* of this chapter) or the Complaint System (§§ 658.400 through 658.426), 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 the remedial action must take effect immediately. The notice also must state 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 business 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 business 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 more time is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate more time, 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 must be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds 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 business days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines the circumstances necessitate continuing remedial action for more time. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate the extended time, 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 SWA, 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 also must 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 business 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 SWA is in compliance; or

(3) The Assistant Secretary has reason to believe the SWA will achieve compliance within 80 business days unless exceptional circumstances necessitate more time, 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 business 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 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 decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 business 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 SWA. 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 orders further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time 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 SWA stating the reasons for this action and providing a 10 business 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 business 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 SWA, 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 Department of Labor 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, other means of electronic service, or 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) Proceedings under this section are governed by secs. 5 through 8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* and the rules of practice and procedure at subpart A of 29 CFR part 18, except as otherwise specified in this section.

(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) Discovery may be conducted as provided in the rules of practice and procedure at 29 CFR 18.50 through 18.65.

(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. 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 SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending a written appeal to the Administrative Review Board.

§ 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 is the final decision of the Secretary on decertification appeals. It 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.

■ 11. Add part 675 to read as follows:

PART 675—INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE DEVELOPMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

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 (WDBs) in the public 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 individuals 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, job seekers, 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 postsecondary 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 development systems under title I of the Workforce Innovation and Opportunity Act cover?

(a) The regulations found in parts 675 through 688 of this chapter set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIOA. This part describes the purpose of that Act, explains the format of these regulations, and sets forth definitions for terms that apply to each part. Parts 676, 677 and 678 of this chapter contain regulations relating to Unified and Combined State Plans, performance accountability, and the one-stop delivery system and the roles of one-stop partners, respectively. Part 679 of this chapter contains regulations relating to statewide and local governance of the workforce development system. Part 680 of this chapter sets forth requirements applicable to WIOA title I programs serving adults and dislocated workers. Part 681 of this chapter sets forth requirements applicable to WIOA title I programs serving youth. Part 682 of this chapter contains regulations relating to statewide activities. Part 683 of this chapter sets forth the administrative requirements applicable to programs funded under WIOA title I. Parts 684 and 685 of this chapter contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 686 and 687 of this chapter describe the particular requirements applicable to the Job Corps and the national dislocated worker grant programs, respectively. Part 688 of this chapter contains the regulations governing the YouthBuild program. In addition, part 603 of this chapter provides the requirements regarding confidentiality and disclosure of State Unemployment Compensation program data under WIOA.

(b) Finally, parts 651 through 658 of this chapter address provisions for the Wagner-Peyser Act Employment Service, as amended by WIOA title III. Specifically, part 651 of this chapter contains general provisions and definitions of terms used in parts 651 through 658 of this chapter; part 652 of this chapter establishes the State Employment Service and describes its operation and services; part 653 of this chapter describes employment services to migrant and seasonal farmworkers and the role of the State Monitor Advocate; part 654 of this chapter addresses the special responsibilities of the Employment Service regarding housing for farmworkers; and part 658 of this chapter contains the administrative provisions that apply to the Wagner-Peyser Act Employment Service.

(c) Title 29 CFR part 38 contains the Department's nondiscrimination regulations implementing WIOA sec. 188.

§ 675.300 What definitions apply to these regulations?

In addition to the definitions set forth in WIOA and those set forth in specific parts of this chapter, the following definitions apply to the regulations in parts 675 through 688 of this chapter:

Consultation means the process by which State and/or local stakeholders convene to discuss changes to the public workforce system and constitutes a robust conversation in which all parties are given an opportunity to share their thoughts and opinions.

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 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 part 678 of this chapter.

Equal opportunity data or *EO data* means data on race and ethnicity, age, sex, and disability required by 29 CFR part 38 of the Department of Labor regulations implementing sec. 188 of WIOA, governing nondiscrimination.

Employment and Training Administration or *ETA* means the Employment and Training Administration of the U.S. Department of Labor.

Family means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(1) A married couple and dependent children;

(2) A parent or guardian and dependent children; or

(3) A married couple.

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 also may 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 38.4.

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 WDB means a Local Workforce Development Board (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

Non-Federal entity, as defined in 2 CFR 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 WIOA.

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 § 680.110 of this chapter.

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 WDB means a State Workforce Development Board (WDB) 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 also may 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 parts 660 through 672 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C, of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

WIOA regulations mean the regulations in parts 675 through 687 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C, of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 38.

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 part 679 of this chapter.

DOL-ED JOINT FINAL RULES: RULE TEXT ONLY

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Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 676, 677, and 678

Department of Education

Department of Labor

Employment and Training Administration

20 CFR Chapter V

For the reasons stated in the preamble, ETA amends 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.

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 676.100 What are the purposes 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 the 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 Combined State Plan partner 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 WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 676.130, a Unified 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 (DOL);

(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 (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(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 guidelines issued by the Secretaries of Labor and 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 Combined State Plan partner programs as described in § 676.140(d), 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 (WDB) 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, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) 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.

(e) All of the requirements in this part that apply to States also apply to outlying areas.

§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under 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)(C) and 102(b)(2)(D)(ii) 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.

§ 676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by 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 for 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 sec. 102(b) of WIOA.

§ 676.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 676.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(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) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) 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 WDBs 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 WDB 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.

(e) 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.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services 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.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, 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.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) 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 WDB 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 negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 676.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and 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 through 676.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed 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 Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner 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 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(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 through 676.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, 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 guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the 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 Combined State Plan partner 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.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 676.143 What is the development, 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 sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs 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 WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) 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 deeming 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.

(e) 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 Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 676.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State 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 deeming the plan complete, if any, under such law;

(2) The portion of the Combined State 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 Combined State 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.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 676.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(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 a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) 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 Combined State Plan partner 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 Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 676.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.,* the authorizing statute is reauthorized) 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 Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to 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 Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner 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 § 676.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and 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.

■ 2. Add part 677 to read as follows:

PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, 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 a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) 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 program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the

point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(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 VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to ''State'' include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

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 authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program 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)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, ''participant'' will have the meaning given to it in § 677.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a ''participant'' does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment

Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary 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 those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary 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 postsecondary 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. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 677.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education 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 of performance 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 who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 677.155 for career services 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 attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services 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 services and training services, respectively, during the most recent program year and the 3 preceding program years, 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 eligible training provider (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 Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 677.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

§ 677.170 How are State levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(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) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated 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 negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(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 are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 677.155 and a local area's performance on the primary indicators of performance identified in § 677.205.

(2) 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.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(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 ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

§ 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) 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 a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails 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 applied 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 issues.

(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, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of

Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 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 economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails 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) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(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:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five 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;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) for the second consecutive year as defined in § 677.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and 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, depending on which program is impacted, 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 Secretary 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 State program score and overall State 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 and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 677.155(a)(1) and (c) 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 of Labor and Education 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 include:

(1) The actual results achieved under § 677.155 and the information required under § 677.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) 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).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(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 DOL.

§ 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 § 677.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance 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 economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated 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, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs 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 WDBs. Pay-for-performance contract strategies must be implemented in accordance with part 683, subpart E 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 adjusted 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 to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 677.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a 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 adjusted levels of performance agreed to under § 677.210 for the same primary indicators of performance for the same core program 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 WDB, 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 WDB 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 WDB 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 WDB and chief elected official to the Secretary of Labor under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, 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 WDB and chief elected

official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal 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)(C).

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 of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs 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 as defined by § 677.150(a) 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) with respect to all individuals engaging in 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 engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. 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 a mechanism of electronic access to the public ETP 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 DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP 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 unemployment insurance (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 ETP 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 (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the 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 either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 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 Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the 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 Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 3. Add part 678 to read as follows:

PART 678—DESCRIPTION OF THE ONE-STOP DELIVERY SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description of the One-Stop Delivery System

Sec.

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 employers 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 public 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 sec. 188 and its implementing regulations at 29 CFR part 38.

(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 job seeker 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 the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); 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 Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB 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 each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A ''direct linkage'' means providing direct connection at the one-stop center, 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.

(ii) A ''direct linkage'' cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 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 job seeker 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 must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 678.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, 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 WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated 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 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff 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 Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff 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, as described in § 678.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act 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 Act 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 delivery 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) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(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 postsecondary 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.

(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 work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 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 delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(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, but not limited to, 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 § 678.410, 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 must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) 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 delivery system.

(b) For title II of WIOA, the entity or agency 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 or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, 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 title I, 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, YouthBuild, 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 eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 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;

(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 WDBs 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 based on proportionate use and relative benefit received;

(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.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 678.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 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.

§ 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. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(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 education, training, and workforce 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 TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and 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.
(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 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 employers, specifically labor exchange activities and labor market information described in § 678.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.
(b) Customized business services may be provided to employers, employer associations, or other such organizations. 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;
(vi) Creating job accommodations and using assistive technologies; or
(vii) Explaining labor and employment laws to help employers comply with discrimination, 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 WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB 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 postsecondary 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 WDB 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 WDB. The Local WDB 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.
(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

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 WDB and the one-stop partners, 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) Agreement on funding the costs of the services and the operating costs of the system, 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.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, 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 different Memoranda of Understanding between the Local Workforce Development 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 WDB, chief elected official and all partners. Alternatively, the Local WDB (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 WDB 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 must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 678.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in subpart E of this part.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, 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 WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB 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 WDB, with the approval of the chief 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 WDBs 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 part 200, 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 WDB 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 WDB 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 local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to ''noncompetitive proposals'' in the Uniform Guidance at 2 CFR 200.320(f) will be read as ''sole source procurement'' for the purposes of implementing this section.

(d) 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 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 678.605(c), 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 WDB may 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 WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

§ 678.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local WDBs may 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 may compete for and be selected as one-stop operators by the Local WDB, 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-area States where the State WDB serves as the Local WDB, 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 conflicts 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 WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery 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, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, 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; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures 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 WDB 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 conflicts of interest.

§ 678.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB 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 for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from

other programs with merit staffing requirements are being provided.

§ 678.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB 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 the 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 WDBs 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 WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, 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, and relative benefit received, consistent with Office of Management and Budget (OMB) 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 WDBs, 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 use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(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 based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 678.730, and timelines for a one-stop partner to submit an appeal in the State funding 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 WDB, 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 funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party 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 WDB 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 its use of the one-stop center, relative to benefits received. Such costs must also 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 to the use of the one-stop center and relative 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 described in § 678.755, the Local WDB 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 WDB 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 funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB 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 funding mechanism, one-stop partner programs may determine what funds they will use to pay for 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 programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(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 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 of the one-stop centers and relative benefit received by 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 part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 678.705 and consistent with the regulations in §§ 678.715 and 678.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 678.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 678.730 through 678.738, for the program year impacted by the local area's failure to reach consensus.

§ 678.730 What is the State one-stop infrastructure funding mechanism?

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 678.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 678.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 678.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 678.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in part 684 of this chapter. The appropriate portion of funds to be provided by Native American program 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 States in which the policy-making authority is placed in an entity or official that is independent of the

authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 678.730 through 678.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 678.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 678.725 must notify the Governor by the deadline established by the Governor under § 678.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 678.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 678.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 678.745) in accordance with § 678.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 678.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 678.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 678.737(b)(1), and

(ii) In accordance with § 678.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 678.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 678.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 678.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 678.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 678.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 678.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 678.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 678.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 678.705), then, in accordance with § 678.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 678.745, and any associated weights to determine the local area budget.

§ 678.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 678.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 678.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 678.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 678.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take 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 WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 678.735(a).

§ 678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 678.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 678.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 678.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act 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 three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, 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 program in the State for a fiscal year.

For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) *Vocational rehabilitation.* (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 678.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(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 Federal 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 § 678.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in part 684 of this chapter, may 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.*) may also be paid using program funds, administrative funds, or both.

(b) In the State 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.

(c) In the State 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 local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 678.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: The number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 678.735(b)(1), if the local area has agreed on such a budget,

the Governor may accept that budget in lieu of applying the formula factors.

§ 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.

(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), the cost contribution caps in § 678.738, consistent with the process described in the State Plan.

(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 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 its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among 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. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, 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 WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 678.720(c).

(d) The shared costs described in paragraph (a) of this section 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 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) 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 WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, 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 WDB'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 WDB is the one-stop operator as described in § 679.410 of this chapter, the State WDB 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 access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. 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 38. 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;

(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; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(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 part 677 of this chapter. 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 WDBs 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 WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs 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 WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 678.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

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 November 17, 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 primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, 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, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

■ 12. Add part 679 to read as follows:

PART 679—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE DEVELOPMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—State Workforce Development Board

Sec.

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

Sec.

Subpart C—Local Workforce Development Boards

Sec.

Subpart D—Regional and Local Plan

Sec.

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

Sec.

Authority: Secs. 101, 106, 107, 108, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—State Workforce Development Board

§ 679.100 What is the purpose of the State Workforce Development Board?

The purpose of the State Workforce Development Board (WDB) 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 public 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 Opportunity 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 WDB 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 WDB must meet the requirements of WIOA sec. 101(b) and must represent diverse geographic areas of the State, including urban, rural, and suburban areas. The WDB membership 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 in the State 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 also may be members of a Local WDB as described in WIOA sec. 107(b)(2)(A)(i);

(B) Represent businesses, or organizations that represent businesses described in paragraph (b)(3)(i) of this section, 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 registered 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 registered 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 the following core programs—

(*i*) The adult, dislocated worker, and youth programs authorized under title I of WIOA and the Wagner-Peyser Act;

(*ii*) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA; and

(*iii*) The State Vocational Rehabilitation (VR) program authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA.

(*iv*) 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 WDB from the business representatives on the WDB 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 WDB 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 WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the following requirements:

(i) If the alternative designee is a business representative, he or she must have optimum policy-making hiring authority.

(ii) Other alternative designees must 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 WDB member participation;

(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 WDB as deemed appropriate by the Governor.

(e) Members who represent organizations, agencies or other entities described in paragraphs (b)(3)(ii) through (iii) of this section must be individuals who have optimum policy-making authority in the organization or for the core program that they represent.

(f)(1) A State WDB 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 WDB member may not serve as a representative of more than one subcategory under paragraph (b)(3)(ii) of this section.

(3) A State WDB 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 WDB members must have voting privileges. The Governor also may 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. Demonstrated experience and expertise may include individuals with experience in education or training of job seekers with barriers to employment as described in § 679.110(b)(3)(ii)(C) and (D).

§ 679.130 What are the functions of the State Workforce Development Board?

Under WIOA sec. 101(d), the State WDB 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 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;

(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 job seekers 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 WDBs and chief elected officials;

(6) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to Local WDBs, 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, job seekers, 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 WDBs, which may include information on factors that contribute to enabling Local WDBs 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 WDBs in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a Local WDB serves as the one-stop operator, the State WDB must use such criteria to assess and certify the one-stop center;

(2) Guidance for the allocation of one-stop center infrastructure funds under WIOA sec. 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 postsecondary 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 Workforce Development 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 WDB must conduct business in an open manner as required by WIOA sec. 101(g).

(b) The State WDB 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 WDB, including:

(1) The State Plan, or modification to the State Plan, prior to submission of the State Plan or modification of the State Plan;

(2) Information regarding membership;

(3) Minutes of formal meetings of the State WDB upon request;

(4) State WDB 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 WDB. This may include:

(1) A State council;

(2) A State WDB 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 WDBs 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 (WIA);

(2) Is substantially similar to the State WDB 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 WDB 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) In parts 675 through 687 of this chapter, all references to the State WDB also apply to an alternative entity used by a State.

§ 679.160 Under what circumstances may the State Workforce Development Board hire staff?

(a) The State WDB 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 WDB 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 WDB.

(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, subtitle 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 WDBs and chief elected officials (CEOs) 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 also may consider include:

(1) Population centers;

(2) Commuting patterns;

(3) Land ownership;

(4) Industrial composition;

(5) Location quotients;

(6) Labor force conditions;

(7) Geographic boundaries; and

(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 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 WDB. Also, significantly, local areas are the areas within which Local WDBs 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 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 areas?

As part of the process of designating or redesignating a local area, the Governor must develop a policy for designation of local areas that must include:

(a) Consultation with the State WDB;

(b) Consultation with the chief elected officials and affected Local WDBs; 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 area; and

(2) Provide an opportunity for comment by representatives of Local WDBs, 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 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 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 WDB 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 WDB 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) Subject to paragraph (c) of this section, after the period of initial designation, if the chief elected official and Local WDB 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 most recent 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)(1).

(c) No determination of subsequent eligibility may be made before the conclusion of Program Year (PY) 2017.

(d) The Governor:

(1) May review a local area designated under paragraph (b) 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 (b) 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 (b) 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 (b) of this section related to the subsequent designation of a local area.

(g) The Governor may approve, under paragraph (c) of this section, a request for designation as a local area from areas served by rural concentrated employment programs as described in WIOA sec. 107(c)(1)(C).

§ 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 the Local WDB 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.

(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 the Local WDB and chief elected official for core indicators of performance as provided in paragraphs (b)(1) and (2) of this section as appropriate, and that the local area has not failed any individual measure for the last 2 consecutive program years in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

(1) For subsequent designation determinations made at the conclusion of PY 2017, a finding of whether a local area performed successfully must be limited to having met or exceeded the negotiated levels for the Employment Rate 2nd Quarter after Exit and the Median Earnings indicators of performance, as described at § 677.155(a)(1)(i) and (iii) of this chapter respectively, for PY 2016 and PY 2017.

(2) For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, a finding of whether a local area performed successfully must be based on all six of the WIOA indicators of performance as described at § 677.155(a)(1)(i) through (vi) of this chapter for the 2 most recently completed program years.

(c) For the purpose of determining initial and subsequent local area designation under § 679.250(a) and (b), 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 WIA as in effect on July 1, 2013 may designate the State as a single-State local area under WIOA.

(b) The Governor of a State local area under paragraph (a) of this section who seeks to designate the State as a single-State local area under WIOA must:

(1) Identify the State as a single-area State 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 WDB for a single-area State must act as the Local WDB and carry out the functions of the Local WDB 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.

(d) Single-area States must conduct the functions of the Local WDB as outlined in paragraph (c) of this section to achieve the incorporation of local interests but may do so in a manner that reduces unnecessary burden and duplication of processes.

(e) States must carry out the duties of State and Local WDBs in accordance with guidance issued by the Secretary of Labor.

§ 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 WDBs of each local area within a planning region make a request to the Governor to redesignate into a single local area, the State WDB must authorize statewide adult, dislocated worker, and youth program 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 WDB.

§ 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 WDB, in accordance with appeal procedures established in the State Plan and § 683.630(a) of this chapter.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State WDB does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at § 683.640 of this chapter.

Subpart C—Local Workforce Development Boards

§ 679.300 What is the vision and purpose of the Local Workforce Development Board?

(a) The vision for the Local WDB is to serve as a strategic leader and convener of local workforce development system stakeholders. The Local WDB partners with employers and the workforce development system to develop policies and investments that support public 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 WDB 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 WDB 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 WDB sets policy for the portion of the statewide workforce development system within the local area and consistent with State policies.

(c) The Local WDB and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local WDB, 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 WDB 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 WDB must carry out the roles of the Local WDB 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 CEO must establish by-laws, consistent with State policy for Local WDB membership, that at a minimum address:

(1) The nomination process used by the CEO to select the Local WDB 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 CEO of a WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB 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 WDB member participation;

(6) The process to ensure WDB 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) A description of any other conditions governing appointment or membership on the Local WDB as deemed appropriate by the CEO.

§ 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 WDB 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 WDB 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 WDBs also may serve on the State WDB. 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 WDB 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 WDB also must include:

(1) At least one eligible training 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 WDBs 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 WDB under sec. 107(b)(1) of WIOA for appointment of members of the Local WDBs, 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 sec. 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities.

(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 WDB members must have voting privilege. The chief elected official may convey voting privileges to non-required members.

§ 679.330 Who must chair a Local Workforce Development Board?

The Local WDB must elect a chairperson from among the business representatives on the WDB.

§ 679.340 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?

For purposes of selecting representatives to Local WDBs:

(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 WDB 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 Workforce Development Board?

The Local WDB 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 Workforce Development Board?

(a) Standing committees may be established by the Local WDB to provide information and assist the Local WDB in carrying out its responsibilities under WIOA sec. 107. Standing committees must be chaired by a member of the Local WDB, may include other members of the Local WDB, and must include other individuals appointed by the Local WDB who are not members of the Local WDB and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local WDB. 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 WDB may designate other standing committees in addition to those specified in paragraph (a) of this section.

(c) Local WDBs 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 Workforce Development Board?

As provided in WIOA sec. 107(d), the Local WDB 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; and

(3) Other research, data collection, and analysis related to the workforce needs of the regional economy as the WDB, 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 WDB and standing committees in carrying out convening, brokering, and leveraging functions at the direction of the Local WDB;

(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 WDB;

(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 postsecondary 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 job seekers, 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 job seekers, 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 the entire one-stop delivery system in the local area;

(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 indicators with the chief elected official and the Governor;

(k) Negotiate with CEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715 of this chapter 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 WDB determines there is an insufficient number of eligible training providers in a local area, the Local WDB 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 of this chapter;

(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 WIOA 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 WDB, with approval of the chief elected official and consistent with the local plan and the duties of the Local WDB;

(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.*); and

(q) Certification of one-stop centers in accordance with § 678.800 of this chapter.

§ 679.380 How does the Local Workforce Development 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 WDB 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 training 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 training providers with expertise in assisting individuals with disabilities and eligible training 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 delivery 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 WDB 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 of this chapter and career services that require contracting with a career service provider; and

(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 individuals with disabilities; and

(ii) Sufficient access for adult education and literacy activities.

§ 679.390 How does the Local Workforce Development Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of the Workforce Innovation and Opportunity Act?

The Local WDB 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 WDB. 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 WDB members;

(c) Selection of one-stop operators;

(d) Award of grants or contracts to eligible training providers of workforce investment activities including providers of youth workforce investment activities;

(e) Minutes of formal meetings of the Local WDB; and

(f) Local WDB by-laws, consistent with § 679.310(g).

§ 679.400 Who are the staff to the Local Workforce Development Board and what is their role?

(a) WIOA sec. 107(f) grants Local WDBs authority to hire a director and other staff to assist in carrying out the functions of the Local WDB.

(b) Local WDBs 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 WDB.

(c) The Local WDB 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 WDB staff only may assist the Local WDB fulfill the required functions at WIOA sec. 107(d).

(e) Should the WDB select an entity to staff the WDB 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 WDB and chief elected official(s) to clarify their roles and responsibilities as required by § 679.430.

§ 679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?

(a)(1) A Local WDB may be selected as a one-stop operator:

(i) Through sole source procurement in accordance with § 678.610 of this chapter; or

(ii) Through successful competition in accordance with § 678.615 of this chapter.

(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 WDB acts as a one-stop operator, the State must ensure certification of one-stop centers in accordance with § 678.800 of this chapter.

(b) A Local WDB may act as a provider of career services only with the agreement of the chief elected official in the local area and the Governor.

(c) A Local WDB 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 training providers of such a program of training services to meet local demand in the local area;

(ii) Information demonstrating that the WDB meets the requirements for eligible training provider 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 training providers 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 WDB involved has engaged in a pattern of inappropriate referrals to training services operated by the Local WDB.

(d) The restrictions on the provision of career and training services by the Local WDB, as one-stop operator, also apply to staff of the Local WDB.

§ 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 WDB or the State WDB in single-area States, 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 WDB staff, one-stop operator, and direct provider of 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 WDB and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA 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 delivery 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 § 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 WDBs in a region.

(c) The Governor must establish and disseminate to Local WDBs and regional planning areas a policy for the submission of local and regional plans. The policy must set a deadline for the submission of the regional and local plans that accounts for the activities required in plan development outlined in §§ 679.510 and 679.550.

§ 679.510 What are the requirements for regional planning?

(a) Local WDBs and chief elected officials within an identified planning region (as defined in WIOA secs. 106(a)(2)(B)–(C) and § 679.200) 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 WDBs 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 WDBs 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 WDBs 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 WDB 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 the requirements of § 679.570, the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after receipt of the plan 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 38.

(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 § 676.105 of this chapter.

§ 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 WDBs 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 WDBs 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 WDB 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 WDB 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 WDB 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 WDB 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 WDB 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 WDB 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 WDB'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 § 677.155(a)(1) of this chapter; 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 WDB will support the strategy identified in the State Plan under § 676.105 of this chapter 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 WDB 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 postsecondary 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 must support the strategy described in paragraph (b)(3) of this section;

(4) An examination of how the Local WDB will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local WDB will promote entrepreneurial skills training and microenterprise services;

(5) The one-stop delivery system in the local area, including:

(i) How the Local WDB will ensure the continuous improvement of eligible providers through the system and that such providers will meet the employment needs of local employers, workers, and job seekers;

(ii) How the Local WDB 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 WDB 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 WDB will coordinate relevant secondary and postsecondary education programs and activities with education and workforce investment activities to coordinate strategies, enhance services, and avoid duplication of services;

(10) How the Local WDB 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 WDB 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 WDB 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 delivery system. This includes cooperative agreements (as defined in WIOA sec. 107(d)(11)) between the Local WDB 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 the Rehabilitation 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 the Rehabilitation 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 WDB 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 WDB will take toward becoming or remaining a high-performing WDB, consistent with the factors developed by the State WDB;

(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 WDB 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 WDB, consistent with WIOA sec. 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 WDB 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 sec. 134(c)(3)(E) and § 680.600 of this chapter.

(c) The local plan must include any additional information required by the Governor.

(d) The local plan must 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 the Governor receives the plan 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 38.

(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 § 676.105 of this chapter.

(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 U.S. Department of Labor in accordance with the procedures described in § 676.105 of this chapter.

(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 WDB, 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 WDB 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 development 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 of this chapter.

§ 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 WDBs;

(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 Act 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 development 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 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 WDB affected by the waiver;

(iii) Provide any Local WDB 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 development 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 WDBs;

(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 OAA that are proposed for waiver, if any;

(6) The outcomes to be achieved by the waivers described in paragraphs (b)(1) through (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 Act or OAA 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 only may 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.

■ 13. 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.

Subpart B—Training Services

Sec.

Subpart C—Individual Training Accounts

Sec.

Subpart D—Eligible Training Providers

Sec.

Subpart E—Priority and Special Populations

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 delivery 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 one-stop center in each local area. Services also may 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 delivery system, adults and dislocated workers needing training are provided Individual Training Accounts (ITAs) and access to lists of eligible training 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. Individuals are considered participants when they have received a Workforce Innovation and Opportunity Act (WIOA) service other than self-service or information-only activities and have satisfied all applicable programmatic requirements for the provision of services, such as eligibility determination (*see* § 677.150(a) of this chapter).

(b) Adults and dislocated workers who receive services funded under WIOA title I other than self-service or information-only activities must be registered and must be a participant.

(c) EO data, as defined in § 675.300 of this chapter, 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 Workforce Development Boards (WDBs) may establish policies and procedures for one-stop centers 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);

(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); and

(3) What constitutes ''unlikely to return to a previous industry or occupation'' under WIOA sec. 3(15)(A)(iii), consistent with § 680.660.

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development 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 WDBs 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 also may be used to provide the additional services described in WIOA sec. 134(d), including:

(1) Job seeker services, such as:

(i) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities;

(ii) Training programs for displaced homemakers and for individuals training for nontraditional employment (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;

(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;

(iv) Supportive services, including needs-related payments, as described in subpart G of this part; and

(v) Transitional jobs, as described in § 680.190, to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history;

(2) Employer services, such as:

(i) Customized screening and referral of qualified participants in training services to employers;

(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 Employment Service;

(iii) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local WDB and consistent with the local plan (*see* § 678.435 of this chapter and WIOA sec. 134(d)(1)(A)(ix)); and

(3) Coordination activities, such as:

(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.*);

(ii) Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture;

(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;

(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;

(v) Improving services and linkages between the local workforce development system (including the local one-stop delivery system) and employers, including small employers, in the local area;

(vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance programs; 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);

(4) Implementing a Pay-for-Performance contract strategy for training services in accordance with §§ 683.500 through 683.530 of this chapter for which up to 10 percent of the Local WDB's total adult and dislocated worker funds may be used;

(5) Technical assistance for one-stop centers, partners, and eligible training providers (ETPs) 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;

(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;

(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; and

(8) Incumbent worker training programs, as described in subpart F of this part.

§ 680.150 What career services must be provided to adults and dislocated workers?

(a) At a minimum, all of the basic career services described in WIOA secs. 134(c)(2)(A)(i)–(xi) and § 678.430(a) of this chapter 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) of this chapter 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) of this chapter, must be made available, as determined appropriate by the Local WDB, for a minimum of 12 months following the first day of employment, to 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 WDB. The Local WDB only may 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 of this chapter.

§ 680.170 What is the individual employment plan?

The individual employment plan (IEP) is an individualized career service, under WIOA sec. 134(c)(2)(A)(xii)(II),

that is developed jointly by the participant and career planner when determined appropriate by the one-stop center 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.

§ 680.180 What is an internship or work experience for adults and dislocated workers?

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), an internship or work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Internships and other work experience may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act. An internship or other 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. Transitional jobs are a type of work experience, as described in §§ 680.190 and 680.195.

§ 680.190 What is a transitional job?

A transitional job is one that provides a time-limited work experience, that is wage-paid and subsidized, and is in the public, private, or non-profit sectors for those individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local WDB. These jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment.

§ 680.195 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 allocations for transitional jobs as described in § 680.190. Transitional jobs must be combined with comprehensive career services (*see* § 680.150) and supportive services (*see* § 680.900).

Subpart B—Training Services

§ 680.200 What are training services for adults and dislocated workers?

Types of training services are listed in WIOA sec. 134(c)(3)(D) and in paragraphs (a) through (k) of this section. This list is not all-inclusive and additional training services may be provided.

(a) Occupational skills training, including training for nontraditional employment;

(b) On-the-job training (OJT) (*see* §§ 680.700, 680.710, 680.720, and 680.730);

(c) Incumbent worker training, in accordance with WIOA sec. 134(d)(4) and §§ 680.780, 680.790, 680.800, 680.810, and 680.820;

(d) Programs that combine workplace training with related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skills upgrading and retraining;

(g) Entrepreneurial training;

(h) Transitional jobs in accordance with WIOA sec 134(d)(5) and §§ 680.190 and 680.195;

(i) Job readiness training provided in combination with services listed in paragraphs (a) through (h) of this section;

(j) Adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with training services listed in paragraphs (a) through (g) of this section; and

(k) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training (*see* §§ 680.760 and 680.770).

§ 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 center 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) Select 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 (TAA), 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 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 the Workforce Innovation and Opportunity Act?

(a) Yes, except as provided by paragraph (b) of this section, 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 center or partner can obtain enough information to make an eligibility determination to be determined eligible for training services under WIOA sec. 134(c)(3)(A)(i) and § 680.210. Where appropriate, a recent interview, evaluation, or assessment, may be used for the assessment purpose.

(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 WDB 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. Programs 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 (a), one-stop centers may take into account the full cost of participating in training services, including the cost of support services and other appropriate costs.

(b) One-stop centers 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 centers 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 center 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 center the WIOA funds used to underwrite the training for the amount the Pell Grant covers, including any education fees the training provider charges to attend training. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIOA participant for education-related expenses.

Subpart C—Individual Training Accounts

§ 680.300 How are training services provided?

Training services for eligible individuals are typically provided by training providers who receive payment for their services through an 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 State eligible training providers they select in consultation with the career planner, which includes discussion of program quality and performance information on the available eligible 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 also may be made incrementally, for example, through payment of a portion of the costs at different points in the training course. Under limited conditions, as provided in § 680.320 and WIOA sec. 134(d)(3)(G), a Local WDB may contract for these services, rather than using an ITA for this purpose. In some limited circumstances, the Local WDB may itself provide the training services, but only if it obtains a waiver from the Governor for this purpose, and the Local WDB meets the other requirements of § 679.410 of this chapter 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 WDB 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 IEP, 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 WDB or Local WDB to establish a range of amounts and/or a maximum amount applicable to all ITAs.

(c) Limitations established by State or Local WDB policies must be described in the State or Local Plan, respectively, but must not be implemented in a manner that undermines WIOA's requirement that training services are provided in a manner that maximizes customer choice in the selection of an ETP. Exceptions to ITA limitations may be provided for individual cases and must be described in State or Local WDB policies.

(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, and the local area has fulfilled the consumer choice requirements of § 680.340:

(1) When the services provided are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs.

(2) When the Local WDB determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs. The determination process must include a public comment period for interested providers of at least 30 days, and be described in the Local Plan.

(3) When the Local WDB determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve individuals with barriers to employment, as described in paragraph (b) of this section. The Local WDB 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 individuals with barriers to employment 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 WDB determines that it would be most appropriate to contract with an institution of higher education (*see* WIOA sec. 3(28)) or other provider of training services in order to 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 WDB is considering entering into a Pay-for-Performance contract, and the Local WDB ensures that the contract is consistent with § 683.510 of this chapter.

(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; or

(14) Other groups determined by the Governor to have barriers to employment.

(c) The Local Plan must describe the process to be used in selecting the providers under a contract for 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?

Registered apprenticeships automatically qualify to be a on a State's eligible training provider list (ETPL) as described in § 680.470.

(a) ITAs can be used to support placing participants in registered apprenticeship through:

(1) Pre-apprenticeship training, as defined in § 681.480 of this chapter; and

(2) Training services provided under a registered apprenticeship program.

(b) Supportive services may be provided as described in §§ 680.900 and 680.910.

(c) Needs-related payments may be provided as described in §§ 680.930, 680.940, 680.950, 680.960, and 680.970.

(d) Work-based training options also may 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 ITAs or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local WDB, through the one-stop center, must make available to customers the State list of eligible training providers required in WIOA sec. 122(d). The list includes a description of the programs through which the providers may offer the training services, and the performance and cost information about those providers described in WIOA sec. 122(d). Additionally, the Local WDB must make available information identifying eligible providers as may be required by the Governor under WIOA sec. 122(h) (where applicable).

(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 one-stop center must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph (c), 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 WDB, 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 postsecondary credentials (defined at WIOA sec. 3(52)) that are aligned with in-demand industry sectors or occupations in the local area.

§ 680.350 May Workforce Innovation and Opportunity Act title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Yes, under WIOA sec. 134(c)(3)(D)(x), title I funds may provide adult education and literacy activities if they are provided concurrently or in combination with one or more of the following training services:

(a) Occupational skills training, including training for nontraditional employment;

(b) OJT;

(c) Incumbent worker training (as described in §§ 680.780, 680.790, 680.800, 680.810, and 680.820);

(d) Programs that combined workplace training and related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skill upgrading and retraining; or

(g) Entrepreneurial training.

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 and programs for WIOA title I, subtitle B adult, dislocated worker, and out-of-school youth (OSY) aged 16–24 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 list of eligible training providers and programs 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, subtitle B. The State list of eligible training providers and programs also is a means for ensuring informed customer choice for individuals eligible for training. In administering the eligible training provider eligibility process, States and local areas must work to ensure that qualified providers offering a wide variety of job-driven programs of training services are available. The State list of eligible training providers and programs 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, including formats accessible to individuals with disabilities. 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 also must 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 of this chapter.

§ 680.410 What is an eligible training provider?

An ETP:

(a) Is the only type of entity that receives funding for training services, as defined in § 680.200, through an individual training account;

(b) Must be included on the State list of eligible training providers and programs under this subpart;

(c) Must provide a program of training services; and

(d) Must be one of the following types of entities:

(1) Institutions of higher education that provide a program which leads to a recognized postsecondary credential;

(2) Entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*); or

(3) Other public or private providers of training services, which may include:

(i) Community-based organizations;

(ii) Joint labor-management organizations; and

(iii) Eligible providers of adult education and literacy activities under title II of WIOA if such activities are provided in combination with training services described at § 680.350.

§ 680.420 What is a ''program of training services''?

A program of training services is one or more courses or classes, or a structured regimen, that provides the services in § 680.200 and leads to:

(a) An industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State involved or the Federal government, an associate or baccalaureate degree;

(b) Consistent with § 680.350, a secondary school diploma or its equivalent;

(c) Employment; or

(d) Measurable skill gains toward a credential described in paragraph (a) or (b) of this section or employment.

§ 680.430 Who is responsible for managing the training provider eligibility process?

(a) The Governor, in consultation with the State WDB, establishes the criteria, information requirements, and procedures, including procedures identifying the respective roles of the State and local areas, governing the eligibility of providers and programs of training services to receive funds through ITAs.

(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 and programs of training services. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Ensuring the development and maintenance of the State list of eligible training providers and programs, as described in §§ 680.450 (initial eligibility), 680.460 (continued eligibility), and 680.490 (performance and cost information reporting requirements);

(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); and

(5) Disseminating the State list of eligible training providers and programs, accompanied by performance and cost information relating to each program, to the public and the Local WDBs throughout the State, as further described in § 680.500.

(c) The Local WDB must:

(1) Carry out the procedures assigned to the Local WDB by the State, such as determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers and programs, and considering the possible termination of an eligible training 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 of eligible training providers and programs through the local one-stop delivery system, including formats accessible to individuals with disabilities.

(d) The Local WDB may make recommendations to the Governor on the procedure used in determining eligibility of providers and programs.

(e) The Local WDB may, except with respect to registered apprenticeship programs:

(1) Require additional criteria and information from local providers as criteria to become or remain eligible in that local area; and

(2) Set higher levels of performance than those required by the State as criteria for local programs to become or remain eligible to provide services in that local area.

§ 680.440 [Reserved]

§ 680.450 What is the initial eligibility process for new providers and programs?

(a) All providers and programs that have not previously been eligible to provide 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 are exempt from initial eligibility procedures. Registered apprenticeship programs must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth in § 680.470. Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470.

(c) In establishing the State requirements described in paragraph (e) of this section, the Governor must, in consultation with the State WDB, develop a procedure for determining the eligibility of training providers and programs. This procedure, which must be described in the State Plan, must be developed after:

(1) Soliciting and taking into consideration recommendations from Local WDBs 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 WDBs 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 postsecondary 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 and programs seeking initial eligibility.

(e) The Governor must require providers and programs 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 programs of training services, which may include information related to training services that lead to a recognized postsecondary 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 performance standards, based on the performance information described in paragraph (e) of this section.

(g) Under WIOA sec. 122(b)(4)(B), eligible training providers receive initial eligibility for only 1 year for a particular program.

(h) After the initial eligibility expires, these initially eligible training 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 eligible training providers and programs to maintain their continued eligibility. The application procedure must take into account the program's prior eligibility status.

(1) Training providers and programs that were previously eligible under WIA will be subject to the application procedure for continued eligibility after the close of the Governor's transition period for implementation.

(2) Training providers and programs 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 WDBs 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 WDBs and providers, and for providing an opportunity for public comment.

(c) Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470. Apprenticeship programs registered under the National Apprenticeship Act must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth 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 the eligible training provider's program on:

(i) The performance accountability measures described in WIOA secs. 116(b)(2)(A)(i)(I)–(IV) and the other matters required by WIOA sec. 122(b)(2);

(ii) Other appropriate measures of performance outcomes determined by the Governor for program participants receiving training services under WIOA title I, subtitle B, taking into consideration the characteristics of the population served and relevant economic conditions; and

(iii) Outcomes of the program for students in general with respect to employment and earnings as defined in WIOA sec. 116(b)(2).

(iv) All of these measures may include minimum performance standards.

(v) Until data from the conclusion of each performance indicator's first data cycle are available, the Governor may take into account alternate factors related to the measures described in paragraphs (f)(1)(i) through (iv) of this section.

(2) Ensuring access to training services throughout the State, including in 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, subtitle B;

(4) The degree to which programs of training services 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 of training services that lead to postsecondary credentials;

(8) The quality of the program of training services including a program that leads to a recognized postsecondary 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 all of the information required for completion of eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart; 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 eligible training providers to submit appropriate, accurate, and timely information for participants receiving training under WIOA title I, subtitle 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 postsecondary 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 postsecondary 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.

(i) The procedure for continued eligibility also must provide for the State biennially to review 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 and removal of any registered apprenticeship programs as described in § 680.470.

(k) The Governor may establish procedures and timeframes for providing technical assistance to eligible training providers 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.

(l) The Governor's procedures must include what the Governor considers to be a substantial violation of the requirement to timely and accurately submit all of the information required for completion of the eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart.

(1) The Governor's procedures on determining a substantial violation must take into account exceptional circumstances beyond the provider's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues.

(2) Providers who substantially violate the requirement in paragraph (g) of this section to timely and accurately submit all required information must be removed from the State list of eligible training providers and programs, as provided in § 680.480(b).

§ 680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?

(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 and programs. All registered apprenticeship programs must be informed of their automatic eligibility to be included on the list, and must be provided an opportunity to consent to their inclusion, before being placed on the State list of eligible training providers and programs. The Governor must establish a mechanism for registered apprenticeship program sponsors in the State to be informed of their automatic eligibility and to indicate that the program sponsor wishes to be included on the State list of eligible training providers and programs. This mechanism must place minimal burden on registered apprenticeship program sponsors and must be developed in accordance with guidance from the U.S. Department of Labor Office of Apprenticeship or with the assistance of the recognized State apprenticeship agency, as applicable.

(b) Once on the State list of eligible training providers and programs, registered apprenticeship programs will remain on the list:

(1) Until they are deregistered;

(2) Until the registered apprenticeship program notifies the State that it no longer wants to be included on the list; or

(3) Until the registered apprenticeship program is 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 38.

(c) A registered apprenticeship program whose eligibility is terminated under paragraph (b)(3) of this section must be terminated for not less than 2 years and is liable to repay all youth, adult, and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures required by § 680.480 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 § 683.630(b) of this chapter.

(d) Inclusion of a registered apprenticeship in the State list of eligible training providers and programs allows an individual who is eligible to use WIOA title I, subtitle B funds to use those funds toward registered apprenticeship training, consistent with their availability and limitations as prescribed by § 680.300. The use of ITAs and other WIOA title I, subtitle B funds toward registered apprenticeship training is further described in § 680.330.

(e) The Governor is encouraged to consult with the State and Local WDBs, 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.

(f) Pre-apprenticeship providers that wish to provide training services to participants using WIOA title I, subtitle B funds are subject to the eligibility procedures of this subpart.

§ 680.480 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must meet the Governors requirements for eligibility 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 38, must be removed from the State list of eligible training providers and programs 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 youth, 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 § 683.630(b) of this chapter.

(c) As a part of the biennial review of eligibility established by the Governor, the State must remove programs of training services that fail to meet criteria

established by the Governor to remain eligible, which may include failure to meet established minimum performance levels. Registered apprenticeship programs only may be removed for the reasons set forth in § 680.470.

(d) The Governor must establish an appeals procedure for providers of training services to appeal a denial of eligibility under this subpart that meets the requirements of § 683.630(b) of this chapter, which explains the appeals process for denial or termination of eligibility of a provider of training services.

(e) Where a Local WDB has established higher minimum performance standards, according to § 680.430(e), the Local WDB may remove a program of training services from the eligible programs in that local area for failure to meet those higher performance standards. Training providers may appeal a denial of eligibility under § 683.630(b) of this chapter.

§ 680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?

(a) In accordance with the State procedure under § 680.460(i), eligible training providers, except registered apprenticeship programs, 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. 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 postsecondary credentials received by such participants in § 680.460(g)(5);

(3) Program cost information, including tuition and fees, for WIOA participants in the program in § 680.460(g)(6); and

(4) Information on the program completion rate for WIOA participants in § 680.460(g)(7).

(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, maintain eligibility, or better to inform consumers.

(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 eligible training providers in collecting and supplying required information such as offering technical assistance.

§ 680.500 How is the State list of eligible training providers and programs 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 programs and accompanying performance and cost information to Local WDBs 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 of eligible training providers and programs and information must be updated regularly and provider and program 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 list of eligible training providers and programs 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 postsecondary education systems. The list must 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 also must be accessible to individuals with disabilities.

(d) The State list of eligible training providers and programs must be accompanied by appropriate information to assist participants in choosing employment and programs of training services. Such information must include:

(1) Recognized postsecondary 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 of eligible training providers and programs 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 Workforce Development Board supplement the information available from the State list of eligible training providers and programs?

(a) Local WDBs may supplement the criteria and information requirements established by the Governor in order to support informed consumer choice and the achievement of local performance indicators. However, the Local WDB may not do so for registered apprenticeship programs.

(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 training 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 and programs located outside of the local area or outside of the State?

(a) An individual may choose training providers and programs outside of the local area provided the training program

is on the State list, in accordance with local policies and procedures.

(b) An individual may choose eligible training providers and programs outside of the State consistent with State and local policies and procedures. State policies and procedures may provide for reciprocal or other agreements established with another State to permit eligible training providers in a State to accept ITAs provided by the other State.

§ 680.530 What eligibility requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

(a) Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to entities listed on the eligible training provider list, and are not included on the State list of eligible training providers and programs.

(b) For providers of training described in paragraph (a) of this section, the Governor may establish performance criteria those providers must meet to receive funds under the adult or dislocated worker programs pursuant to a contract as provided in § 680.320.

(c) One-stop operators in a local area must collect such performance information as the Governor may require and determine whether the providers meet any performance criteria the Governor may establish under paragraph (b) of this section.

(d) One-stop operators must disseminate information identifying providers and programs that have met the Governor's performance criteria, along with the relevant performance information about them, through the one-stop delivery system.

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 of the Workforce Innovation and Opportunity Act?

(a) WIOA sec. 134(c)(3)(E) states that priority for individualized career services (*see* § 678.430(b) of this chapter) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, and 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 center 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 (a) of this section does not necessarily mean that these services only may be provided to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. The Local WDB 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) and the priority provisions of WIOA sec. 134(c)(3)(E), discussed above in paragraphs (a) and (b) of this section.

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No, the statutory priority only applies to adult funds and only applies to providing 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 of this chapter describes the roles of such partners in the one-stop delivery system and it applies to the TANF program. TANF serves individuals who also may 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 delivery system. TANF participants, who are determined to be WIOA eligible, and who need occupational skills training may be referred through the one-stop delivery 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 also are determined TANF eligible may be referred to the TANF program for assistance.

§ 680.630 How does a displaced homemaker qualify for services under title I of the Workforce Innovation and Opportunity Act?

(a) Individuals who meet the definitions of a ''displaced homemaker'' (*see* WIOA sec. 3(16)) qualify for career and training services with dislocated worker title I funds.

(b) Displaced homemakers also may 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 also may be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in § 682.210(c) of this chapter.

(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 Workforce Innovation and Opportunity 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, as defined 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 part 1010. A veteran still must 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 § 683.230 of this chapter.

§ 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) OJT is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer or registered apprenticeship program sponsor 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) OJT 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 OJT 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.

(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 IEP.

§ 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 or wages comparable to or higher than wages from previous employment, as determined by Local WDB 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 WDB.

§ 680.720 What conditions govern on-the-job training payments to employers?

(a) OJT 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.

(c) Employers are not required to document such extraordinary costs.

§ 680.730 Under what conditions may a Governor or Local Workforce Development 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 of this chapter up to 75 percent, and the Local WDB also may increase the reimbursement rate for OJT contracts described in § 680.320(a)(1) up to 75 percent, when taking into account the following factors:

(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 WDB 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 WDBs 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 entered into with registered apprenticeship program sponsors or participating employers in registered apprenticeship programs for the OJT 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 § 680.710.

§ 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 WDB 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 or wages comparable to or higher than wages from previous employment, as determined by Local WDB 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 WDB.

§ 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. 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, with the following exception: In the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more as long as a majority of those employees being trained do meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they also are enrolled as a participant in the WIOA adult or dislocated worker program.

§ 680.790 What is incumbent worker training?

Incumbent worker training must satisfy the requirements in WIOA sec. 134(d)(4) and increase the competitiveness of the employee or employer. For purposes of WIOA sec. 134(d)(4)(B), incumbent worker training 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 allocations for incumbent worker training as described in § 680.790;

(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)(4) of this chapter).

§ 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker training funds?

The Local WDB must consider under WIOA sec. 134(d)(4)(A)(ii):

(a) The characteristics of the individuals in the program;

(b) The relationship of the training to the competitiveness of an individual and the employer; and

(c) Other factors the Local WDB 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 depends upon the limits established under WIOA secs. 134(d)(4)(ii)(C) and (D).

§ 680.830 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.

§ 680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

No. Funds provided to employers for work-based training, as described in this subpart and in subpart A of this part, may not be used to directly or indirectly aid 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.

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). Local WDBs, 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 of this chapter). Local WDBs must ensure that needs-related payments are made in a manner consistent with §§ 680.930, 680.940, 680.950, 680.960, and 680.970. Supportive services are services that are necessary to enable an individual to participate in activities authorized under WIOA sec. 134(c)(2) and (3). These services may 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, as described at §§ 680.930, 680.940, 680.950, 680.960, and 680.970;

(f) Assistance with educational testing;

(g) Reasonable accommodations for individuals with disabilities;

(h) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 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.

(b) Supportive services only may be provided when they are necessary to enable individuals to participate in career service or training activities.

§ 680.920 Are there limits on the amount or duration of funds for supportive services?

(a) Local WDBs may establish limits on the provision of supportive services or provide the one-stop center 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 also may be established to allow one-stop centers 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 WDB. For statewide projects, the payment level for adults must be established by the State WDB.

(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 WDB policies.

■ 14. 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.

Subpart B—Eligibility for Youth Services

Sec.

Subpart C—Youth Program Design, Elements, and Parameters

Sec.

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?

The Workforce Innovation and Opportunity Act (WIOA) eliminates the requirement for Local Workforce Development Boards (WDBs) to establish a youth council. However, the Department encourages Local WDBs 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 WDB 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 WDB decides to form a standing youth committee, the committee must include a member of the Local WDB, 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 WDB.

(b) The committee must 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 (OSY). Members may represent agencies such as secondary and postsecondary education, training, health, disability, 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.

(c) A Local WDB 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 WDB, a standing youth committee may:

(a) Recommend policy direction to the Local WDB 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) Recommend ways to coordinate youth services and recommend eligible youth service providers;

(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 WDB after consultation with the chief elected official (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 OSY are eligible for youth services.

§ 681.210 Who is an ''out-of-school youth''?

An OSY is an individual who is:

(a) Not attending any school (as defined under State law);

(b) Not younger than age 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. In cases where schools do not use quarters, local programs must use calendar 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 offender;

(5) A homeless individual aged 16 to 24 who meets the criteria 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 aged 16 to 24 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) or a runaway;

(6) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, 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;

(7) An individual who is pregnant or parenting;

(8) An individual with a disability; or

(9) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

§ 681.220 Who is an ''in-school youth''?

An ISY is an individual who is:

(a) Attending school (as defined by State law), including secondary and postsecondary 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 aged 14 to 21 who meets the criteria 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 aged 14 to 21 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), or a runaway;

(5) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, 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; or

(8) An individual who requires additional assistance to complete an educational program or to secure or hold employment.

§ 681.230 What does ''school'' refer to in the ''not attending or attending any school'' in the out-of-school and in-school eligibility criteria?

In general, the applicable State law for secondary and postsecondary institutions defines ''school.'' However, for purposes of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild programs, the Job Corps program, high school equivalency programs, or dropout re-engagement programs to be schools. Therefore, in all cases except the one provided below, WIOA youth programs may consider a youth to be an OSY for purposes of WIOA youth program eligibility if he or she attend adult education provided under title II of WIOA, YouthBuild, Job Corps, high school equivalency programs, or dropout re-engagement programs regardless of the funding source of those programs. Youth attending high school equivalency programs funded by the public K–12 school system who are classified by the school system as still enrolled in school are an exception; they are considered ISY.

§ 681.240 When do local youth programs verify dropout status?

Local WIOA youth programs must verify a youth's dropout status at the time of WIOA youth program enrollment. An individual who is out of school at the time of enrollment, and subsequently placed in any school, is an OSY for the purposes of the 75 percent expenditure requirement for OSY throughout his/her participation in the program.

§ 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), (4), (5), (6), (7), and (8) are not required to be low-income.

(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 WIOA youth may be participants who ordinarily would be required to be low-income for eligibility purposes and 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 newly enrolled youth in the local area's WIOA youth program in a given program year who would ordinarily be required to meet the low-income criteria.

(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 he or she lives in a high poverty area.

§ 681.260 How does the Department define ''high poverty area'' for the purposes of the special regulation for low-income youth in the 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, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance or county that has a poverty rate of at least 25 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 Workforce Innovation and Opportunity Act if his or her 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. Furthermore, only ISY with a disability must be low income. OSY with a disability are not required to be low-income.

§ 681.290 How does the Department define the ''basic skills deficient'' criterion in this part?

(a) As used in § 681.210(c)(3), a youth is ''basic skills deficient'' if he or she:

(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.

(b) The State or Local WDB 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 individuals with disabilities.

§ 681.300 How does the Department define the ''requires additional assistance to enter or complete an educational program, or to secure and hold employment'' criterion in this part for OSY?

Either the State or the local level may establish definitions and eligibility documentation requirements for the ''requires additional assistance to enter or complete an educational program, or to secure and hold employment'' criterion of § 681.210(c)(9). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

§ 681.310 How does the Department define the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in this part for ISY?

(a) 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 § 681.220(d)(8). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

(b) In each local area, not more than five percent of the ISY newly enrolled in a given program year may be eligible based on the ''requires additional assistance to complete an educational program or to secure or hold employment'' criterion.

§ 681.320 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) In order to be a participant in the WIOA youth program, all of the following must occur:

(1) An eligibility determination;

(2) The provision of an objective assessment;

(3) Development of an individual service strategy; and

(4) Participation in any of the 14 WIOA youth program elements.

Subpart C—Youth Program Design, Elements, and Parameters

§ 681.400 What is the process used to select eligible youth service providers?

(a) The grant recipient/fiscal agent has the option to provide directly some or all of the youth workforce investment activities.

(b) However, as provided in WIOA sec. 123, if a Local WDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the Local WDB must award such grants or contracts on a competitive basis, subject to the exception explained in paragraph (b)(4) of this section:

(1) The Local WDB must identify youth service providers based on criteria established in the State Plan (including such quality criteria established by the Governor for a training program that leads to a recognized postsecondary credential) and take into consideration the ability of the provider to meet performance accountability measures based on the primary indicators of performance for youth programs.

(2) The Local WDB must procure the youth service providers in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, in addition to applicable State and local procurement laws.

(3) If the Local WDB establishes a standing youth committee under § 681.100 it may assign the committee the function of selecting of grants or contracts.

(4) Where the Local WDB determines there are an insufficient number of eligible youth providers in the local area, such as a rural area, the Local WDB may award grants or contracts on a sole source basis.

§ 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 2 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) for youth or WIOA sec. 132(b)(1)(B)(iv)(II) for adults, the State may submit a request to the Secretary to decrease the percentage to 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 ISY and OSY 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 OSY due to a low number of OSY; 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 OSY.

(c) In the exercise of discretion afforded by WIOA sec. 129(a)(4), the Secretary has determined that requests to decrease the percentage of funds used to provide youth workforce investment activities for OSY will not be granted to States that received 90 percent of the allotment percentage for the past year. Therefore, when the Secretary receives such a request from a State, the request will be denied.

(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 Workforce Development 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 and strengths, 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 based on the needs of 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 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) Provide 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 14 program elements required in § 681.460 are to be made available within that framework.

(c) Local WDBs 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 WDBs 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 WDBs 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 training 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.

(g) Local WDBs must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(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.

(i) The Local WDBs may implement a WIOA Pay-for-Performance contract strategy for program elements described at § 681.460, for which the Local WDB 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 regulations on WIOA Pay-for-Performance contract strategies, see § 683.500 of this chapter.

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA 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 (WIOA) youth program or the WIOA adult program?

A local program must 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 assessment of their occupational skills, prior work experience, employability, and the participant's needs.

§ 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 postsecondary 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:

(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 postsecondary 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 postsecondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the Local WDB 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 postsecondary 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.

(c) When available, the Department encourages local programs to partner with existing local, State, or national entities that can provide program element(s) at no cost to the local youth program.

§ 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act 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 WDB 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 designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et. seq.*) (referred to in this part as a ''registered apprenticeship'' or ''registered apprenticeship program'') and includes the following elements:

(a) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(b) Access to educational and career counseling and other supportive services, directly or indirectly;

(c) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(d) Opportunities to attain at least one industry-recognized credential; and

(e) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

§ 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; and

(3) 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 may include 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) Support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;

(h) 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

(i) 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 drug and alcohol abuse counseling, mental health counseling, and referral to 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.

§ 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 postsecondary 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.

§ 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; and

(h) Positive job attitudes and work skills.

§ 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 postsecondary 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) Lead to the attainment of a recognized postsecondary 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 Individual Training Accounts (ITAs) for OSY, ages 16 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 may 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 also may 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) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 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 postsecondary education and training. Follow-up services may include regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise.

(b) Follow-up services for youth also may include the following program elements:

(1) Supportive services;

(2) Adult mentoring;

(3) Financial literacy education;

(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 postsecondary education and training.

(c) All youth participants must be offered an opportunity to receive follow-up services that align with their individual service strategies. Furthermore, follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Follow-up services

may be provided beyond 12 months at the State or Local WDB'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. Follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome.

§ 681.590 What is the work experience priority and how will local youth programs track the work experience priority?

(a) Local youth programs must expend not less than 20 percent of the funds allocated to them to provide ISY and OSY with paid and unpaid work experiences that fall under the categories listed in § 681.460(a)(3) and further defined in § 681.600.

(b) 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 ISY and OSY. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

§ 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. Consistent with § 680.840 of this chapter, funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that 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. Work experiences provide the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education. The educational component may occur concurrently or sequentially with the work experience. Further academic and occupational education may occur inside or outside the work site.

(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 (OJT) opportunities as defined in WIOA sec. 3(44) and in § 680.700 of this chapter.

§ 681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?

No, WIOA does not require Local WDBs to offer summer youth employment opportunities as summer employment is no longer its own program element under WIOA. However, WIOA does require Local WDBs to offer work experience opportunities using at least 20 percent of their funding, which may include summer employment.

§ 681.620 How are summer employment opportunities administered?

Summer employment opportunities are a component of the work experience program element. If youth service providers administer the work experience program element, they must be selected by the Local WDB according to the requirements of WIOA sec. 123 and § 681.400, 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.

§ 681.630 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 an integrated education and training model and describes how workforce preparation 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.

§ 681.640 Are incentive payments to youth participants permitted?

Yes, incentive payments to youth participants are permitted 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 award 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) Are in accordance with the requirements contained in 2 CFR part 200.

§ 681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Local WDBs 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 WDB. They also can get involved by serving as mentors, serving as tutors, and providing input into the design and implementation of other program design elements. Local WDBs also must 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 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 part 678 of this chapter, connections between the youth program and the one-stop delivery 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 one-

stop center resources, and referral as appropriate; and

(5) Other activities described in WIOA sec. 129(b)–(c).

(c) Local WDBs must either colocate WIOA youth program staff at one-stop centers and/or ensure one-stop centers and staff are trained to serve youth and equipped to advise youth to increase youth access to services and connect youth to the program that best aligns with their needs.

§ 681.710 Do Local Workforce Development 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 WDBs 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.

■ 15. 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.

Subpart B—Required and Allowable Statewide Employment and Training Activities

Sec.

Subpart C—Rapid Response Activities

Sec.

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 the Workforce Innovation and Opportunity Act (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).

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 training providers (including those providing non-traditional training services), for adults and dislocated workers and eligible training providers of registered apprenticeship programs;

(2) Information identifying eligible providers of on-the-job training (OJT), customized training, incumbent worker training (see § 680.790 of this chapter), internships, paid or unpaid work experience opportunities (see § 680.180 of this chapter) and transitional jobs (see § 680.190 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, consistent with the requirements of §§ 680.490 and 680.530 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;

(c) States must assure that the information listed in paragraphs (b)(1) through (7) of this section is widely available;

(d) Conducting evaluations under WIOA sec. 116(e), consistent with the requirements found under § 682.220;

(e) Providing technical assistance to State entities and agencies, local areas, and one-stop partners 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;

(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 the adjusted

levels of performance agreed to under § 677.210 of this chapter;

(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;

(k) Providing additional assistance to local areas that have a high concentration of eligible youth; and

(l) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary.

§ 682.210 What are allowable statewide employment and training activities?

Allowable statewide employment and training activities may 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;

(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;

(f) Conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers;

(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 postsecondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency;

(h) Supporting the provision of career services in the one-stop delivery system in the State as described in § 678.430 of this chapter and WIOA secs. 129(b)(2)(C) and 134(c)(2);

(i) Supporting financial literacy activities as described in § 681.500 of this chapter 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;

(k) Providing technical assistance to Local Workforce Development Boards (WDBs), 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;

(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;

(m) Carrying out activities to facilitate remote access to training services provided through the one-stop delivery system;

(n) Activities that include:

(1) Activities to improve coordination of workforce investment activities, with economic development activities; 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; and

(3) Developing and disseminating workforce and labor market information;

(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;

(q) Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs; 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.

§ 682.220 What are States' responsibilities in regard to evaluations?

(a) 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, research and test innovative services and strategies, and achieve high levels of performance and outcomes.

(b) Evaluations conducted under paragraph (a) of this section must:

(1) Be coordinated with and designed in conjunction with State and Local WDBs 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), 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 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 WDB and Local WDBs in the State, and make available to the public (including by electronic means) reports containing the results, as available, of the evaluations 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 under the laws cited in paragraph (b)(4) of this section. 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 WDBs, and assuring that subgrantees and WDBs allow timely site visits;

(2) Encouraging other one-stop partners at local level to cooperate in timely provision of data, survey responses and site visits as listed in paragraphs (d)(1)(i) through (iv) of this section; and

(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) In fulfilling the requirements under paragraphs (a) through (c) of this section, States are permitted, but not required, to:

(1) Conduct evaluations that jointly examine title I core program activities and activities under other core programs in WIOA titles II–IV, as determined through the processes associated with paragraph (b)(1) of this section;

(2) Conduct any type of evaluation similar to those authorized for, or conducted by, the Department of Labor or the Department of Education under the laws cited in paragraph (b)(4) of this section, including process and outcome studies, pilot and demonstration projects that have an evaluative component, analyses of administrative and programmatic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions; and

(3) Conduct evaluations over multiple program years, involving multiple phases and such tasks and activities as necessary for an evaluation, such as a literature or evidence review, feasibility study, planning, research, coordination, design, data collection, analysis, and report preparation, clearance, and dissemination.

(f) In funding evaluations conducted under paragraph (a) of this section, States are permitted, but not required to:

(1) Use funds from any WIOA title I–IV core program to conduct evaluations, as determined through the processes associated with paragraph (b)(1) of this section; and

(2) Use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations relating to activities under the WIOA title I–IV core programs. Such projects may include those funded by the Department of Labor and other Federal agencies, among other sources.

Subpart C—Rapid Response Activities

§ 682.300 What is rapid response, and what is its purpose?

(a) Rapid response is described in §§ 682.300 through 682.370, and encompasses the strategies and activities necessary to:

(1) Plan for and respond to as quickly as possible following an event described in § 682.302; 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.

§ 682.302 Under what circumstances must rapid response services be delivered?

Rapid response must be delivered when one or more of the following circumstances occur:

(a) Announcement or notification of a permanent closure, regardless of the number of workers affected;

(b) Announcement or notification of a mass layoff as defined in § 682.305;

(c) A mass job dislocation resulting from a natural or other disaster; or

(d) The filing of a Trade Adjustment Assistance (TAA) petition.

§ 682.305 How does the Department define the term ''mass layoff'' for the purposes of rapid response?

For the purposes of rapid response, the term ''mass layoff'' used throughout this subpart will have occurred when at least one of the following conditions have been met:

(a) A layoff meets the State's definition of mass layoff, as long as the definition does not exceed a minimum threshold of 50 affected workers;

(b) Where a State has not defined a minimum threshold for mass layoff meeting the requirements of paragraph (a) of this section, layoffs affecting 50 or more workers; or

(c) When a Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the layoff announced.

§ 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 WDBs, 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 WDB, 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) 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, funding, and managing incumbent worker training programs or other worker upskilling approaches as part of a layoff aversion strategy or activity;

(5) Connecting companies to:

(i) Short-time compensation or other programs designed to prevent layoffs or to reemploy dislocated workers quickly, 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 registered 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 delivery system services, and employment and training activities, including information on the 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 WDB(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 part 687 of this chapter.

(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; and

(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, mass 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. 133(a)(2), a State may reserve up to 25 percent of its allotted dislocated worker funds 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, mass 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 § 682.340.

§ 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

(a) Where a WIOA individual record exists for an individual served under programs reporting through the WIOA individual record, States must report information regarding the receipt of services under this subpart for such an individual. This information must be reported in the WIOA individual record.

(b) States must comply with these requirements as explained in guidance issued by the Department of Labor.

§ 682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Funds reserved by the Governor for rapid response activities that remain unobligated after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities under §§ 682.200 and 682.210. Statewide activities for which these funds may be used include 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.

■ 16. 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.

Subpart B—Administrative Rules, Costs, and Limitations

Sec.

Subpart C—Reporting Requirements

Sec.

Subpart D—Oversight and Resolution of Findings

Sec.

Subpart E—Pay-for-Performance Contract Strategies

Sec.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Sec.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

Sec.

Subpart H—Administrative Adjudication and Judicial Review

Sec.

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Funding and Closeout

§ 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

(a) WIOA *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 Act 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 Act funds are awarded by grant or cooperative agreement, as defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations at 2 CFR 200.51 and 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 Act 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) Awards of grants, contracts, or cooperative agreements 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, contract, or cooperative agreement for the project.

(3) Awards of grants, contracts, or cooperative agreements for carrying out projects in paragraphs (e)(1)(ii) through (iv) of this section may not be awarded to the same organization for more than 3 consecutive years unless:

(i) Such grant, contract, or cooperative agreement is competitively reevaluated within such period;

(ii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because it was for less than $100,000, and:

(A) The non-competitive continuation is for less than $100,000;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met; or

(iii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because the project was funded jointly with other

public or private sector entities that provide a substantial portion of the assistance, and:

(A) The non-competitive continuation maintains a substantial portion of joint funding;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met.

(4) Entities with recognized expertise in the methods, techniques, and knowledge of workforce investment activities will be provided priority in awarding funds for the projects under paragraphs (e)(1)(ii) through (iv) of this section. The duration of such projects will be specified in the grant, contract, or cooperative agreement.

(5) A peer review process will be used to review and evaluate projects under this paragraph (e) for grants, contracts, or cooperative agreements 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 performance has expired. The grants and cooperative agreements must be closed in accordance with the closeout provisions at 2 CFR 200.343 and 2 CFR part 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 must 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 must 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 WIOA Pay-for-Performance contract strategies will remain available until expended in accordance with WIOA sec. 189(g)(2)(D).

(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 award document.

(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 Act.* 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 secs. 102 and 103 of WIOA, sec. 8 of Wagner-Peyser Act, and §§ 676.100 through 676.145 of this chapter and §§ 652.211 through 652.214 of this chapter.

§ 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 WDBs must assist Governors in the development of any youth or adult discretionary within-State allocation formulas.

(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;

(ii) After consultation with chief elected officials and Local WDBs in each of the local areas; and

(iii) In accordance with sec. 182(e) of WIOA, 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 WIOA sec. 129(b) and statewide employment and training activities under WIOA sec. 134(a), for adults and dislocated workers, and youth activities, as described in §§ 682.200 and 682.210 of this chapter, 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 WDB 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 WDB 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 §§ 682.300 through 682.370 of this chapter.

(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 of this chapter.

(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), 133(b)(2)(A), and 133(b)(2)(B) of WIOA, which are youth, adult, and dislocated worker funds, a local area must not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years.

(b) The Department's annual fiscal year appropriation provides funding for programs and activities described in paragraph (a) of this section under separate appropriations with various periods of availability. These periods of availability are described in § 683.100 as a program year. A program year for funds allocated under secs. 133(b)(2)(A) and 133(b)(2)(B) of WIOA begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year. A program year for funds available under WIOA sec. 128(b)(2) is available from April 1 of the fiscal year in which the appropriation is made and ends on June 30 of the following year. Therefore, when grantees are calculating the minimum funding percentage they must do so on a program year basis.

(c) When a new local area is designated under sec. 106 of WIOA the State must develop a methodology to apply the minimum funding provision specified in paragraph (a) of this section to local area allocations of WIOA youth, adult, and dislocated worker funds.

(d) 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.

(e) 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 Workforce Development 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 WDB 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) Local WDBs may not transfer funds to or from the youth program.

(c) Before making any transfer described in paragraph (a) of this section, a Local WDB must obtain the Governor's written approval. The Governor's written approval must be based on criteria or factors that the Governor must establish in a written policy, such as the State Unified or Combined Plan or other written policy.

§ 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.

(d) Obligations must be reported on the required Department of Labor (the Department) financial form, such as the ETA–9130 form, unless otherwise noted in guidance.

§ 683.140 What reallocation procedures must the Governors use?

(a) The Governor, after consultation with the State WDB, 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 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 Department of Labor 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 Act funds?

(a) After the expiration of the period of performance, the Department will closeout 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 otherwise noted in the terms and conditions of the award or an extension, grant recipients must comply with 2 CFR 200.343(b) and 2900.15 in regards to closeout.

(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 through 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 through 200.316.

(5) Records retention as required in 2 CFR 200.333 through 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 200.310 through 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 and 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 Act funds?

(a) *Uniform Guidance.* Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the Uniform Guidance at 2 CFR parts 200, 215, 225, 230, 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;

(2) Commercial organizations, for-profit entities, and foreign entities that are contractors or subcontractors must adhere 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 the Wagner-Peyser Act 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) 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 the Wagner-Peyser Act.

(3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local WDB 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 the Wagner-Peyser Act must follow 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), subrecipients 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 WDBs 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 WDB member, Local WDB member, or WDB 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 that member's immediate family.

(ii) Neither membership on the State WDB, the Local WDB, or a WDB 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 Act grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. 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 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.

(8) Interest income earned on funds received under title I of WIOA and the Wagner-Peyser Act must be included in program income.

(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 Act 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 in accordance with the Drug-Free

Workplace Act of 1988, 41 U.S.C. 8103 *et seq.,* and 2 CFR part 182.

(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 the Wagner-Peyser Act must be expended in compliance with secs. 8301 through 8303 of 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 Act 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), 132(b), and 133(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 funding agreement under title I of WIOA are excluded from the administrative cost limitations.

(b) *Discretionary grants.* 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 Act funds?

All recipients of WIOA title I and Wagner-Peyser Act 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.

(a) *Commercial or for-profit.* Grant recipients and subrecipients of title I and Wagner-Peyser Act funds that are commercial or for-profit entities must adhere to the requirements contained in 2 CFR part 200, subpart F.

(b) *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.

(c) *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 must 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 WDBs, 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; 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.

(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, other than those subrecipients listed in paragraph (a) of this section, 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 training providers, 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 paragraph (a) of this section 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 Act 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 WIOA, 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* §§ 680.600 and 680.650 of this chapter). A veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program.

§ 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) 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 the Wagner-Peyser Act Employment Service must be colocated 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 for authorized purposes, the State must request disposition instructions from the Grant Officer prior to disposition or sale. The portion of the proceeds from the disposition or sale of the real property that is attributable to the Reed Act equity must be returned to the State's account in the Unemployment Trust Fund (UTF) and used in accordance with Department-issued guidance.

(c) *Job Training Partnership Act and Workforce Investment Act-funded properties.* Real property that was purchased with WIA funds or that was transferred to WIA now is 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 title I of the Workforce Innovation and Opportunity Act?

(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 development system.

(2) Public service employment, except as specifically authorized under title I of WIOA.

(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 title I, subtitle B must not be used for foreign travel.

§ 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) *Prohibition.* 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 38.

§ 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.

§ 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.

(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.

(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.

(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.*).

§ 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 38. Under that definition, the term ''recipients'' includes State and Local WDBs, 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 38, and are administered and enforced by the Department of Labor Civil Rights Center.

(3) 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 Secretary of Homeland Security or the Secretary's designee to work in the United States.

(b)(1) Title 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 also may be considered indirect. *See also* § 683.255 and 29 CFR 37.6(f)(1).

(2) Title 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 of Workforce Innovation and Opportunity Act and Wagner-Peyser Act 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 *https://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 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), 122(a) 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.

(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.

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 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 WDBs 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 part 677, subpart A, of this chapter.

(2) For all programs authorized under subtitle D of WIOA, each grant recipient must complete reports on performance indicators 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. Closeout financial reports are required no later than 90 calendar days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant. If required by the terms and conditions of the grant, closeout performance reports are required no later than 90 calendar 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.

(h) *Additional reporting.* At the Grant Officer's or Secretary's discretion, reporting may be required more frequently of its grant recipients. Such requirement is consistent with 2 CFR parts 200 and 2900.

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 the Wagner-Peyser Act to determine compliance with these statutes 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 also will conduct in-depth reviews in several States, including financial and performance monitoring, to assure that funds are spent in accordance with WIOA and the Wagner-Peyser Act.

(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 WDBs 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 the Wagner-Peyser Act?

(a) Each recipient and subrecipient of funds under title I of WIOA and under the Wagner-Peyser Act must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act program(s) and those of its subrecipients and contractors as required under title I of WIOA and the Wagner-Peyser Act, 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 WIOA and the regulations in this part;

(2) Determine whether there is compliance with other provisions of WIOA 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 WIOA and the WIOA regulations;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIOA and Wagner-Peyser Act 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 paragraph (b)(2) or (3) of this section is found.

(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.

§ 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 the Wagner-Peyser Act.

(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 the Wagner-Peyser Act, as amended by WIOA title III.

(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 Department of Labor 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 38.

§ 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 paragraph (a) of this section. 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, the Wagner-Peyser Act, and applicable regulations, and the terms and conditions of the grants 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 workforce development problem 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; and the acceptable cost to government associated with achieving these outcomes;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring; and

(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) Prior to the implementation of a WIOA Pay-for-Performance contract strategy, a local area must conduct a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for-Performance contract strategy.

(c) 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 a percentage of cost contracts.* Use of cost plus a percentage of cost 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 paragraph (j) of this section and § 683.500, 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).

(g) *Target populations.* WIOA Pay-for-Performance contracts must identify target populations as specified by the Local WDB, which may include individuals with barriers to employment.

(h) *Bonus payments.* WIOA Pay-for-Performance contracts may include bonus payments for the contractor based on achievement of specified levels of performance. 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.

(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 of this chapter.

(j) *Validation.* WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. 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 adult 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 allocations can be reserved and used 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 allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(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.

(3) Conduct other activities that comply with limitations on the use of the Governor's Reserve.

(b) Using non-Federal funds, Governors may establish incentives for Local WDBs 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 the Department 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 of this chapter and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to the Department 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 of this chapter, 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 § 683.500 and 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 allotments and no more than 10 percent of a local area's youth allotment is reserved and used 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 §§ 686.960 and 686.965 of this chapter.

(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 development 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 development 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 38. 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 Workforce Innovation and Opportunity Act 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 38 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 part 658 of this chapter.

§ 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 Department of Labor 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 WDB 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 § 679.250 of this chapter.

(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 WDB 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 WDB 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 WDB 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 area to the State WDB has not resulted in such designation, may appeal the State WDB'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 WDB, 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 WDB.

(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 § 679.250 of this chapter.

(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 § 679.250 of this chapter, the Secretary may require that the area be designated as a local area. In making this determination, the Secretary may consider any comments submitted by the State WDB 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 indicators 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 § 677.225 of this chapter.

(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) *Applicability.* (1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, and 38 and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or requiring 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 38.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in part 677 of this chapter.

(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 § 683.410, 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 of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(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 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 WDB 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 disclose all violations of Federal criminal law involving fraud, bribery or gratuity violations, 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 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 WIOA, 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 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 Act 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 WIOA 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 WIOA 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 Act 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 part 677 of this chapter, 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 WIOA, its regulations, the grant or other agreement under WIOA 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 Department 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 WIOA, 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 only will 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 (b) 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 also must 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.

■ 17. 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.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Sec.

Subpart C—Services to Customers

Sec.

Subpart D—Supplemental Youth Services

Sec.

Subpart E—Services to Communities

Sec.

Subpart F—Accountability for Services and Expenditures

Sec.

Subpart G—Section 166 Planning/Funding Process

Sec.

Subpart H—Administrative Requirements

Sec.

Subpart I—Miscellaneous Program Provisions

Sec.

Authority: Secs. 134, 166, 189, 503, Public Law 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 Indian and Native American (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.*).

§ 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. In addition, the Department will consult with the INA program grantee community in developing policies for the INA programs, actively seeking and considering the views of INA program grantees prior to establishing INA program policies and regulations. The Department will follow the Department of Labor'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 § 675.300 of this chapter, 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, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the INA population is at least 25 percent of the total INA population of such area using the most recent ACS 5-Year data. Alternatively, high-poverty also can mean, a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the total population is at least 25 percent of such area using the most recent ACS 5-Year data. INA program grantees may use either definition when determining if a Census tract is a high-poverty area.

INA program 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 sec. 166 of WIOA.

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 were receiving INA funding as of October 18, 2016 and met the 51 percent threshold with the inclusion of members of ''State recognized tribes'' continue to be eligible for WIOA sec. 166 funds as an Indian-Controlled Organization, as long as they have been continuously funded under WIOA as recipients of INA program grantees since October 18, 2016. 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 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.

(b) 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).

(c) Incumbent grantees which do not meet this dollar threshold and were

receiving INA funding of less than $100,000 as of October 18, 2016 will be grandfathered into the program and are eligible to be awarded less than $100,000 so long as the grantees have continuously received less than $100,000 since October 18, 2016.

(d) The Department will make an exception to the $100,000 minimum for applicants that apply for WIOA funding through Public Law 102–477, the Indian, Employment, Training, and Related Services demonstration program, 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 were receiving INA funding of less than $20,000 as of October 18, 2016 will be grandfathered into the program and are eligible to be awarded less than $20,000 so long as the grantees have continuously received less than $20,000 since October 18, 2016.

(e) 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.

(f) 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.

(g) 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 were grantees under WIA as of July 1, 2015 will be grandfathered into WIOA as Indian-controlled organizations provided they meet the definition of Indian-controlled organization in § 684.130.

§ 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 the 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 § 683.800 of this chapter or the alternative dispute resolution procedures at § 683.840 of this chapter. 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 § 683.800 of this chapter 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 TAT 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 also may 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 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. INA program 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 also must 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.

(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.

(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 of this chapter.

(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 postsecondary 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 postsecondary 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 postsecondary 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, basic literacy training, and training programs for limited English proficient (LEP) individuals, 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.
(b) INA program 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; 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.
(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 OJT 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; or
(2) Have exhibited a pattern of violating paragraphs (b)(1) and/or (2) of this section.
(d) INA program grantees are prohibited from using funds to encourage the relocation of a business, as described in WIOA sec. 181(d) and § 683.260 of this chapter.
(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.
(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 § 683.255 of this chapter, 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 delivery system?

(a) In those local 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 part 678 of this chapter. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA program grantee and the Local Workforce Development Board (WDB) over the operation of the one-stop center(s) in the Local WDB's workforce development area also must be executed. Where the Local WDB is an alternative entity under § 679.150 of this chapter, 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 development system, as specified in §§ 678.420 and 678.500 through 678.510 of this chapter. 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 delivery system in that area in order to receive WIOA services.
(b) At a minimum, the MOU must contain the provisions listed in WIOA sec. 121(c) and:
(1) The exchange of information on the services available and accessible through the one-stop delivery 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 delivery system and the INA program; and
(3) Arrangements for the funding of services provided by the one-stop(s), consistent with the requirements 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 WDB, 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 WDB.
(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 part 678 of this chapter.

§ 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 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.

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.

§ 684.410 What entities are eligible to receive supplemental youth services funding?

Entities eligible to receive supplemental youth services funding are limited to: Those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIOA sec. 166(d)(2)(A)(i) or other grantees serving those areas, and entities serving the populations specified in § 684.400 that received funding under sec. 166(d)(2)(A)(ii) of the Workforce Investment Act.

§ 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.

§ 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 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 indicators are applicable to the supplemental youth services program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators 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 postsecondary 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 postsecondary 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 indicators 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 Workforce Innovation and Opportunity Act?

(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) 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; and

(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 also may be provided to or for employers.

§ 684.510 What services may Indian and Native American grantees provide to the community at large under the Workforce Innovation and Opportunity Act?

(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 program grantee's 4-year plan.

(b) INA program grantees 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 WIOA sec. 166. These requirements are codified at 2 CFR part 200, subpart E (and Department modifications at 2 CFR part 2900), and covered in WIOA regulations at § 683.200 of this chapter. 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 also is 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 indicators are in place for the Indian and Native American program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators 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 postsecondary 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 postsecondary 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 indicators 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 § 683.200(c)(5)(iii) of this chapter and 2 CFR parts 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 also must 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; and

(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 WIOA may involve political activities.

(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 38. 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 grantee provide?

INA program grantees must establish grievance procedures consistent with the requirements of WIOA sec. 181(c) and § 683.600 of this chapter.

§ 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 38, 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 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 indicators and expected levels of performance.

(b) The 4-year plan also must 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 program 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 § 683.800 or § 683.840 of this chapter 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 program 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 program 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 § 683.600 of this chapter; 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 §§ 683.200 through 683.215 of this chapter.

§ 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 §§ 683.205(b) and 683.215 of this chapter.

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?

No, under § 683.205(b) of this chapter, limits on administrative costs for sec. 166 grants will be negotiated with the grantee and identified in the grant award document.

§ 684.840 How must Indian and Native American program grantees classify costs?

Cost classification is covered in the WIOA regulations at §§ 683.200 through 683.215 of this chapter. For purposes of the INA program, program costs also include costs associated with other activities such as 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 part 200, subpart E, Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards, and the Department's modifications to 2 CFR part 200, subpart E, at 2 CFR part 2900, 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 part 200, subpart F, Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards, and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

(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 and to 2 CFR part 200 and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

§ 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), §§ 683.200(c)(6) through (8) and 683.300(c)(5) of this chapter, 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 program 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. The waiver process will be generally consistent with, but not identical to, the waiver requirements under sec. 189(i)(3)(B) of WIOA. INA program grantees may submit a waiver request as part of the 4-year strategic plan.

(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 paragraph (a) of this section.

§ 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; and
(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 the Interior (DOI). Accordingly, the administrative oversight for funds transferred to DOI, including the reporting of financial expenditures and program outcomes are the responsibility of DOI. However, the Department 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 DOI 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.

■ 18. 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 (WIOA) regulations apply to the programs authorized under WIOA?

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

Sec.
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?
685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

Sec.
685.300 What are the general responsibilities of grantees?
685.310 What are the basic components of a National Farmworker Jobs Program service delivery strategy?
685.320 Who is eligible to receive services under the National Farmworker Jobs Program?
685.330 How are services delivered to eligible migrant and seasonal farmworkers?
685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?
685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?
685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?
685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?
685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?
685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Subpart D—Performance Accountability, Planning, and Waiver Provisions

Sec.
685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?
685.410 What planning documents must a grantee submit?
685.420 What information is required in the grantee program plan?
685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?
685.440 How are costs classified under the National Farmworker Jobs Program?
685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?
685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?
685.470 How can grantees request a waiver?

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

Sec.
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, Public Law 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 § 675.300 of this chapter, 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 sec. 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 sec. 167(i)(3).

Emergency assistance is a form of ''related assistance'' and means assistance provided by grantees that addresses immediate needs of eligible MSFWs and their dependents. 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 § 651.10 of this chapter.

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 services which contribute to safe and sanitary temporary and permanent housing constructed, supplied, or maintained with NFJP funding.

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 delivery system and includes both career services and training grants, and housing grants.

Recognized postsecondary 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.

Supportive services means the services defined in WIOA sec. 3(59).

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 Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

The regulations that apply to programs authorized under WIOA sec. 167 include but are not limited to:

(a) The regulations found in this part;

(b) The general administrative requirements found in part 683 of this chapter, including the regulations concerning Complaints, Investigations and Hearings found at part 683, subparts D through H, of this chapter, 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 parts 200 and 2900;

(d) The regulations on partnership responsibilities contained in parts 679 (Statewide and Local Governance) and 678 (the One-Stop System) of this chapter; and

(e) The Department's regulations at 29 CFR part 38, 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; and

(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 § 683.800 of this chapter.

§ 685.220 What is the role of the grantee in the one-stop delivery system?

In those local 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 part 678 of this chapter. Consistent with those provisions, the grantee and Local Workforce Development Board (WDB) must develop and enter into an MOU which meets the requirements of § 678.500 of this chapter, and which sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop delivery 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; 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 § 683.440 of this chapter.

§ 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 award grants pursuant to § 685.210 for the provision of services to eligible MSFWs within each service area. 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 § 651.10 of this chapter and the State's Monitor Advocate.

(d) Grantees are responsible for fulfilling the responsibilities of one-stop partners described in § 678.420 of this chapter.

§ 685.310 What are the basic components of a 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 part 680 of this chapter;

(c) The provision of youth workforce investment activities described in WIOA sec. 129 and part 681 of this chapter may be provided to eligible MSFW youth;

(d) The arrangements under the MOUs with the applicable Local WDBs for the delivery of the services available through the one-stop delivery 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 may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the career services described in WIOA secs. 167(d) and 134(c)(2), and part 680 of this chapter to eligible MSFWs.

(b) Grantees may provide other services identified in the approved program plan.

(c) The delivery of career services to eligible MSFWs by the grantee and through the one-stop delivery system must be discussed in the required MOU between the Local WDB and the grantee.

§ 685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the training activities described in WIOA secs. 167(d) and 134(c)(3)(D), and part 680 of this chapter to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and on-the-job training (OJT). Eligible MSFWs are not required to receive career services prior to receiving training services.

(1) When providing OJT services NFJP grantees may reimburse employers for the extraordinary costs of training by up to 50 percent of the wage rate of the participant for OJT.

(2) Grantees also may increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant under certain conditions, provided that such reimbursement is being provided consistent with the reimbursement rates used under WIOA sec. 134(c)(3)(H)(i) for the local area(s) in which the grantee operates its program.

(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 postsecondary credentials as defined in § 685.110 when appropriate for an eligible MSFW.

§ 685.360 What housing services may 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 may 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.

(i) Types of permanent housing may include rental units, single family homes, duplexes, and other multi-family structures, dormitories, 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 also are considered permanent housing.

(ii) 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 also may be considered part of managing permanent housing.

(2) Temporary housing that is not owner-occupied and is used by MSFWs whose employment requires occasional travel outside their normal commuting area.

(i) Types of temporary housing may include: Housing units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures 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; off-farm housing operated independently of employer interest in, or control of, the housing; or on-farm housing located on property owned by an agricultural employer and operated by an entity such as an agricultural employer or a nonprofit organization; and other housing types that provide short-term, seasonal, or temporary housing opportunities in temporary structures.

(ii) Temporary housing services include but are not limited to: Managing temporary housing which 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.

(d) Permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs. Temporary housing services must only be provided to eligible MSFWs.

(e) Except as provided in paragraph (f) of this section, NFJP funds used for housing assistance must ensure the provision of safe and sanitary temporary and permanent housing that meets the Federal housing standards at part 654 of this chapter (ETA housing for farmworkers) or 29 CFR 1910.10 (OSHA housing standards).

(f) When NFJP grantees provide temporary housing assistance that allows the participant to select the housing, including vouchers and cash payments for rent, lease, and utilities, NFJP grantees are not required to ensure that such housing meets the Federal housing standards at part 654 of this chapter or 29 CFR 1910.10.

§ 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; and

(5) Other activities and services that conform to the use of funds for youth activities described in part 681 of this chapter.

(b) 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. For the purposes of performance reporting, eligible MSFWs who receive any career services, youth services, training, or certain related assistance are considered participants as defined in § 677.150 of this chapter and must be included in performance calculations for the indicators of performance. Eligible MSFWs who receive only those services identified in § 677.150(a)(3)(ii) or (iii) of this chapter are not included in performance calculations for the indicators of performance described in WIOA sec. 116(b)(2)(A).

(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. Additionally, grantees providing permanent housing development activities will use the total number of individuals served and the total number of 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 activities, 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 § 683.215 of this chapter; 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 § 683.205(b) of this chapter, 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 National Farmworker Jobs Program?

(a) The statutory waiver provision at WIOA sec. 189(i) and discussed in § 679.600 of this chapter 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 § 675.100 of this chapter.

§ 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 by the Department 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 part 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).

■ 19. 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.

Subpart B—Site Selection and Protection and Maintenance of Facilities

Sec.

Subpart C—Funding and Selection of Center Operators and Service Providers

Sec.

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

Sec.

Subpart E—Program Activities and Center Operations

Sec.

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 (WDBs), 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 postsecondary 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 WDB means a Local WDB 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 (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 also are 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 postsecondary 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 Department of Labor 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;

(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.

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.

(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 Department of Labor 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 WDB for the workforce development area in which the center is located.

(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 WDBs, Local WDBs, applicable one-stop centers, and the State and region in which the center is located;

(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; and

(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 also must 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 postsecondary 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 postsecondary 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 WDBs, Local WDBs, 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;

(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; 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.

(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 only will 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)(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. If an operator assumes operation of a center that meets the criteria under paragraphs (d)(1) and (2) of this section, the first contractual option year will not be denied based on the application of paragraph (d) of this section provided that the operator otherwise meets the requirements for renewal described in paragraphs (a) through (c) of this section.

(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) 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; and

(2) 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.

(g) 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 Department of Labor 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 WDB for the workforce development area in which the center is located.

(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 WDBs, Local WDBs, 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 Department of Labor 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 this section 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. 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 the following non-exclusive list of factors that will be analyzed in consultation with center operators:

(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 38.

(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;

(iii) Employability and skills training; and

(iv) 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 § 686.810 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 with demonstrated effectiveness, 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 training providers 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 completion 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 § 686.920.

§ 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, donations, and other fundraising activities, 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 § 686.545. 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.

(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 this policy.

§ 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 38.

(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* §§ 683.255 and 683.285 of this chapter; 29 CFR part 38.

§ 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.

§ 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) Postsecondary education;

(c) Advanced training programs, including registered 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. Multiple other resources also may 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 WDBs, one-stop operators and partners, employers, unions and industry organizations;

(4) Placing graduates in jobs, registered apprenticeship, the Armed Forces, or postsecondary 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 WDBs:

(3) Entities offering apprenticeship opportunities, including registered apprenticeships, 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 must 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 must 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 WDB constituted under § 679.110 of this chapter.

(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, or their designees, 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 WDBs 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;

(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 must be implemented at the center to enable enrollees to obtain the employment opportunities identified; and

(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 WDBs, 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 must 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 *https://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 Department of Labor 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.

(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.

(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.

§ 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 § 686.470 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 38 and § 686.985.

§ 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 WIOA or regulations for this part of WIOA 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 WIOA or the WIOA regulations. If the Regional Director determines that there has been a violation of WIOA or WIOA 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 WIOA or WIOA regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the Department of Labor Office of Administrative Law Judges under § 683.800 or § 683.840 of this chapter.

§ 686.970 How does Job Corps ensure that centers or other service providers comply with the Workforce Innovation and Opportunity Act and the WIOA 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 WIOA or WIOA 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 WIOA and WIOA regulations. If the Regional Director determines that the center or service provider is not in compliance with WIOA or WIOA regulations, the Regional Director may take action to resolve the complaint under § 686.965(b), or will report the incident to the Department of Labor Office of the Inspector General, as described in § 683.620 of this chapter.

§ 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 38;

(b) Title 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) Title 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;

(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 postsecondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program. Program participants who obtain a secondary school diploma or its recognized equivalent will be included in the percentage only if they also have obtained or retained employment, or are in an education or training program leading to a recognized postsecondary credential, within 1 year after exit from the program;

(e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; 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.

§ 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;

(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;

(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;

(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; and

(e) Additional indicators of performance, as necessary.

§ 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;

(c) The number of graduates who entered registered apprenticeship programs;

(d) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program;

(e) The number of graduates who entered unsubsidized employment not related to the education and training received through the Job Corps program;

(f) The percentage and number of graduates who enter postsecondary education;

(g) The average wage of graduates who entered unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day; and

(h) Additional indicators of performance, as necessary.

§ 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 registered 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 postsecondary 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 also will 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 also may 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, 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.

(c) Under a performance improvement plan, the Secretary may take the following actions, as necessary:

(1) Providing technical assistance to the center;

(2) Changing the management staff of a center;

(3) Changing the career technical training offered at the center;

(4) Replacing the operator of the center;

(5) Reducing the capacity of the center;

(6) Relocating the center; or

(7) Closing the center in accordance with the criteria established under § 686.200(b).

■ 20. Add part 687 to read as follows:

PART 687—NATIONAL DISLOCATED WORKER GRANTS

Sec.

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 Dislocated Worker Grants under the Workforce Innovation and Opportunity Act?

There are two types and purposes of National Dislocated Worker Grants (DWGs) under sec. 170 of WIOA: Employment Recovery DWGs and Disaster Recovery DWGs.

(a) Employment Recovery DWGs provide employment and training activities 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 major economic dislocations or other events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

(b) Disaster Recovery DWGs allow for the creation of disaster relief employment to assist with clean-up and recovery efforts from emergencies or major disasters and the provision of employment and training activities, in accordance with § 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 Employment Recovery DWGs include:

(1) Plant closures or mass layoffs affecting 50 or more workers from one employer in the same area;

(2) Closures and realignments of military installations;

(3) Plant closures or 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 Recovery DWGs 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, natural or man-made, that could result in a potentially large loss of employment, as declared or otherwise recognized and issued in writing 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 Employment Recovery DWGs, the following entities are eligible to apply:

(1) States or outlying areas, or a consortium of States;

(2) Local Workforce Development Boards (WDBs), or a consortium of WDBs;

(3) An entity described in sec. 166(c) of WIOA (relating to Indian and Native American programs);

(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 Recovery DWGs, the following entities are eligible to apply:

(1) States;

(2) Outlying areas; and

(3) Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(6)).

§ 687.130 When must applications for National Dislocated Worker Grants be submitted to the Department?

(a) Applications for Employment Recovery DWGs may be submitted at any time during the year and must 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 DWG; 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 Recovery DWGs to respond to an emergency or major disaster must 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) A situation as described in § 687.110(b)(2) occurs. The 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 situation as described in § 687.110(b)(3) occurs, and interest in services has been determined and is sufficient to justify the need for a DWG.

§ 687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant Application is submitted?

Prior to submitting an application for DWG funds, applicants must:

(a) For Employment Recovery DWGs:

(1) Collect information to identify the needs and interests of the affected workers through rapid response activities (described in § 682.330 of this chapter), or other means;

(2) Provide appropriate services to eligible workers including other rapid response activities, based on information gathered as described in paragraph (a)(1) of this section; and

(3) Coordinate with the Local WDB and chief elected official(s) of the local area(s) in which the proposed DWG project is to operate.

(b) For Disaster DWGs:

(1) Conduct a preliminary assessment of the clean-up and humanitarian needs of the affected areas;

(2) Reasonably ascertain that there is a sufficient population of eligible individuals to conduct the planned work; and

(3) Coordinate with the Local WDB 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 guidance on the requirements for submitting applications for DWGs.

Requirements may vary depending on the DWG. A project implementation plan must be submitted after receiving the DWG award, unless otherwise specified.

§ 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 DWG application within 45 calendar days of receipt of an application that meets the requirements of this part. Applicants are encouraged to review their DWG 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 guidance.

§ 687.170 Who is eligible to be served under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) In order to receive employment and training activities, 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)(iii)(B) 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)(iii)(B) of this section.

(iv) For Employment Recovery DWGs 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)).

(2) [Reserved]

(b) For Disaster Recovery DWGs:

(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 and training activities and in rare instances, disaster relief 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.

(c) For Disaster Recovery DWG funds, individuals described in paragraph (b)(2) of this section are eligible to receive services provided with DWG funds in the State, tribal area, or outlying area in which the disaster occurred or the State, tribal area, or outlying area to which they have relocated. In certain cases determined by the Secretary, individuals described in paragraph (b)(2) of this section are eligible to receive services in both the State, tribal area, or outlying area in which the disaster occurred and the State, tribal area, or outlying area to which they have relocated.

§ 687.180 What are the allowable activities under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) Employment and training assistance, including those activities authorized at secs. 134(c) through (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) DWGs may provide for supportive services, including needs-related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable, and the terms and conditions of the grant) 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 DWG 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 DWG award; or

(ii) Under other circumstances as specified in guidance governing DWG application requirements.

(b) For Disaster DWGs: 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 DWGs serving individuals in an emergency or 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 also may 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 an entity described in § 687.120(b).

(2) For DWGs serving individuals who have relocated from an emergency or disaster area, only employment and training activities will be authorized, except where disaster relief employment is appropriate.

(3) For DWGs 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 employment and training activities may be authorized, depending on the circumstances associated with the specific event.

(c) Disaster Recovery DWG funds may be expended through public and private agencies and organizations engaged in the activities described in this paragraph (b) of this section.

§ 687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

(a) For DWGs, utilization of statutory or regulatory waivers is limited to waivers already approved by the Department under sec. 189(i) of WIOA, separate from the DWG process. WIOA sec. 189(i) gives the Department the authority to waive provisions under subtitles A, B, and/or E of WIOA; requirements of DWGs in WIOA subtitle D cannot and will not be waived.

(b) A grant application must include a description of the approved waiver and request that the waiver be applied to the DWG. The Department will consider such requests as part of the overall DWG application review and decision process; however, applicants may not use this process to request new waivers.

(c) If during the operation of a DWG, the grantee wishes to utilize a statutory or regulatory waiver that the Department has already approved under sec. 189(i), but it was not included in the grantee's original DWG application, the grantee must submit a grant modification that describes the waiver and requests application of the waiver to the DWG. Grantees may not use this process to request new waivers.

§ 687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

(a) Unless otherwise authorized in a DWG agreement, the financial and administrative rules contained in part 683 of this chapter 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 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 Recovery DWG 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 an entity described in § 687.120(b) in the same program year the funds were awarded;

(3) DWG 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 administrative costs with the applicant as part of the application review and grant award and modification processes. Administrative cost limits will be calculated against the amount of the grant awarded;

(4) The period of availability for expenditure of funds under a DWG is specified in the grant agreement;

(5) The Department may establish supplemental reporting, monitoring, and oversight requirements for DWGs. 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.

■ 21. Add part 688 to read as follows:

PART 688—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Subpart B—Funding and Grant Applications

Subpart C—Program Requirements

Subpart D—Performance Indicators

Subpart E—Administrative Rules, Costs, and Limitations

Subpart F—Additional Requirements

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 postsecondary 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 industries or occupations. 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 to:

(a) 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 postsecondary education and training opportunities;

(b) Provide disadvantaged youth with opportunities for meaningful work and service to their communities;

(c) Foster the development of employment and leadership skills and commitment to community development among youth in low-income communities;

(d) 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; and

(e) 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 the Workforce Innovation and Opportunity Act (WIOA) and § 675.300 of this chapter, 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:

(i) *Elderly and disabled families.* $400 for any elderly or disabled family.

(ii) *Medical expenses.* The amount by which three percent of the annual family income is exceeded by the sum of:

(A) Unreimbursed medical expenses of any elderly family or disabled family;

(B) Unreimbursed medical expenses of any family that is not covered under paragraph (1)(ii)(A) of this definition, except that this paragraph (1)(ii)(B) only applies to the extent approved in appropriation Acts; and

(C) 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.

(iii) *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.

(iv) *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.

(v) *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 only applies to the extent approved in appropriations Acts.

(vi) *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 only applies to the extent approved in appropriations Acts.

(vii) *Earned income of minors.* The amount of any earned income of a member of the family who is not:

(A) 18 years of age or older; and

(B) The head of the household (or the spouse of the head of the household).

(2) *Permissive exclusions for public housing.* In determining adjusted income, a Housing Development Agency may, at 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:

(i) *Excessive travel expenses.* Excessive travel expenses in an amount not to exceed $25 per family per week, for employment or education-related travel.

(ii) *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:

(A) All earned income of the family,

(B) The amount earned by particular members of the family;

(C) The amount earned by families having certain characteristics; or

(D) The amount earned by families or members during certain periods or from certain sources.

(iii) *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, and who has English reading, writing, or computing skills at or below the eighth grade level on a generally accepted standardized test; or

(2) Who is a youth or adult, and 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.

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 Workforce Development Board (WDB);

(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 § 677.150(c) of this chapter.

Follow-up services include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570 of this chapter;

(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 postsecondary education.

Homeless child or youth means an individual who lacks a fixed, regular, and adequate nighttime residence and includes a child or youth who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or a 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, is abandoned in a hospital, or is awaiting foster care placement;

(4) Has 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) Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(6) Is a migratory child living in circumstances described in this definition.

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) 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) Is a migratory child 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. 1437a(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 with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

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 postsecondary 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 postsecondary 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 who enrolls in the program and receives services or training described in § 688.320.

Pre-apprenticeship, as defined in § 681.480 of this chapter, means a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*) (referred to in this part as a ''registered apprenticeship'' or ''registered apprenticeship program'') and includes the following elements:

(1) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(2) Access to educational and career counseling and other supportive services, directly or indirectly;

(3) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(4) Opportunities to attain at least one industry-recognized credential; and

(5) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

(6) YouthBuild programs that receive funding under this part are considered pre-apprenticeship programs under this definition.

Recognized postsecondary credential means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of a registered 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; 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 12.

Section 3 means 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 for youth, as defined in § 681.570 of this chapter, are 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 health care;

(10) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(11) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(12) Payments and fees for employment and training-related applications, tests, and certifications.

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 part and provides disadvantaged youth with opportunities for employment, education, leadership development, service to the community, and training through the rehabilitation (which, for purposes of this part, includes energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities.

Youth in foster care, as defined in § 681.210 of this chapter, means an individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship, guardianship, or adoption; or 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.

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 WIOA. 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 postsecondary 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 WDBs, one-stop 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 postsecondary 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 development system which may include:

(i) State and Local WDBs;

(ii) State workforce agencies; and

(iii) One-stop centers and their partner programs;

(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 a 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 WDBs, one-stop operators, employers, local unions, entities carrying out registered apprenticeship programs, other community groups, and the applicant's past experience with rehabilitation or construction of housing or public facilities (including experience with programs through the U.S. Department of Housing and Urban Development (HUD) under sec. 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, postsecondary 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 WDBs, one-stop operators, faith and community-based organizations, State education 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 describing 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 describing of, the entity that will manage and operate the property;

(s) Information identifying and describing 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;

(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; and

(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, the Employment and Training Administration (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;

(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 § 683.230 of this chapter 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 documents for individuals with disabilities);

(iv) Counseling and assistance in obtaining postsecondary 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, interpersonal skills, 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 postsecondary 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) Applies consistently to all program participants; and

(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, each within a different skill area, in a construction skills training program that offers an industry-recognized credential;

(b) Be built or renovated for low-income individuals or families;

(c) Have a restrictive covenant in place that only allows for rental or resale to low-income participants as required by § 688.730; and

(d) 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 may 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; and

(b) Participants meet the exit policies established by the grantee.

(1) Such policies must describe the program outcomes and/or individual goals that must be met by each participant in order to successfully complete the program; and

(2) Grantees must apply the policies consistently to determine when a successful exit has occurred.

§ 688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

In those local 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 part 678 of this chapter.

Subpart D—Performance Indicators

§ 688.400 What are the performance indicators for YouthBuild grants?

The performance indicators for YouthBuild grants include:

(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 postsecondary credential or secondary school diploma or its recognized equivalent (and for those achieving the secondary diploma or its recognized equivalent, such participants also have obtained or retained employment or are in an education or training program leading to a recognized postsecondary 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 postsecondary 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 § 677.155(c)(6) of this chapter; 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 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 from one grant competition to another. 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 part 683 of this chapter, except those that apply only to the WIOA title I, subtitle 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 (OMB) government-wide grants requirements at 2 CFR parts 200 and 2900, as applicable;

(2) The Department's regulations at 29 CFR part 38, which implement the nondiscrimination provisions of WIOA 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 parts 200 and 2900, as applicable; and

(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, postsecondary 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 § 683.215 of this chapter.

(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 15 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 Uniform Guidance at 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; and

(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; and

(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; and

(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 a registered apprenticeship or technical education program; and

(3) Employer- or Government-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 Uniform Guidance at 2 CFR part 200.

§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?

Under § 683.275(d) of this chapter, 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 ETA 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 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 § 683.280 of this chapter, 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 the ETA 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 family, 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. The Department advises that any additional stipulations imposed by a grantee or property owner 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.

Signed at Washington, DC, this 29th day of June 2016.

Thomas E. Perez,

Secretary of Labor.

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