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YouthBuild Program; Final Rule

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 672**

RIN 1205-AB49

YouthBuild Program**AGENCY:** Employment and Training Administration, Labor.**ACTION:** Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) issues this final rule to implement the YouthBuild Transfer Act of 2006 (Transfer Act), which establishes the YouthBuild program in the Department under subtitle D of Title I of the Workforce Investment Act of 1998 (WIA) as amended. The final rule clarifies the requirements of the Transfer Act for YouthBuild program providers and participants. The final rule sets the standards under which YouthBuild program providers can carry out the goals of the program, which are to assist at-risk youth in obtaining a High School diploma or General Educational Development (GED) diploma and acquiring occupational skills training that leads to employment through the construction/rehabilitation of housing for low-income or homeless individuals and families in the community.

DATES: *Effective date:* This final rule is effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Sanzanna Toles, Program Manager, Division of Youth Services, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue, Room N-4508, Washington, DC 20210; telephone 202-693-3030 (this is not a toll free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal information Relay service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary***I. Purpose of the Regulatory Action*

a. The ETA of the Department issues this final rule to implement the Transfer Act, which establishes the YouthBuild program in the Department under subtitle D of Title I of the WIA as amended.

b. On September 22, 2006, the Transfer Act, codified at Section 173A of the WIA, 29 U.S.C. 2918a, was signed into law. The Transfer Act authorizes

grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades.

II. Summary of the Major Provisions of the Regulatory Action In Question

The final rule clarifies the requirements of the Transfer Act for YouthBuild program providers and participants. The final rule sets the standards under which YouthBuild program providers can carry out the goals of the program, which are to assist at-risk youth in obtaining a High School diploma or GED and acquiring occupational skills training that leads to employment through the construction/rehabilitation of housing for low-income or homeless individuals and families in the community. Furthermore, the final rule expands the occupational skills training opportunities in YouthBuild beyond construction skills training. We have determined, based on comments received advocating the expansion of the training offered to include occupational skills training and our program administration experience, that allowing other occupational skills training will help YouthBuild programs provide more successful job placement outcomes and secondary schools placements for program participants.

III. Costs and Benefits

This rule has not been designated an economically significant rule under section 3(f) of Executive Order 12866. However, we provide an analysis of the impact of the final rule, including a costs and benefits analysis under Executive Order 13563, in the Administrative Section of this final rule.

The Preamble of this final rule is organized as follows:

- I. Background—provides a brief description of the development of the final rule;
- II. General Discussion of the Rulemaking;
- III. Section-by-Section Review of the Final Rule—analyzes comments and summarizes and discusses the structure and requirements of the YouthBuild Program;
- IV. Administrative Section—sets forth the applicable regulatory requirements.

I. Background

On September 22, 2006, the YouthBuild Transfer Act of 2006, Public Law 109-281 (Transfer Act), codified at Section 173A of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2918a, was signed into law. The

Transfer Act authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades.

The White House Task Force for Disadvantaged Youth recommended transferring the administration of the YouthBuild program, also known as “Hope for Youth,” from the U.S. Department of Housing and Urban Development (HUD) to the Department. *The White House Task Force for Disadvantaged Youth Final Report*. Pg. 4, October 2003.

The transfer allows for greater coordination of the YouthBuild program with Job Corps, WIA Youth Programs, the workforce investment system, including local workforce investment boards (WIBs), One-Stop Career Centers, and their partner programs (for example, Federal, State, and local education agencies), while at the same time retaining many of the same affordable housing goals as the HUD program. The Transfer Act transfers the authority for the YouthBuild program from the Cranston-Gonzalez National Affordable Housing Act (49 U.S.C. 12899 *et seq.*) (Cranston-Gonzales Act) to subtitle D of Title I of WIA, and it makes modifications and changes to the programs that focus on increasing the skilled workforce available for the construction trades.

The Transfer Act authorizes the expansion of activities authorized under the YouthBuild program to include many activities authorized under the WIA Title I youth formula program. This rule maintains all the goals of the YouthBuild program as originally developed under HUD, but shifts the emphasis to education and skills training for at-risk youth participants. The Department will continue to support the development of affordable housing which was a goal of the HUD program.

The Transfer Act retains the out-of-school and age requirements that were in the Cranston-Gonzalez Act for YouthBuild, targeting eligible youth who are school dropouts and are between the ages of 16 and 24 years old. The Transfer Act further provides that at least 75 percent of participants must be school drop-outs who are members of low-income families, foster care youth, youth offenders, youths with a disability, children of an incarcerated parent, or migrant youths. In addition,

to ensure that other at-risk youths have access to the program, the Transfer Act includes a 25 percent eligibility exception. This exception permits secondary schools to refer students to a YouthBuild program that offers a secondary school diploma if the program is determined to be a better fit for the youth. The exception also allows youth who have a diploma or GED but test as basic skills deficient to participate in a YouthBuild program.

II. General Discussion of the Rulemaking

We have administered the YouthBuild program, including making grants, since the passage of the Transfer Act. In drafting the Notice of Proposed Rulemaking (NPRM), we relied on the knowledge gained from administering the program, along with the experience gained in developing the WIA Youth Program. Consistent with the Transfer Act, the rule incorporates technical modifications to the YouthBuild program to make it consistent with WIA job training, education, and employment goals. Moreover, the rule authorizes education and workforce investment activities such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. In addition, the rule describes how we will use performance indicators developed for Federal youth employment and training programs to enhance the accountability of YouthBuild programs.

On August 27, 2010, ETA published the YouthBuild NPRM at 75 FR 52671 (Aug 27, 2010). The NPRM explained our main focus is to prepare at-risk youth for employment, although the construction and rehabilitation of affordable housing continues to be a major component of the YouthBuild training program. Therefore, the NPRM increased the emphasis on the education and occupational skills training provided by YouthBuild programs. Specifically, the NPRM proposed that the occupational skills training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry-recognized credential; i.e., the National Center for Construction Education and Research (NCCER), the Home Builder's Institute's (HBI) HPACT curriculum, or the Building Trades Multi-Craft Core curriculum. Additionally, the NPRM placed emphasis on coordinating training with registered apprenticeship programs, which will allow participants to enter such programs upon exiting YouthBuild.

The NPRM proposed the use of some YouthBuild funds to pay for supervision and training costs to allow participants to develop skills and obtain work experience in the rehabilitation or construction of community buildings and other public facilities. The NPRM advanced these and other new activities to better assist at-risk youth in preparing for employment.

Finally, in the NPRM, we solicited comments on whether YouthBuild should continue to focus on construction skills training or whether skills training should be expanded to other industry areas.

Overview of the Comments Received on the NPRM

The comment period for the NPRM was open from August 27, 2010 to October 26, 2010. We received twenty-nine comment letters in response to the NPRM. The commenters represented a broad range of constituencies for the YouthBuild program, including seven private citizens, five local and community employment and training organizations, two union organizations, five local YouthBuild programs, two local governments, two Federal agencies, three state governments, one advocacy organization, and two individuals with YouthBuild U.S.A.

The comments raised a variety of concerns, some general and some pertaining to specific provisions or specific proposals. After reviewing the comments, we have modified some provisions and retained others as originally proposed in the NPRM. The issue most frequently raised in the comments concerned the NPRM's specific proposals for various program requirements. Most of these comments were requests for clarification about specific program requirements, such as the time allowed for follow-up services for program participants. Several commenters also addressed the question whether the YouthBuild program should continue to focus on construction skills training or if we should allow other occupational skills training in YouthBuild.

We received several comments that were beyond the scope of the proposed rule and included issues with the YouthBuild Solicitation for Grant Applications, published at 73 FR 58653 (October 7, 2008), and individual State laws. These are issues that cannot be resolved or implemented through this regulatory process or are not within the Department's purview. Additionally, comments submitted in a manner inconsistent with the specific directions of the NPRM or submitted after the

comment period closed were not considered.

III. Section-by-Section Review of the Final Rule

When developing this final rule the substantive issues raised by the comments were taken into careful consideration. These issues and our reasons for developing the final rule as it is written are discussed below.

Subpart A—Purpose and Definitions

Sections 672.100, .105, and .110 deal with the purpose, scope, and definitions related to the YouthBuild program. Significantly, under § 672.100, we emphasize that YouthBuild is a workforce development program in addition to a program that aims to increase the amount of affordable housing for low-income and homeless individuals and families. This emphasis implements one of the primary goals of the Transfer Act, which, in moving the administration of YouthBuild from HUD to the Department, was to make YouthBuild a program that focuses on occupational skills development.

What is YouthBuild? (§ 672.100)

This section describes the YouthBuild program as administered by the Department. One commenter requested either an expansion or clarification of the description of the YouthBuild program. The commenter suggested changing the description of the program as being for secondary school dropouts, to read “at least 75 [percent] of whom have left school without a diploma.” The commenter states this would make it clear at the outset that not all YouthBuild participants must lack a High-School diploma.

We believe that § 672.300 clearly articulates who may be an eligible participant by stating that at least 75 percent of participants must lack a High-School diploma, while no more than 25 percent of participants may have a diploma but are still basic skills deficient as defined in section 101(4) of WIA. Nevertheless, we have accommodated the commenter's concern by adding the words “most of whom” to make clear that there are some YouthBuild participants who need not be high school dropouts.

What are the purposes of the YouthBuild program? (§ 672.105)

This section details the goals of the YouthBuild program. We received four comments from two commenters on this section. We changed § 672.105(a) by emphasizing that YouthBuild participants should obtain education and training for high-demand and local

in-demand jobs to achieve economic self-sufficiency. We believe this change better reflects WIA Sec. 173(A)(a) which states that the purpose of YouthBuild is to provide education and employment skills for participants for occupations in demand. One commenter made a recommendation to insert the following sentence, “[t]o assist participants in overcoming barriers, the program provides a variety of case management and counseling supports, as well as training in life skills” in § 672.105(a). The commenter suggests that the purpose for the change is to appropriately emphasize key components of successful programs. We agree that case management and counseling are key components to a YouthBuild program but we do not think it is appropriate to highlight these components in this section which is a broad statement of the program’s goals. Instead, these services are more appropriately addressed in the discussion of § 672.210.

The commenter also recommended changing § 672.105(a)(3) from the goal being to “reduce the rate of homelessness in communities with YouthBuild programs,” to the goal being “to expand the supply of permanent affordable housing * * *” The commenter believes the change is more accurate and is a direct reflection of the Transfer Act. We agree with the commenter and have changed the language at § 672.105(a)(3) to more accurately reflect the language of the Transfer Act.

The other commenter requested that the final rule articulate the importance of recruiting young women and young women with children as provided in the Transfer Act. The commenter went on to explain that special efforts to recruit young women into YouthBuild are essential to increasing their participation because few women are exposed to the construction trades and other non-traditional occupations while they are in school.

We agree with the commenter about the importance of recruiting young women and participants with children but we don’t feel it is appropriate to amend the statement of goals. Instead, we will consider the effort to recruit, or plans to recruit young women put forth by YouthBuild programs and applicants as an important factor in the Solicitation for Grant Application selection process.

What definitions apply to this part? (§ 672.110)

This section explains the definitions applicable to this final rule. We received comments, which we discuss below, on several of the definitions. Those

definitions on which we did not receive comments have been adopted as proposed.

Alternative School

In part, the proposed definition of “alternative school” reads, “An ‘alternative school’ must be recognized by the authorizing entity designated by the State, must award a high school diploma and, must be affiliated with YouthBuild programs. * * *” One commenter pointed out that some YouthBuild programs are recognized by authorizing entities but only offer GEDs while other YouthBuild programs offer GEDs and High School Diplomas and are recognized by authorizing entities. The commenter goes on to ask what the impact of these regulations would be on the alternative school status of those YouthBuild programs that offer GEDs and High School Diplomas.

We have changed the rule so that schools offering both a high school diploma and a GED, when authorized by the appropriate entity, can be included as an alternative school. For the purposes of participation in a sequential services strategy, schools that offer only High School Diplomas will continue to be considered alternative schools. In order for a YouthBuild Program’s academic component to meet the definition of a “sequential service strategy,” as defined in § 672.110, the program’s alternative school must award a high school diploma and not a GED. This allows YouthBuild programs with alternative schools to enroll out-of-school youth participants into their alternative school prior to enrollment into their YouthBuild program, while enabling them to maintain their out-of-school youth eligibility at the time of their enrollment into the YouthBuild program as long as it is part of a “sequential service strategy.” This flexibility is only granted to YouthBuild programs with alternative schools that award high school diplomas and not GEDs because research establishes that individuals who receive a high school diploma have a higher long-term earning potential than individuals who receive a GED. GEDs are also generally achieved by participants within the first year of service. The flexibility for YouthBuild grantees to use a “sequential service strategy” is an incentive for more programs to move towards high school diploma granting academic components, and supports earlier dropout recovery of future YouthBuild participants and prevents programs from having to drop youth out of their program so they can then reenroll as an out-of-school youth.

Community or Other Public Facility

We received several comments seeking to expand the definition for “Community or Other Public Facility.” The NPRM explained that “community or other public facility” means those facilities which are publicly owned and publicly used for the benefit of the community. Examples include public-use buildings such as recreation centers, libraries, public park shelters, or public schools. This term may also encompass facilities used by the program but only if the facility is available for public entry and use.

One commenter wanted the definition to include churches or faith-based facilities. Another commenter agreed that buildings owned by faith-based, non-profit organizations should be included in the definition. Another commenter also suggested that if the definition of community and public facilities could be expanded, it would increase opportunities for employment training and community benefits. The commenter further stated that proposed projects should be individually evaluated based on several factors including the extent of rehabilitation or construction required to make the project habitable, the project’s likelihood to provide comprehensive training value to young people, and the project’s projected value to the broader community, regardless of ownership or public use. Two other comment letters contend that since the Transfer Act does not state that “community or other public facilities” must be publicly owned, the definition should include privately held non-profit facilities.

We agree with the commenters and revise the definition of “community or other public facilities” to include privately owned non-profit facilities, including facilities owned by faith-based organizations, as well as publicly owned facilities, as long as those facilities are available for public entry and used for the benefit of the public. While grant funds can be used in the rehabilitation or construction of buildings owned by faith-based organization, funds may not be used to rehabilitate or construct a facility, or portion of a facility, that will be used for religious purposes.

Any work done by YouthBuild participants on a community or public facility must be directly related to training for YouthBuild participants and follow the relevant Office of Management and Budget’s (OMB) cost principles for grants. (OMB Circulars A–87, 2 CFR part 225 and A–122, 2 CFR part 230). Under these cost principles, any activity funded with grant funds

that would result in the Department obtaining an equity interest in equipment, buildings, or land, is unallowable. Of particular relevance to the YouthBuild program, under Circulars A–87 and A–122, capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable. 2 CFR part 225, Appendix B, § 15(b); 2 CFR part 230, Appendix B, § 15(b). While Circulars A–87 and A–122 permit these costs with advance approval from the Department, as a matter of policy the Department will not approve these costs in order to avoid taking an equity interest in the relevant capital asset (i.e.: land, building, and equipment).

However, costs for normal maintenance and upkeep that does not add to the value or prolong the useful life of land, buildings, or equipment are allowable costs not subject to pre-approval by the Department. 2 CFR part 225, Appendix B, § 25; 2 CFR part 230, Appendix B, § 27.

The NPRM contemplates that buildings privately owned by non-profit grantees fall within the definition of “community or other public facilities.” We do not think that there is any reason to distinguish between grantee and non-grantee owned non-profit facilities that are privately owned, thus we agree with the commenters that the definition should be expanded. However, proposed projects on privately owned facilities, including facilities owned by faith-based organizations, must meet the public entry and use restrictions outlined in the definition and the cost principles already discussed.

Homeless Individual

We received no comments on the definition for “homeless individual”. However, the definition for “homeless individual” from the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) provided in the NPRM was amended before publication of this final rule by sec. 1003(a)(2) of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009. 42 U.S.C. 11302(a). As a result, we are changing the rule text by removing the detailed definition of “homeless individual” to cite only the McKinney-Vento Homeless Assistance Act in the final rule to incorporate any future changes in the definition. Therefore, for the purposes of YouthBuild, the definition of “homeless individual” at Section 103 of the McKinney-Vento Homeless Assistance Act applies.

Indian and Indian Tribe

One commenter described the definition of “Indian” and “Indian tribe” as too limiting and potentially offensive to Native Alaskans. The commenter suggested that we replace the term “Indian and Indian Tribe” with “American Indian/Alaska Native. We appreciate the sensitivity explicit in the commenter’s suggestion. However, in this instance we are constrained from changing the term because the final rule reflects the Transfer Act’s adoption of the definitions of these terms from sec. 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)).

Low Income Family

In the NPRM, we defined “Low-Income Family” as a family whose income does not exceed 80 percent of the median income for the area unless the U.S. Secretary of Labor (Secretary) determines that a higher or lower ceiling is warranted. This term is defined in the Transfer Act. One commenter wanted the rule to increase the median income level from 80 percent of the median income for the area to 120 percent of the median income for a low-income family, due to the difficulty some YouthBuild programs are having finding low-income homebuyers.

We have determined that the definition of “Low-income family” will remain unchanged in the rule to mean 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. The term “low-income family” was taken from United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and is a widely recognized term and metric. However, at the discretion of the Secretary, we may consider temporary increases in the median income level based on economic conditions. If such a temporary increase is determined to be necessary it will be done so in future SGAs or through guidance.

Further, we have made several non-substantive changes to this definition to improve readability.

Migrant Youth

We received one comment on the definition of “Migrant Youth.” The commenter stated that the proposed definition was too limiting because it did not include workers affiliated with the seasonal fishing industry. We understand the commenter’s concern with the possible limitations of the definition of “migrant youth.” Because YouthBuild is a WIA-funded program,

we first considered using a definition for “Migrant Youth” that incorporates the WIA definition for migrant farmworker from the National Farmworker Jobs Program found at WIA Sec. 167(h)(3). Under WIA, a “Migrant seasonal farmworker” is a seasonal farmworker 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. (WIA sec. 167 (h)(3)(A)(4)(A)). However, we believed that using the definition found in the statute limited the number of potential program participants. Accordingly, we chose to adapt our definition of “Migrant Youth” from the broader definition of “migrant farmworker” found in Farmworker Bulletin 00–02, which relates to eligibility in the Migrant Seasonal Farmworker Youth Program, and expands on the definition of “migrant seasonal farmworker” found in WIA. Using this broader definition allows a larger population of potential YouthBuild participants to be served by the program. The definition of “migrant farmworker” found in Farmworker Bulletin 00–02 uses the North American Industry Classification System (NAICS) codes to determine whether or not a worker is a “migrant farmworker.” The definition of “migrant farmworker” in the Farmworker Bulletin excludes workers whose work is classified as “aqua-culture,” which includes the seasonal fishing industry. In addition, using the definition of “migrant seasonal farmworker” from Farmworker Bulletin 00–02 allows for consistency throughout ETA programs, as both the National Farmworker Jobs Program and the Office of Foreign Labor Certifications use similar definitions that exclude the seasonal fishing industry. Because we have based our definition on Farmworker Bulletin 00–02, and because that definition does not include workers in the seasonal fishing industry, we have decided not to include seasonal fishing industry workers as part of the definition of migrant youth.

We received no comments on the remaining definitions, and therefore have adopted each as proposed.

Subpart B—Funding and Grant Applications

This subpart deals with the selection process, the funding process, and the application process for potential grantees to apply through an SGA.

How are YouthBuild grants funded and administered? (§ 672.200)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

How does an eligible entity apply for grant funds to operate a YouthBuild program? (§ 672.205)

We did not receive any comments on this section. The final rule adopts proposed regulation as proposed.

How are eligible entities selected to receive grant funds? (§ 672.210)

This section describes the criteria for selecting grantees. One commenter requested that we offer separate funding for rural programs, urban programs, and new programs as was the case when HUD administered YouthBuild. The commenter maintained that it is difficult for rural programs to compete against urban programs. Additionally, the commenter believed the minimum amount of funds for which a program can apply is an amount too large for smaller YouthBuild programs. We acknowledge the commenter's concerns in that some rural programs may have difficulty in obtaining grant awards because often the suggested minimum amount of a YouthBuild grant award is more than some rural programs need to operate successfully. We believe, however, that the commenter's concerns are addressed in the annual SGAs. When awarding grant funds the Grant Officer considers a variety of factors, including geographic diversity and the need for affordable housing in an area. Additionally, YouthBuild SGAs do not have a minimum level of funding which applicants must request; the minimum amounts in the SGA are only suggested amounts. Applicants may request an amount of funding that is less than the suggested minimum grant award amount.

Two commenters expressed some difficulties in obtaining data addressing the required indicators of need, poverty, unemployment rates, and high school drop-out rates referenced in § 672.210(c). They further related that there is no standardized methodology for calculating unemployment or drop-out rates among States and local communities. The commenters believe this situation makes it unfair to rate applications from different regions against each other.

We understand it may be difficult to obtain data which demonstrates the various indicators of need in § 672.210(c) for different State and local communities. However, contrary to the commenters' assertion, we do not

evaluate grant applications by comparing them to one another or measuring them against other grant applications. Each respective YouthBuild application submitted in response to an SGA is rated only against the criteria established in the SGA. Furthermore, we do not mandate that applicants obtain data which demonstrates the various indicators of need from specific sources. YouthBuild applicants are free to use whatever source they prefer for data showing indicators of need as long as they can demonstrate in their grant application the validity of the data and its accuracy in showing the community's need for the YouthBuild program.

One commenter suggested adding "counseling and case management" to § 672.210(d) which reads, "[t]he commitment of an applicant to provide skills training, leadership development, and education to participants." The commenter contends that without the commitment of personal support for the individual participant offered by YouthBuild programs through counseling and case management, the ability of participants to achieve the desired outcomes would be dramatically reduced.

We agree that the offer of counseling and case management is important for participants' success in YouthBuild. We also believe that these services are being provided by YouthBuild programs as part of their commitment to provide skills training, leadership development, and education to participants. Furthermore, § 672.310(a)(2) details some of the eligible activities, including counseling services, that may be funded in YouthBuild programs. However, we agree with the commenter that counseling and case management should be included as a basis for selection in the grant application process. Accordingly, we have added counseling and case management to § 672.210(d) as part of the required selection criteria.

Two commenters proposed new language to be added to § 672.210(e). Proposed § 672.210(e) establishes that one, of many, selection criteria is, "[t]he focus of a proposed program on preparing youth for postsecondary education and training opportunities or in-demand occupations in the construction industry." The commenters proposed that this section be changed to read, "[t]he focus of a proposed program on preparing youth for postsecondary education or jobs within their communities, including high-demand occupations and entrepreneurship opportunities." The commenters stated the reason the

change is necessary is because in rural and Native communities, "demand" occupations may not be reflected accurately in data due to the small size of many employers. Further, the complete absence of products and services in a community often reflects need but this need is not captured by actual employment data. One of these commenters suggests that these factors place programs in these communities in the awkward position of encouraging young people to leave their communities, and also may encourage young people to apply for jobs for which they have no transportation or cannot afford the transportation to access.

We agree with the commenters' concern. The selection criteria and the process through which grantees are selected, as stated at § 672.210(e), is specifically described in sec. 173A(c)(4)(E) of WIA. Section 173A(c)(4)(E) states that applicants will be judged based on "the focus of a proposed program on preparing youth for occupations in demand or postsecondary education and training opportunities." Therefore, we have amended the text in § 672.210(e) by adding the word "local" to address the commenters' concerns about demand occupations.

Two commenters noted that rural and Tribal programs are disadvantaged by the criteria in § 672.210(f)(1) because they have limited partnership choices which affect the applicant's performance under the selection criterion that deals with an applicant's demonstrated ability to enter partnerships with various entities. One commenter went on to explain that the lack of One-Stop Centers and other workforce investment systems in rural areas and Tribal lands make it difficult for programs in these areas to seek partnerships with those entities as required in § 672.210(f)(1). To remedy this, the commenter suggested that Job Corps be added as a specific workforce investment partner in the rule.

We are aware that rural and Tribal programs may have limited partnership choices and that Job Corps would make a good partner for the YouthBuild program. However, we do not believe it is necessary to specifically mention Job Corps in the text of § 672.210(f)(1) because Job Corps is a One-Stop partner and applicants are already evaluated on the extent to which they propose to coordinate activities with such partners. Therefore, specifically adding in a Job Corps provision to this section would be redundant. To address the issue about potential partners that the commenter raised, we issued Training and Employment Notice (TEN) 50-08, on

June 24, 2009 to provide strategies to YouthBuild Programs on collaborating with Job Corps Programs. The TEN is available at the ETA Advisories Web site at <http://wdr.doleta.gov/directives/attach/TEN/ten2008/TEN50-08acc.pdf>, and is made available to any new YouthBuild-funded programs.

We understand the difficult task of obtaining partnerships, especially for those applicants in rural areas or Tribal lands, this is why the workforce system coordination clause in § 672.210(f)(1) contains the caveat, “or the extent of the applicant’s good faith efforts, as determined by the Secretary, in achieving such coordination.” This clause allows the Grant Officer to credit an applicant’s effort to obtain partnerships, even if that effort was ultimately unsuccessful.

One commenter suggested that we strengthen in § 672.210(i)(1) through (5) the emphasis on the quality and coordination of the partnerships and the nature of the partnering relationship, rather than on the number of partnerships. The commenter stated that, “while partnerships are desirable and often essential, both for delivering services and leveraging resources, we see risks in over-emphasizing and incentivizing partnerships as the way to deliver services.”

We believe that we have appropriate measures in place to prevent the over-emphasis on the number of partnerships versus the quality of partnerships in the grant selection process. In our SGAs, YouthBuild applicants are not rated simply on the number of partners, but also must demonstrate the level of commitment, the qualifications, and the abilities of the partners to contribute to participants’ success, and the strength and the maturity of the partnership. Therefore, in assessing the selection criteria in § 672.210(i)(1) through (5), we seek to analyze the qualitative aspects of the described partnership and how likely the partnership will contribute to the overall success of a YouthBuild participant.

The same commenter suggested adding the adult justice system to proposed § 672.210(i)(4) which describes the extent to which an applicant should partner with the juvenile justice system, because many of the participants are classified as adults. Additionally, the commenter suggested that we add a paragraph to § 672.210(i)(4) stating that a selection criterion for YouthBuild applicants is the demonstrated service they can receive from partnerships with the adult and juvenile justice system for referrals of eligible participants through diversion or re-entry from incarceration.

We agree with the commenter’s two suggestions and have made the suggested changes in the rule, because many possible YouthBuild participants are classified as adults in the justice system. Consequently, it would be the adult justice system that would be able to provide assistance with reporting recidivism rates and referrals of these potential participants. This will enable YouthBuild to better attract participants from its targeted population.

How are eligible entities notified of approval for grant funds? (§ 672.215)

This section describes the process and timeline for notifying a grant applicant of a YouthBuild grant application approval or disapproval.

One commenter recommended the addition of the following: “The [Department] will establish a threshold level of points required to be eligible for funding, and will make known what was the actual cut-off point for funding, if it was above that threshold as a result of high quality competition, in each round. Upon request the [Department] will provide the specific scores for each proposal and written feedback regarding the weaknesses of the proposal. It will also accept appeals from applicants who can demonstrate after reviewing the scores that a specific error in scoring was made on a technical point, such as whether a particular item of required documentation was provided. If the Secretary determines a correction is warranted, the Secretary may make that correction from subsequent year appropriations.”

We find that these suggestions are unnecessary. As explained in our YouthBuild SGAs, proposals that are timely and responsive to the requirements of the SGA are rated against listed criteria by an independent panel comprised of representatives from the Department, HUD, the U.S. Department of Justice, the U.S. Department of Health and Human Services, and other peers. The ranked scores serve as the primary basis for selecting applications for funding, in conjunction with other factors such as: urban, rural, and geographic balance; whether the areas to be served have previously received grants for YouthBuild programs; the availability of funds; and which proposals are most advantageous to the Department. Also in the SGAs, we state that, upon request, we provide feedback to applicants on portions of their specific application we believe can be improved. However, we do not provide guidance on any portions that we believe are strengths in an application. We take this approach because we understand that what works

for one grant applicant may not work for other grant applicants that have different challenges and needs that YouthBuild may help in addressing. Further, we do not provide a threshold for scores in the regulation or in the current SGAs because the numerical scores are only one part of the overall final award decision, other factors (listed above) are also brought into consideration. Also, the Department has routinely received enough high scoring applications submitted in response to SGAs, thus there is no need to set a threshold score to ensure that enough high quality grants given out. In addition, an applicant has a right to appeal the decision on their grant application under sec. 186 of WIA. Finally, the Secretary reserves the right to make any corrections she believes necessary in awarding grants for YouthBuild.

Subpart C—Program Requirements

Subpart C deals with eligibility determinations of YouthBuild program participants, required program activities, designated minimum timeframes for certain activities, and services that must be carried out by programs.

Who is an eligible participant? (§ 672.300)

Section 672.300 implements sec. 173A(e)(1) of WIA. This section defines who is eligible to become a YouthBuild participant. Specifically, § 672.300(a)(1) through (3), implementing sec. 173A(e)(1)(A) of WIA, states that an individual eligible for YouthBuild participation must be between 16 and 24 years old, a school dropout or a dropout who is enrolled in an alternative school as defined § 672.110, and either is a member of a low-income family, in foster care, a youth offender, disabled, a child of an incarcerated parent, or a migrant youth. Under sec. 173A(e)(1)(B) of WIA no more than 25 percent of the participants in a particular YouthBuild program may be individuals that do not meet the criteria described above, provided that they meet one of the exceptions listed in sec. 173A(e)(1)(B) of WIA. These exceptions are set out in § 672.300(b) of the final rule.

One commenter suggested increasing YouthBuild’s current exception in § 672.300(b)(1) for participants who have a high school diploma or GED and an educational deficiency from 25 percent to 40 percent, because this would aid recruitment and broaden YouthBuild’s participant base, and enable YouthBuild programs to move even more participants more quickly

into employment, enhancing placement rates. While this suggestion would help broaden the number of potential eligible participants, the 25 percent cap is mandated by the statute. Section 173A(e)(1)(B) of WIA states that no more than 25 percent of YouthBuild participants in a particular program may be individuals who do not meet the educational deficiency requirements in sec. 173A(e)(1)(A)(ii) and (iii) of WIA.

One commenter suggested that the rule include guidance on what documentation is acceptable for determining the eligibility of a participant.

We do not view the regulations as the proper place to provide detailed operational guidance. The regulations set the general rules governing the YouthBuild program and we provide administrative guidance to provide the detailed operational procedures. The type of documentation we accept to establish participant eligibility is broad, and often changing due to changes made at the Federal, State, or local level to the forms required, changes in the relevant legal definitions at the Federal, State, and local level, or because of other changes to the documentation that we currently accept. By including this information in the regulation, we could not easily adapt to the changes described above and could not make the changes that we believe are necessary in a timely fashion. In addition, upon award of a YouthBuild grant, each grantee is provided with a Department-issued YouthBuild handbook that helps grantees understand what documentation is acceptable to be used to determine a participant's eligibility. This handbook also provides eligibility guidelines for grantees to use when selecting participants. Finally, each grantee is required to have in place written policies it will use to determine the eligibility status of a perspective participant.

Another commenter recommended that rather than calling the young people "dropouts," the regulation should describe them as young people who left school without a diploma. The commenter reasoned that language used to describe the participants should carefully avoid labels of all kinds, and in many quarters "dropout" has a negative connotation. We understand the commenter's concerns about labeling participants with a word that could have a negative connotation. However the term "drop out," as currently used in WIA sec. 173A(e)(1)(A)(iii) and as defined in WIA sec. 101(39), is a clear, fair, commonly-used and concise term used to describe

the actions of youth who voluntarily left high school without a diploma.

Are there special rules that apply to veterans? (§ 672.305)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What eligible activities may be funded under the YouthBuild program? (§ 672.310)

This section implements sec. 173A(e)(3) and 173A(c)(2)(A) of WIA, which outline new education and workforce investment activities. These activities, newly permitted under the YouthBuild program, consist of postsecondary education services and activities, including tutoring, study skills training and dropout prevention activities; other paid and unpaid work experiences, including internships and job shadowing; alternative secondary school services, occupational skills training, and counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral.

One commenter had a general concern that the wording of § 672.310 may leave some YouthBuild programs and applicants with the impression that it will be at the individual program's discretion as to whether or not they will provide certain services. The commenter is correct that the intent of the regulation is to provide program operators with some discretion over the services they may provide. While a YouthBuild program must offer several required services, we allow some variation in the overall services available in a program because we do not believe that a one-size fits all approach would help programs be successful. We recognize that because YouthBuild is a nation-wide program, there will be differences between the needs and resources between regions and among individual programs. This is not to say that YouthBuild programs can pick and choose services in a vacuum. Grantees must structure programs so that at least 90% of the participants' time is spent on eligible education activities (50%) and eligible workforce investment activities (40%). YouthBuild Federal project officers monitor program progress and work with grantees to make sure that grantees' programs produce positive outcomes for the program and for the participants, while giving detailed information on required activities and allowable activities.

The same commenter stated that Mental Toughness is an important element that contributes greatly to

cohesive culture-building, and motivates young people to engage with the program and with each other. Consequently, the commenter recommended that Mental Toughness/Orientation be mentioned in the regulations and that programs be allowed to use their grant funds for this activity. We agree that Mental Toughness can be an important component of a YouthBuild program. Because of its potential positive impact, we issued guidance on Mental Toughness/Orientation (Training and Employment Guidance Letter (TEGL) 14-09 issued on February 25, 2010), which discusses the allowable costs for initial intake or informal interviews with YouthBuild participants to gauge prospective participants and their readiness for the rigors of the YouthBuild program. While we recognize that Mental Toughness can have a very positive impact on programmatic and participant success, we do not feel it is appropriate to mandate this technique to all grantees. Since YouthBuild is a nation-wide program, there will be differences in the needs, resources, and approaches between regions and among individual programs.

One commenter recommended that we clarify that YouthBuild programs are permitted to use grant funds for post-secondary educational training costs where a participant completes secondary education while still enrolled in the program, or where a participant is otherwise ready for post-secondary study. Section 672.310(a)(1)(iv), which mirrors Sec. 173A(c)(2)(A)(iv)(IV) of WIA, provides that counseling and assistance in obtaining post-secondary education and required financial aid is an eligible education activity for grant funds and is available to the participant whether the participant is still in the program or has exited and is receiving follow-up services. The regulation follows the language of the statute. It is an allowable activity under § 672.310(a) for grantees to spend grant funds on post-secondary education costs described in § 672.530(e)(1) and (2). We urge grantees to use these funds reasonably for participants, both during their time in YouthBuild and after they exit and are receiving follow-up services, so that they may assist as many participants as possible with post-secondary education costs such as application fees or fees associated with financial aid. However, grantees have discretion to determine whether to spend grant funds to directly fund the costs of post-secondary education.

Another commenter recommended that funding rules should allow

YouthBuild sites to offer relationship skills training so that participants may learn communication skills and problem solving skills. The commenter believes this will help young people acquire necessary skills and keep jobs they may get with the skills learned through YouthBuild participation. We agree with the importance of offering relationship skills training for YouthBuild participants. Many of the young people who eventually enter YouthBuild lack the communication skills needed to build strong interpersonal and work-centered relationships. In our experience, the development of these “soft” skills is critical to participant success in the workforce once an individual leaves YouthBuild. Therefore, at § 672.310(a)(3), we provide for employment and leadership skills training to encourage positive social behaviors, which includes the type of training suggested by the commenter.

One commenter wanted the final rule to offer participants a stipend for transportation because it would aid in their ability to participate successfully in a YouthBuild program. The commenter stated that many low to very low income individuals lack dependable transportation and that providing participants with a stipend for public transportation would improve successful outcomes. We agree with the commenter’s understanding of the importance of transportation to the success of participants. The NPRM, at § 672.310(a)(4) would permit programs to use grant funds to provide supportive services, which includes aiding participants in obtaining transportation, including public transportation, to and from YouthBuild locations and worksites because it is considered a supportive service under WIA sec. 101(46). We have carried this provision into the Final Rule.

Another commenter wanted the final rule to provide guidance on how programs are authorized to provide funds for childcare. Childcare is another supportive service available under § 672.310(a)(4).

One commenter stated that the 10 percent restriction on grant funding in § 672.310(c)(2) should be increased to allow for additional exposure to other sectors of the construction industry beyond residential construction. We are constrained by WIA sec. 173A(c)(2)(C), which states that no more than ten percent of grant funds may be used for the supervision and training for participants in the rehabilitation or construction of community and other public facilities.

What timeframes apply to participation? (§ 672.315)

We received two comments about the amount of time a participant is permitted to be enrolled in the YouthBuild program. One commenter wanted to know if there was an exception to the requirement that participants must be offered full-time participation for a period of at least six months and not more than 24 months. Section 173A(e)(2) of WIA provides no exception to this requirement. Therefore we cannot permit an exception in the final rule.

The other commenter requested that the rule discourage programs from establishing their program length at the minimum level because many YouthBuild students’ incoming reading and math skill levels and workforce readiness are typically so limited that YouthBuild participation and program engagement longer than six months is required to help improve these skills. The same commenter went on to recommend that the rule make it clear that every enrollee may participate for up to 24 months, or for however long the program receives funding, whichever is shorter.

The suggested change is not needed. Because we are focused on outcomes within the requirements of the Transfer Act, we work with programs to ensure participants’ success regardless of the time spent in a YouthBuild program. We understand that the various programs and participants face different challenges and, therefore, we encourage programs to work towards successful outcomes for participants, whether occurring after six months or longer. In addition, § 672.325 requires that each participant exiting a YouthBuild program be provided follow-up services for a minimum of nine months to assist participants in obtaining or retaining employment, or applying for and transitioning to post-secondary education or training. Therefore, each participant who exits a YouthBuild program, even after only six months, receives additional services to help ensure a successful transition into employment or post-secondary education.

What timeframes must be devoted to education and workforce investment or other activities? (§ 672.320)

This section explains the required structure of YouthBuild programs so that participants in the program are offered specific educational and related services and activities during at least 50 percent of their participation time, workforce investment activities during

at least 40 percent of their participation time, with the 10 percent time remaining designated for YouthBuild participants to conduct leadership development and community service activities, or additional workforce investment activities or educational activities. The 40 percent workforce investment activities participation time is a new requirement under sec. 173A(e)(3)(B) of WIA.

We received two comments on the 10 percent time limit designated for YouthBuild participants to conduct construction skills training and construction on affordable housing and public facilities. One commenter suggested that YouthBuild programs be permitted to use the 10 percent time limit for YouthBuild participants to work on community projects to include the opportunity for participants to work on commercial projects. Both commenters stated that such a broadening of the use of the additional time could serve to bring YouthBuild programs and Registered Apprenticeship programs into closer mutual understanding and alignment and allow additional exposure to these other sectors of the construction industry.

We agree with the commenter that permission to work on commercial projects would expose participants to other sectors of the construction industry. Therefore, we will allow YouthBuild participants to work on commercial projects as long as those commercial projects directly involve the building of affordable housing for low income and homeless families and individuals. One of the goals of the YouthBuild program, as articulated in sec. 173A(a)(4), is to increase the amount of permanent affordable housing for homeless individuals and low-income families. Therefore, due to the limited amount of time for YouthBuild participants to do construction, coupled with our goal of increasing affordable housing for homeless individuals and low-income families, we will permit participants to work on public facility-based projects and commercial projects, as long as those commercial projects are building affordable housing.

YouthBuild Programs May Offer Other Occupational Skills Training

In response to comments solicited in the NPRM, we have determined that YouthBuild programs may offer participants other occupational skills training besides construction skills training. Each YouthBuild program is required to offer construction skills training, but participants do not need to

complete construction skills training as a prerequisite to engage in other occupational skills training.

In addition, we will continue to require YouthBuild programs to provide community service and leadership development opportunities for every YouthBuild participant. We expect that, when possible, YouthBuild programs will align community service projects and leadership development activities with the participant's occupational training and will provide participants with an opportunity for community service relevant to their training, allowing participants to use their skills and training to serve their communities. For example, relevant community service opportunities for a participant pursuing health care career training might include volunteering at a local clinic or volunteering to educate the community about preventative health care. Other current examples include participants volunteering at a community food pantry, tutoring younger youth, participating in a graffiti removal campaign, cleaning a city park, or organizing and speaking at voter registration drives.

These community service opportunities should intend to address real needs in the community. It is expected that participants will play a key role in the design, selection, and implementation of service projects. Additionally, participants are encouraged to perform additional community service or volunteer in local non-profit organizations independent of the YouthBuild program.

We discuss the options we considered for expanding occupational skills training beyond construction skills training in detail below.

Options Considered for Expanding YouthBuild Training for Participants

In the NPRM, we explained that current grantees have expressed an interest in expanding their program training beyond construction to other occupational skills training because YouthBuild programs have difficulty in placing participants in the construction industry when demand for construction workers in a local area is low. Additionally, we learned from grantees that many youth can benefit from the YouthBuild program, but are not interested in ultimately entering careers in the construction industry. Because of these concerns, we asked for comments in the NPRM on whether YouthBuild should continue to focus on construction skills training or if the skills training should be expanded to other industry areas. See 75 FR 52671, 52676 (Aug. 27, 2010).

In response, we received fourteen comments on the issue of whether to allow YouthBuild programs to provide occupational skills training in addition to construction skills training. One comment was outside the scope of this rulemaking. Ten commenters stated that we should allow programs to focus on other occupational skills training besides construction. Three commenters wanted to keep the focus of occupational skills training on construction in YouthBuild programs.

Based on our analysis of the comments, we developed three options. The first option was to maintain the current program approach which is to allow construction skills training only. The second and third options both involved allowing other occupational skills training in YouthBuild besides construction. The second option would require some construction skills training as a prerequisite for participants to undergo other occupational skills training. The third option allowed participants to do other occupational skill training without first engaging in construction skills training.

Option 1: Allow Construction Skills Training Only

Three commenters advocated allowing only construction skills training in YouthBuild. One commenter stated that it was important to support youth who have the technical skills and industry-recognized credentials to fill future jobs in the construction industry. This commenter went on to suggest that YouthBuild participants should be helped to understand that many skills acquired through YouthBuild construction skills training are transferable to other industries.

Another commenter supported maintaining construction skills training because the growing U.S. population and the aging building environment in the U.S. will combine to drive demand for construction workforce development efforts like YouthBuild. This commenter also stated that the increasingly complex skills necessary for construction due to the energy efficiency and sustainable construction movement will drive demand for programs like YouthBuild. The commenter also addressed the benefits of using construction skills training in YouthBuild by explaining that it provides a step-by-step learning opportunity with well-defined knowledge benchmarks. The commenter explained that once construction skills were learned, the participant could immediately apply this knowledge in the participant's non-construction work experiences. The commenter also stated

that through construction skills training, YouthBuild participants could see tangible results of their training. Furthermore, the commenter felt that YouthBuild participants would be better prepared to address home maintenance or repair issues themselves through construction skills learned in training. Finally, this commenter addressed the statement made in the NPRM that many YouthBuild participants are not interested ultimately in entering construction careers. The commenter said that participants are not limited to placement in construction occupations and that plans targeting the participant's ultimate career goal could be part of an individual's "placement plan".

The third commenter in support of only construction skill training stated that from personal experience in operating a YouthBuild program for more than a decade, the commenter has found that participants may discover an interest in careers other than construction as a result of construction skills training in YouthBuild. The commenter also stated that emphasizing construction skills training enables programs to teach a work-ethic, provide hands-on training in a demand occupation that may lead to apprenticeship opportunities, increase the supply of affordable housing for low-income and homeless individuals and families, and promote and assist students interested in other in demand occupations after exiting YouthBuild.

While we agree with many of the commenters' arguments, we have decided not to continue to require YouthBuild grantees to provide only construction skills training for a number of reasons. Sec. 173A(c)(2)(A)(ii) of WIA allows other occupational skills training. Additionally, sec. 173A(a)(1) states that one of the purposes of the program is to enable participants to obtain the skills necessary to achieve economic self-sufficiency in occupations in demand, which may not include jobs in the construction industry in a local area. We agree with the commenters that a program allowing for other occupational skills training besides or in addition to construction skills affords YouthBuild programs and participants more flexibility in matching available training opportunities to participants' interests. This approach also allows programs to try and match skills training with local job market data when appropriate or possible, to develop a program better suited to both the needs of the community and the interests of the participants, which we believe will lead to better employment outcomes for participants.

Option 2: Allow Other Occupational Skills Training But Require Construction Skills Training

Four of the commenters recommended allowing other occupational skills training but stated that construction skills training should remain a core or primary component of YouthBuild training. Three of the commenters recommended that YouthBuild should continue to focus on construction skills training as the primary mode by which participants learn job-related and leadership skills. One of these commenters stated that some programs have identified innovative and unique opportunities to impart in-demand skills to participants including agricultural and forestry skills, technology-based skills like computer repair, cosmetology, and entrepreneurship skills. This commenter further recommended that YouthBuild programs should be provided with an approved list of other occupational skills training based on sound models proposed or implemented by local programs, including rural and Native-serving programs. However, this commenter stressed that construction [skills training] should continue to be the primary mode by which young people learn job-related and leadership skills. The commenter went on to suggest that any other occupational skills training “track” should be pre-approved by the Department and should be secondary to construction skills training.

Another commenter supported allowing YouthBuild programs the flexibility to include additional high-demand, service-oriented skills training that would provide access to entry-level jobs and post-secondary placement in promising career tracks. However, the commenter stated that additional occupational skills training should be offered as an enhancement to accompany construction skills training, not as a replacement for construction as the core element of YouthBuild training. The commenter stated that construction skills training continues to be of value to YouthBuild participants because it is attractive to young men who are underrepresented in youth employment programs. The commenter pointed out that more than 30 percent of YouthBuild graduates enter construction jobs and that construction careers should recover as green building expands. Finally, the commenter asserted that Public Housing authorities seek to hire disadvantaged youth to “green” public housing, and construction companies will hire youth with criminal records who have gotten back on track.

We understood these four comments as advocating an approach that would make construction skills training a required element for all YouthBuild participants. While we appreciate the approach these commenters recommend, we have determined that we will not require YouthBuild programs to make construction skills training a prerequisite for other occupational skills training. We agree with the commenters that construction skills training is important to YouthBuild because it is a vehicle that allows programs to teach transportable skills sets to participants while imparting them with experiences in team work in a community service context. We want to make it clear that, based on sec. 173A(c)(2)(A)(i) of WIA, YouthBuild programs have to make construction skills training available as a part of every program. However, when possible, we believe that participants, working with YouthBuild administrators and educators, should be able to make a decision about the occupational skills training they want to undertake. Feedback received from several YouthBuild programs suggests this approach, matching training opportunities based on local, in-demand jobs with participants’ interests, will lead to better educational and job placement outcomes. We will work with YouthBuild programs to develop innovative job training programs as one commenter suggested.

Option 3: Allow Other Occupational Skills Training Without Requiring Construction Skills Training

Six commenters recommended that YouthBuild programs should be allowed to train participants in other occupational skills besides construction without first going through construction training.

Of the six commenters that recommended a change from construction skills training to other occupational skills training, four of these commenters cited the depressed construction industry labor demand as a reason to expand the skills training in YouthBuild. Two of these commenters went on to explain that limiting skills training in YouthBuild to construction work harms existing skilled workers by reducing their ability to find a job in a time of high unemployment in the construction industry since there is a surplus of construction workers seeking limited job opportunities.

Another commenter stated that workforce training in construction does not offer participants useful employment skills to enter the labor market in communities where there are

few or no jobs in construction. This commenter explained that allowing YouthBuild programs to tailor the training offered to more closely mirror employment opportunities available within local labor markets would increase the number of participants who successfully achieve job placements after completion of the program.

Additionally, three of the commenters cited the lack of participant interest in construction skills training as a basis for supporting other occupational skills training. Another commenter stated that, in one particular YouthBuild program, most female students, when asked, preferred a different career track than construction. One commenter stated that the heart of YouthBuild is a project-based learning environment and that construction skills training is simply one method of conducting it. Furthermore, the commenter believed that because participants’ needs, interests, and abilities may not support construction skills training, grantees should be given flexibility to train young people for any high demand field, as long as programs can demonstrate use of an effective project-based learning environment. This commenter stated that what is essential to the YouthBuild program is that participants’ experiences in YouthBuild include hands-on training that meet real community needs in a team-based setting.

In response to the comments received, we have carefully considered the issue of whether to expand the skills training offered by YouthBuild from construction skills to other occupational skills training. As discussed, we have determined that we will allow other occupational skills training in YouthBuild programs, because we believe that allowing programs to be able to match job training opportunities with local, in-demand jobs will lead to more successful employment outcomes for YouthBuild participants. This will also allow programs, when possible, a better way to match training opportunities with participants’ interests. However, because the Transfer Act made clear that the YouthBuild program continues to be a construction training program, we have determined that YouthBuild programs must continue to offer construction skills training as an element in all YouthBuild programs.

Section 173A(c)(2)(A)(i) and (ii) of WIA permits grantees to use grant funds for workforce investment activities including work experience and skills training in rehabilitation and construction activities and occupational skills training. We have determined,

based on comments received advocating the expansion of the training offered to include occupational skills training and our program administration experience, that allowing other occupational skills training will help YouthBuild programs provide more successful job placement outcomes and secondary schools placements for program participants. As we have learned from the most recent recession, allowing only construction skills training makes job placement especially difficult for YouthBuild participants during downturns in the construction industry. Also, we believe that this approach will enable programs to take innovative approaches to providing training opportunities that may benefit more participants, especially female participants who many commenters pointed out do not, ultimately, pursue construction careers.

In addition, sec. 173A(c)(3)(B)(i) and (v) of WIA require grant applications to include information about the local labor market, including projections on career opportunities in growing industries and descriptions of educational and job training activities that will prepare participants for employment in in-demand occupations in local labor markets. We believe that allowing other occupational skills training in YouthBuild in addition to construction, especially for local in-demand occupations such as healthcare, “green” jobs, and information technology allows the Department and grantees to better achieve the purposes of the Transfer Act.

We will work to ensure that the other occupational skills training should lead to some benchmarked outcome such as a nationally recognized certificate or certification, an associate degree, or a recognizable skills achievement that will assist the participant in pursuing a sustainable career pathway. We will provide further guidance on this issue as necessary.

While we believe that occupational skills training can be a valuable part of any YouthBuild program, we stress that construction skills training remains a mandatory offering for all YouthBuild programs. Construction skills training is a project-based, easily benchmarked method for teaching occupational and teamwork skills that are transferable to virtually any part of the country. As we discussed in the NPRM, YouthBuild creates a sense of self-worth for its participants by providing job skills training in the construction industry and highlighting the important role that each individual can have on community development and engagement. In addition, youth can witness their success and contributions through the

rehabilitation and construction of affordable housing for homeless individuals and families and low-income families. This provides a sense of accomplishment that many participants will experience for the first time through a YouthBuild program.

Other Comments

Another commenter suggested changes to § 672.320(a) and (b). The commenter felt the language in paragraphs (a) and (b) could lead to the misunderstanding that a program might be out of compliance if a participant leaves the program before actually participating in education or workforce investment activities at the specified percentages. The commenter pointed out that the operative word in the statute is “offered” and argued that programs should not be penalized for the actual levels of participation that are demonstrated by participants who do not complete the program. Finally, the commenter suggested modifying these paragraphs to read: “(a) Eligible education activities * * * during at least 50 percent of the program cycle in which they have enrolled;” and “(b) Eligible workforce investment activities * * * during at least 40 percent of the program cycle in which they have enrolled.”

We believe the language as written is sufficient to avoid any unfair penalties for non-compliance. The current language in § 672.320(a) and (b) focuses on the services that participants are offered during the time they participate in the program because it is the structure of the program and not participant activity in those services that governs compliance.

What timeframes apply for follow-up services? (§ 672.325)

This section requires that follow-up services be provided to YouthBuild participants for a period of not less than 9 months but no more than 12 months after participants exit a YouthBuild program. One commenter wanted clarification whether the rule required that all participants be provided follow-up services or if only those participants that achieve placement were to be provided follow-up services. All participants that exit the program must be provided follow-up services, whether or not they achieve placement. The text of the Final Rule has been changed to clarify this provision.

Another commenter suggested that the follow-up period be no less than six months with the cap on follow-up periods being the end of the grant period. The commenter felt that some YouthBuild programs have excellent

post-exit follow-up services, and that some participants require more intensive follow-up services. Similarly, another commenter wanted to extend the period of follow-up for up to two years. We agree that some participants need intensive services. However, the length of time allotted for follow-up services is set by law in sec. 173A(c)(2)(A)(vii) of WIA at a maximum of 12 months. Additionally, the 9 month minimum for follow-up services is essential for measuring programmatic outcomes. Specific outcomes for the program are measured in 3 quarter (or 9 month) increments. For participants and programs to be measured properly throughout their time in YouthBuild, a minimum 9 month follow-up period is required by the common performance measures.

Subpart D—Performance Indicators

Subpart D deals with the required performance indicators for grants, required levels of grant performance, grant reporting requirements, and grant reporting due dates.

What are the performance indicators for YouthBuild grants? (§ 672.400)

This section explains the required indicators, such as certificate attainment, that must be reported by YouthBuild grantees.

One commenter recommended that OSHA–10, First-Aid/CPR, Weatherization Tactics, and the 48 hour HAZWOPER certificates all be considered recognized credentials and counted towards program performance. Another commenter asked about other industry-recognized credentials, particularly for weatherization and green construction or other green industries that may be applicable to YouthBuild and can be reported in the performance indicators.

We appreciate the time and effort necessary to earn these certificates and the benefits that accrue from them. Credential attainment is a common measure for WIA and other workforce programs. As a result, certifications that may be counted towards program performance must meet the requirements established in TEGL 17–05. This TEGL explains that the parameters for recognized credential are, “participation in secondary school, post-secondary school, adult education program, or any other organized program of study leading to a degree or certificate.” The parameters for credentials were further clarified in TEGL 15–10, which says that “a credential is awarded in recognition of an individual’s attainment of measurable technical or occupational

skills necessary to gain employment or advance within an occupation.” The certificates specifically mentioned by the commenter do not meet the criteria to be considered a credential under TEGLs 17–05 and 15–10.

Examples of industry-recognized credentials in the construction field include the credentials earned through the National Center for Construction Education and Research’s program, the Home Builder’s Institute’s (HBI) HPACT curriculum, and the Building Trades Multi-Craft Core curriculum, are the ones most widely used throughout YouthBuild. Examples of credentials that are recognized in industries other than construction include, Certified Nursing Assistant, Certified Java Programmer, National Institute for Automotive Service Excellence Certificate, Certified Novell Engineer, and industry-recognized licensure. While these lists are not exhaustive, they give a few examples of credentials that would qualify for the performance measures.

What are the required levels of performance for the performance indicators? (§ 672.405)

This section explains that expected levels of performance for each of the common performance indicators are national standards that will be established at a later date and will be provided in separately issued guidance.

Three commenters requested that we consider basing performance level expectations on peer group data, specifically rural, urban and tribal data, and or statewide data or negotiations for other WIA programs, and that accommodations for sustained economic downturn be factored into these expectations in some manner. One commenter suggested that sustained economic distress (which can vary regionally) and urban, rural and tribal data warrant less uniform and more individualized performance level expectations without compromising the goal of continuous improvement in performance. Additionally, according to a commenter, performance measures should be, in part, based on average entrance scores—not just Educational Functioning Levels (levels that measure a defined set of skills and competencies as developed by the U.S. Department of Education, 34 CFR 462.3), and on placement outcomes as well. One of the commenters additionally recommended that all students should be required to meet the outcome measures for literacy and numeracy, but that only the more advanced students should be held to criteria concerning academic or occupational credentials and placement.

We have determined it is not necessary to change the performance measures. In 2006, we issued TEGL No. 17–05, which dealt with Common Measures and performance accountability in ETA programs such as YouthBuild. This guidance set forth one set of measures to be used for common measure performance purposes. Furthermore, this TEGL describes the participant information that must be collected and reported for ETA programs that will be used to assess the performance of grantees under the common measures. We appreciate the commenters’ concerns but the purpose a common set of measures that apply across similar programs is to enable us to compare the accomplishments of different programs and to determine which strategies are successful so that we can apply them to improve similar programs.

Developing individualized performance targets based on individual and unique situations would result in performance reports based on varying definitions and methodologies. This would make it difficult both to assess the YouthBuild program as a whole and to determine YouthBuild’s impact on the workforce system. Furthermore, since the Department began administration of the YouthBuild program, we have held the program to goals that are higher than the Government Performance Results Act (GPRA) goals. We do not want to lower the expected performance outcomes based on individualized factors because we believe that doing so would be detrimental to YouthBuild participants. YouthBuild programs should strive to meet the performance goals set by the Department to ensure successful post-secondary and job placement outcomes for participants. We believe that these aggregate goals have motivated and will continue to motivate YouthBuild grantees to continue working towards improved performance outcomes. For these reasons, and for the reasons discussed above, we will continue to use the standards announced in TEGL 17–05 that apply to ETA programs such as YouthBuild.

Another commenter stated that it is essential that data collected to develop the performance indicators for YouthBuild be disaggregated by gender and other characteristics, so that young women’s participation in the program can be evaluated. We do track this data and disaggregate participation by, among other things, gender for review of program activity. We have an electronic management information system (MIS) that performs this operation for internal analysis. This information allows us to

craft policy to address program concerns as they arise.

Another commenter recommended that we mention reduction in recidivism as a performance measure that the Secretary may require to be tracked. As explained above, we have determined that it is important to use the Common Measures for the YouthBuild program which are also required by sec. 173A(c)(3)(B)(xii) of WIA. We will provide the details of the performance indicators in administrative guidance and will take the comments into consideration as performance standards are established. If we later conclude that the standard identified by the commenter, or any other performance standard is appropriate, § 672.400(a)(4) allows us to require additional performance indicators not listed in § 672.400(a)(1) through (3).

Another commenter recommended that YouthBuild programs be held to the same or equivalent standards required of apprenticeship programs under 29 CFR part 29. The commenter reasoned that the standards set forth at 29 CFR 29.5, would ensure a quality program.

We appreciate the commenter’s suggestions as means to enhance YouthBuild standards. However, if we were to apply all of the requirements of 29 CFR part 29 to YouthBuild, we would extend the period of training beyond the period of performance authorized in the Transfer Act.

What are the reporting requirements for YouthBuild grantees? (§ 672.410)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What are the due dates for quarterly reporting? (§ 672.415)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

Subpart E—Administrative Rules, Costs and Limitations

This subpart deals with other Federal regulations that apply to YouthBuild programs, and cost limitations and fund matching requirements.

What administrative regulations apply to the YouthBuild program? (§ 672.500)

This section explains the other regulations focusing on administrative standards, non-discrimination requirements, audit requirements, and other requirements that apply to YouthBuild programs.

One commenter recommended that the occupational skills and safety training provided by grantees include comprehensive training on equal

employment opportunity laws, rights, and responsibilities. The commenter believes that training YouthBuild participants about their equal employment opportunity rights and responsibilities will help create a work environment free of discrimination for all workers.

We agree that a work environment free of unlawful discrimination is very important. Therefore, § 672.500 specifically refers to the WIA nondiscrimination regulations at 29 CFR part 37 that apply to YouthBuild. Furthermore, the nondiscrimination provisions of WIA in sec. 188 require YouthBuild grantees to ensure equal opportunity and prevent discrimination in their programs. WIA sec. 188 ensures nondiscrimination and equal opportunity for various categories of persons, including persons with disabilities, who apply for and participate in programs and activities operated by recipients of WIA Title I financial assistance. Finally, while we do not require YouthBuild grantees to conduct comprehensive Equal Employment Opportunity training for program participants, the programs are required by 29 CFR 37.29 through 37.32 to post, in a conspicuous place in the YouthBuild facility, an equal opportunity hiring policy applicable to YouthBuild program staff.

Another commenter requested that we specify young women as a target population in YouthBuild's nondiscrimination regulations in Subpart E of the Rule. Section 672.500 explicitly states that the non-discrimination provisions in 29 CFR part 37 are applicable to YouthBuild. Part 37 broadly prohibits all forms of discrimination for WIA Title I programs (which include YouthBuild), including against women. Specifically, 29 CFR 37.5 states that "[n]o individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief ... be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I—funded program or activity." We believe that these applicable non-discrimination provisions sufficiently protect YouthBuild participants, including young women

How may grantees provide services under the YouthBuild program? (§ 672.505)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What cost limits apply to the use of YouthBuild program funds? (§ 672.510)

Two commenters recommended that the restriction or cap of the cost of supervision and training for participants in the rehabilitation or construction of community and other public facilities be raised from 10 percent to 25 percent or 30 percent, or be eliminated. One commenter explained that the current housing crisis has affected rural and tribal YouthBuild programs by making it difficult for these programs to maintain a pipeline of rehabilitation and construction projects for skills training.

We understand that the comments are aimed at increasing training projects for YouthBuild participants and producing projects that may bring added value to the broader community. However, we may not alter the cost limitation by regulation because it is statutorily mandated in WIA Section 173A(c)(2)(C).

What are the cost-sharing or matching requirements of the YouthBuild program? (§ 672.515)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What are considered to be leveraged funds? (§ 672.520)

This section provides that funds must be applied toward allowable costs to be counted as leveraged funds.

One commenter stated that by focusing solely on allowable costs, the regulations penalize rural and Native groups, which have fewer opportunities to match and to leverage funds, as well as any group that raises funds for unallowable costs to advance their program goals. The commenter suggests creating a third category for which programs are acknowledged and rewarded (with application review points or monitoring visit assessment ratings) called "Other Funds Raised to Support the Program." The commenter states this would encourage programs to fundraise for legitimate needs (but "unallowable" costs) while assisting us to fully capture local support for YouthBuild. The commenter also suggested that match and leveraged funding level requirements and criteria be lowered for rural and tribal programs in high-poverty and/or persistently poor census tracts or counties, in recognition of very limited assets and resources in these communities.

While we recognize that rural and tribal programs are often located in high-poverty and/or persistently poor census tracts, we have decided not to lower the match requirement. We believe that well-run YouthBuild

programs can not rely solely on Federal grant funds. YouthBuild programs, to be effective, must have several different funding sources in order to be able to provide the various services participants need. The required match over a three year period of performance brings necessary resources and partners to the program. Therefore, we do not believe that the requirement is so onerous that it prevents these kinds of grantees from serving as YouthBuild grantees.

Furthermore, the match requirement demonstrates the commitment of the community and the program to provide the necessary resources for the success of the YouthBuild program. Our program experience is that that a significant number of rural and native applicants have been able to meet the match requirement, therefore we do not believe that that requirement prevents rural and tribal programs from serving as YouthBuild grantees.

We want to clarify that costs which benefit the grant program (whether paid for with Federal or non-Federal resources) and are otherwise allowable under the cost principles are allowable under the grant and may be used as leveraged funds as long as no other statutory, regulatory, or grant provision prohibits the use of such funds for that purpose. In response to the commenter's proposed third category, the type of funds the commenter characterizes are already taken into account. An additional category is not needed since leveraged or matched funds are already considered in the review of the application.

How are the costs associated with real property treated in the YouthBuild program? (§ 672.525)

This section explains the costs associated with real property that are allowable solely for the purpose of training YouthBuild participants.

We received four comments on this section, one of which was outside the scope of the NPRM. One commenter recommended that personal protective equipment (PPE) be allowed as an expense for YouthBuild training activities in § 672.525(c)(1) in order to ensure that YouthBuild participants comply with Federal and State health and safety standards.

We agree that the protection and safety of YouthBuild participants during construction training is of the highest importance. Therefore, we have amended the final rule to include PPE as an allowable expense for YouthBuild training activities under § 675.525(c)(1).

Two commenters asked that the cost of land acquisition for the construction of a new building for the purposes of

YouthBuild construction training be an allowable cost for match and leverage requirements. Because YouthBuild is a job skills training program, as a matter of policy, the allowable costs for match and leverage must be made up of training-related costs and not property costs. Therefore, the final rule continues to disallow land acquisition as an allowable cost.

What participant costs are allowable under the YouthBuild program? (672.530)

We did not receive any comments on this section. However, as described above in the discussion of § 672.310, we have added language to § 672.530(e) to clarify that the costs for providing additional benefits, described in § 672.530(e)(1) through (3), to participants or individuals who have exited the program and are receiving follow-up services, can still be incurred after participants terminate participation in the program.

What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits? (§ 672.535)

This section explains what effect stipends and other assistance received from YouthBuild have on a participant's income for purposes of establishing need for other Federally sponsored needs-based programs.

One commenter stated that wages paid to participating youth as part of construction skills training should be exempt from income considerations for Temporary Assistance for Needy Families (TANF), Section 8 rental assistance programs, and Medicaid income thresholds. The commenter goes on to explain that access to nutrition, housing, and health care should not be diminished by participating in an employment and training program that will help participants become self-sufficient.

We agree. Under the WIA regulations at 20 CFR 667.272(c), allowances, earnings, and payments to individuals participating in programs under Title I of WIA 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). Since YouthBuild is a WIA Title I Program, income earned from participation in the YouthBuild program should not disqualify participants from benefitting from other Federally-sponsored needs-based programs that are available to them.

What program income requirements apply under the YouthBuild program? (§ 672.540)

This section deals with program income requirements, as specified in the applicable Uniform Administrative Requirements at 29 CFR 95.24 and 97.25.

One commenter stated that it was disappointing to learn that, in the NPRM, we proposed that revenue from the sale or rental of YouthBuild construction and rehabilitation projects would not be counted as program income because it would be discouraging to participants to see the fruits of their labors not reinvested in improving and sustaining their program.

We agree with the commenter that under the Uniform Administrative Requirements rental income is considered program income and can be used to pay for allowable costs incurred by the program. We have amended § 672.540(b) to reflect this change. However, under the Uniform Administrative Requirements, income derived from the sale of YouthBuild construction and rehabilitation projects is not considered program income. We encourage grantees to reinvest any revenue realized through sales back into the YouthBuild programs to promote long-term sustainability.

Are YouthBuild programs subject to the Davis-Bacon Act labor standards? (§ 672.545)

This section deals with the Davis-Bacon wage rules that cover prevailing wage rates on Federally-funded or -assisted construction projects. We received five comments on this section. Two commenters stated that many groups may be confused by the Davis-Bacon Act labor standards and its application to YouthBuild. One commenter suggested that we offer separate guidance on this issue. At this time, ETA has no plans to offer guidance on Davis-Bacon labor standards' applicability to YouthBuild. However, the Department's Wage and Hour Division (WHD), which is responsible for the administration of the Davis-Bacon Act labor standards, does offer compliance guidance at its Web site at http://www.dol.gov/whd/regs/compliance/ca_main.htm.

The other commenter requested a definition of "Davis-Bacon-covered laborer or mechanic work." The definition of laborer or mechanic work for Davis-Bacon purposes can be found at 29 CFR 5.2.

Proposed § 672.545(b)(1) of the NPRM explained that YouthBuild participants could be classified as "trainees" for

Davis-Bacon purposes if they are individually registered in a trainee program approved by ETA. Two commenters objected to classifying YouthBuild participants as "trainees" on Davis-Bacon covered projects that would allow the YouthBuild "trainee" to be paid less than the Davis-Bacon Labor Standards require. Both commenters go on to say that allowing YouthBuild "trainees" to be paid lower rates than workers subject to the Davis-Bacon wage requirements would provide an incentive to hire YouthBuild "trainees" for construction work instead of journey-level construction workers and apprentices in many of the building and construction trades. It also, according to one commenter, could result in the loss of jobs and job opportunities for laborers. The commenters also suggest that establishing YouthBuild programs as "trainee" programs would place them in direct competition with many formal apprenticeship programs registered with the Department because in many instances, according to the commenters, the two training programs draw upon the same pool of candidates. Both commenters argue that because there are other benefits attached to participation in YouthBuild such as needs-based stipends and other services, this would place YouthBuild "trainees" at a competitive advantage with apprentices and journey-workers by making YouthBuild "trainees" cheaper to employ. One commenter states that this affects the construction industry by weakening its ability to attract and retain skilled workers. This commenter goes on to argue that the YouthBuild program does not qualify as a certified and registered training program under ETA and therefore, YouthBuild participants should not be classified as "trainees" for Davis-Bacon purposes.

However, this commenter encourages us to promote cooperation and partnerships between YouthBuild and registered apprenticeship programs and to promote the transfer of YouthBuild training credit within these apprentice programs. Furthermore, the other commenter argues that there is nothing in the Transfer Act that indicates the purpose of YouthBuild is to create trainee programs registered with ETA. Finally, the commenter states that it seems clear that Congress intended YouthBuild to serve as a source of qualified applicants for formal pre-apprenticeship and registered apprenticeship training programs in the building and construction industry.

The two commenters linked comments about the YouthBuild Trainee—Apprenticeship Preparation

Standards (YB-TAP) to the NPRM section that addresses certified “trainee” programs under the Davis-Bacon Act in § 672.545.

The YB-TAP standards are a set of national standards developed in close consultation with ETA’s Office of Apprenticeship (OA). The standards provide the basis for a YouthBuild program to establish an OA-approved trainee training program. By using the YB-TAP standards, a YouthBuild program can participate in a nationally approved trainee training program that allows it to pay participants less than the Davis-Bacon journey worker wage rates when performing work on Federal and federally assisted construction projects to which Davis-Bacon requirements apply.

Our intent in developing the YB-TAP was to design standards specifically for YouthBuild to create a more formal pathway into registered apprenticeships for YouthBuild participants, to create consistency in the construction skills training offered by YouthBuild programs across the country, and to provide another portable credential for YouthBuild program participants. Additionally, YB-TAP provided greater flexibility for YouthBuild programs to work on sites covered by Davis-Bacon, and thus expand the pool of potential worksites for grantees which often struggle to find suitable projects for worksite training. Of the 223 DOL-funded YouthBuild programs, 28 have registered with YB-TAP to-date; 12 of those requested and received a certification to have participants work at Davis-Bacon-covered sites, which allows them to be paid at less than the journey worker prevailing wage.

However, as a result of implementing YB-TAP, we found unintended consequences have arisen that are a concern for YouthBuild programs. Many of the organizations that YouthBuild seeks to partner with see YB-TAP as being in direct competition because programs are allowed to pay their participants, as trainees, less than the prevailing wage rate. The lower ratio of journey workers to trainees approved in the YB-TAP program makes it less expensive for a contractor to hire a YouthBuild-sponsored construction crew versus a journey worker staffed crew, and the YB-TAP standards, in effect, create a competing apprenticeship-like program approved by the Department.

Therefore, while these provisions for trainees who may be paid less than Davis-Bacon journeyman wage rates remain in effect as part of the Davis-Bacon Act labor standards, we have deleted the references to trainees and

registered trainee programs in § 672.545(b)(1) to indicate that we will not approve programs as “trainee” programs for Davis-Bacon wage rate purposes without further notice. We believe this change is currently in the best interests of the YouthBuild program for the reasons discussed above.

What are the recordkeeping requirements for YouthBuild programs? (§ 672.550)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

Subpart F—Additional Requirements

This subpart deals with other requirements, such as safety requirements and YouthBuild housing requirements, with which all programs must comply.

What are the safety requirements for the YouthBuild program? (§ 672.600)

This section explains the safety standards that YouthBuild grantees must meet.

A commenter wrote that though safety is a preeminent concern for YouthBuild grantees, following National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA) standards can present significant challenges. That commenter explains that Mental Toughness is only effective if young people gain some exposure to the worksite, and it is not practical to provide such training at the beginning of Mental Toughness. The commenter asks that grantees be given some discretion in the timing of OSHA safety training to accommodate the purpose of Mental Toughness. The commenter also suggests that many YouthBuild grantees do not own or manage their own construction sites. They build in cooperation with a housing partner, such as Habitat for Humanity. The commenter believes it would be appropriate to follow the safety standards used by the housing partner.

On November 14, 2006, we published, at 71 FR 66349, a **Federal Register** notice requesting public comments and announcing public meetings on the design of YouthBuild grants. The notice sought public input and observations on the optimum number of years and amount of grant awards, ways to ensure grantees meet educational and employment outcomes, how capacity building grants can be strengthened, and ways to improve any other aspect of the program. We received four comments, including comments from NIOSH and OSHA, relating to safety issues in response to the **Federal Register** notice.

The NIOSH comments emphasized the dangers of youth working in construction and noted that youth fatalities in construction are related to noncompliance with child labor laws and occupational safety and health regulations. The comments from OSHA similarly stressed the importance of safety training and identification of worksite hazards.

Based upon the concerns raised by these commenters and others, the NPRM required that YouthBuild grantees not only comply with Federal and State health and safety standards, including the hazardous orders in the WHD child labor regulations, but also that they: Provide comprehensive safety training for youth working on YouthBuild construction projects; have written, jobsite-specific, safety plans overseen by an on-site supervisor with authority to enforce safety procedures as part of the grant application; provide necessary personal protective equipment to youth working on YouthBuild projects; and submit injury incident reports to ETA. The intent of these requirements is to protect the health and safety of YouthBuild participants on YouthBuild work sites, and to ensure that YouthBuild grantees comply with child labor laws.

We reiterate the importance of the NIOSH and OSHA safety standards for YouthBuild programs to ensure participant safety; therefore, we will not grant programs the discretion to provide the training after youth have already been on the worksite. The dangers inherent in youth working in construction and the well documented youth fatalities in construction which are directly related to noncompliance with child labor laws and occupational safety and health regulations makes it imperative that YouthBuild participants receive NIOSH and OSHA training before admittance to the work site. However, we recommend that any safety standards that may exist in addition to the required safety standards already discussed should be observed by YouthBuild participants. Therefore, it is appropriate for participants also to follow the safety standards of a YouthBuild housing partner, as the commenter suggested, as long as the standards compliment Federal, State, and local safety standards and provide at least the same level of safety as the required Federal, State and local standards.

Another commenter recommended that the requirement that grantees comply with Federal child labor laws be extended to include state child labor laws as well. We agree it is important for programs to comply with state child

labor laws as well and therefore has included the requirement in § 672.600.

The same commenter contended that we need to develop an injury surveillance system to routinely collect, analyze and report the injury data that grantees will be required to submit under the proposed rules. We agree with the importance of capturing this information and already have a system in place in which to capture the data.

Further, the commenter stressed the need to conceptualize and implement health and safety training as an integral and essential component of occupational skills development. The commenter felt that health and safety training was an “add-on” to occupational skills training instead of being an integral component of occupational skills development. We disagree with this assessment. Safety of the participants and the program staff is of significant importance to the Department. This is expressed not only in the proposed rule, but in all of the YouthBuild SGAs.

What are the reporting requirements for youth safety? (§ 672.605)

This section explains the requirements and process for filing reports when youth are injured while working on YouthBuild projects.

One commenter asked that we specify the process of reporting and filing injury incident reports for accidents involving youth that occur while youth are working on YouthBuild projects. This commenter goes on to ask that we provide details on what forms must be used in filing injury incidents, where to obtain the reports, and where the form is filed.

As we explained in § 672.605 of the NPRM and in this final rule, a YouthBuild grantee is responsible for sending a copy of OSHA’s injury incident report form, to the U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at <http://www.osha.gov/recordkeeping/RKforms.html>.

What environmental protection laws apply to the YouthBuild program? (§ 672.610)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What requirements apply to YouthBuild housing? (§ 672.615)

This section explains that, for a period of at least ten years, all

YouthBuild housing must be rented or sold to low income or homeless individuals and families, and that housing must be kept in a clean and sanitary condition. In addition, this section outlines some of the rules that must be followed when leasing YouthBuild housing to homeless or low income families and individuals.

One commenter expressed concern that there is a potential for exploitation for private benefit without requiring grantees to have written policies governing the rehabilitation of low income houses that are occupied. The same commenter went on to suggest that the Department’s lawyers examine what impact, if any, Federal rules relating to relocation may have on the rehabilitation of occupied housing. The commenter pointed out that the Uniform Relocation Act and related statutes provide certain rights to residents who are relocated as a result of Federally-assisted housing activities.

We share the commenter’s concern that there is a chance for exploitation for private benefit without requiring grantees to have a written policy. Furthermore, we appreciate the commenter’s concerns over the applicability of the Uniform Relocation Act as it pertains to grantees rehabilitating occupied low income housing. We will examine the issues and, if necessary, will produce guidance addressing both of these issues.

IV. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) which will describe the impact of a regulation on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the final rule is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. The final rule directly affects all YouthBuild grantees, of which there are currently 226. About half of these are small entities (generally

non-profit, community-based organizations). We do not believe that the final rule will have a significant economic impact on a substantial number of these small entities. We have certified this to the Chief Counsel for Advocacy, Small Business Administration, under the Regulatory Flexibility Act. The primary issues affected by the final rule are discussed below.

The YouthBuild program has existed since 1978. YouthBuild began as a Federal grant program in 1994 and was administered by HUD until 2006 when it was transferred to the Department. YouthBuild operates as a voluntary grant program. While there are matching and leverage requirements, organizations apply for Federal grant funds. Also, grant funds may be used to pay for requirements in the final rule that address participant safety, worksite environmental standards, and a required follow-up time period for YouthBuild enrollees.

The final rule requires that all applicable National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA) regulations be followed for youth who are on YouthBuild participant construction sites. The NIOSH safety standards are standard requirements for all Federally-funded construction worksites across the United States. The requirements will not add demonstrably to the cost of any YouthBuild program because safety equipment required by NIOSH standards can be purchased using YouthBuild grant funds provided by the Department. Further, the cost of the other requirements—supervisor training, development of safety plans, safety reporting, etc.—can be paid for with grant funds as well.

In addition, the final rule requires that all Federal environmental standards, including National Environmental Policy Act of 1969 (NEPA), be followed. This is a standard for all Federally-funded construction worksites across the United States and is already established procedure at many YouthBuild work sites. YouthBuild grant funds may be used to ensure compliance with the required environmental standards.

The YouthBuild program will have a beneficial economic impact on small entity program participants. While there are match and leverage requirements under YouthBuild, the grantees are applying to receive additional resources to carry out their purposes for the benefit of participants. Finally, we are aware of no public concern that the rule will have a significant economic impact

on a substantial number of small entities. We specifically invited comments from members of the public who believe there will be such an impact on small entities. We did not receive any comments in response.

Accordingly, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

One of the purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, is to minimize the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

The collection of data described in this final rule contains requirements to implement reporting and recordkeeping requirements for the YouthBuild program. This reporting structure features standardized data collection for program participants, and quarterly narrative and Management Information System (MIS) performance report formats. All data collection and reporting will be done by YouthBuild grantees.

These requirements were previously reviewed and approved for use by OMB under 44 U.S.C. 3507 and 5 CFR part 1320, and assigned OMB control number 1205-0464 under the provisions of the PRA. YouthBuild grantees will collect and report selected standardized information on participants in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. ETA will provide all grantees with a YouthBuild management information system (MIS) to use for collecting participant data and for preparing and submitting the required quarterly reports. We have determined that this final rule contains no new information collection requirements.

We estimate that the public reporting burden for this collection of information will amount to 16,280 hours. This total includes all paperwork required by this rule over the course of one program year for all grantees nationwide.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as “economically significant”); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866

We received one comment on E.O. 12866 addressing whether this rule is a significant regulatory action. The commenter was concerned that YouthBuild participants who were employed on Davis-Bacon sites would displace skilled construction apprentices and journey workers because the YouthBuild participant could be paid a lower than Davis-Bacon required wage. The commenter suggested that this would result in the unemployment of these trade workers and the effect on the economy could be large, ranging from loss of income and loss of buying power, to increased Federal unemployment support and increased need for other social services. However, in response to the comment, we have determined that YouthBuild participants that work on Davis-Bacon worksites will be subject to Davis-Bacon wage rates. Therefore, YouthBuild participants could not be employed at lower than Davis-Bacon wage rates.

E.O. 13563, issued after publication of the NPRM, asked agencies to identify, to the extent possible, the necessity of the regulation as well as the costs and benefits of the regulation.

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 offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth. This regulation is necessary for the orderly operation and management of the YouthBuild program because the Department has not published regulations governing the YouthBuild program since it was transferred from HUD to the Department in 2006.

Program participants receive numerous benefits through their participation in the YouthBuild program. Participants receive education services that may lead to either a high school diploma or GED. Further, they receive occupational skills training and are encouraged to pursue a post-secondary education or additional training, including registered 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 individuals and families and low-income families, as well as public facilities, or in other high wage, high-demand jobs. The program also benefits the larger community because it provides more new and rehabilitated affordable housing.

In contrast to the benefits provided to both program participants and their communities, the cost to YouthBuild programs to provide these services is minimal. The money to provide these benefits to program participants is provided to YouthBuild programs both through an annual grant competition overseen by the Department, as well as any additional leveraged resources obtained by YouthBuild programs. Based on these factors, we have reviewed the costs and benefits of the regulation and have determined that this regulatory approach maximizes net benefits.

While the regulatory requirements defined and implemented by this final rule for this grant program will not have an annual, measurable effect on the economy of \$100 million or more, the final rule raises novel policy issues about, among other things, application of Davis-Bacon wage rules, Federal cost limitations, and the expansion of the YouthBuild program approved training to other occupational skills besides construction skills training. Therefore, this rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of E.O. 12866 and submitted to OMB for review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531)

directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. This final rule has no “Federal mandate,” which is defined in 2 U.S.C. 658(6) to include either a “Federal intergovernmental mandate” or a “Federal private sector mandate.” A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. The YouthBuild program is a grant program. Grantee participation in YouthBuild is voluntary. Furthermore, this final rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

Executive Order—12630 Government Actions and Interference With Constitutionally Protected Property Rights

The YouthBuild Transfer Act requires that housing rehabilitated or constructed with YouthBuild grant funds be for the purposes of housing homeless individuals and families or low-income families. In order for the Department to ensure that the YouthBuild program is administered in compliance with the legislation, each grantee must ensure that the owner of the property where YouthBuild funds are spent to construct or rehabilitate residential units records a restrictive covenant on the property, limiting the use of the units to housing for homeless individuals and families and low-income families. Such a restrictive covenant will not result in a taking without just compensation. This is a contractually-based restriction and therefore property owners are compensated for any limitations on the use of their land. Property owners enter into these contracts creating the restriction voluntarily and they receive consideration in the form of services from the YouthBuild program to build or rehabilitate their housing for the burden on their property. Subsequent purchasers will have notice of the covenant and will be able to determine purchase price with knowledge of the limitations on the use of the property. Furthermore, the restrictive covenant will expire 10 years from the date of issuance of occupancy permit, giving flexibility to the grantee and/or property owner within a reasonable time period. We are committed to upholding the integrity of the YouthBuild program in all its aspects and believe that a

restrictive covenant is the best way to meet the purpose of the legislation to increase the supply of housing for homeless individuals and families and low-income families.

Executive Order 12988—Civil Justice

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This final rule has no impact on the environmental health or safety of children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian Tribal governments. The order requires Federal agencies to take certain actions when regulations have “Tribal implications.” Required actions include consulting with Tribal governments before promulgating a regulation with Tribal implications and preparing a Tribal impact statement. The order defines regulations as having Tribal implications when they have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule addresses a voluntary grant program, YouthBuild, which is administered by the U.S. Department of Labor. Although there are tribal YouthBuild grantees, we conclude that this final rule does not directly affect one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Environmental Impact Assessment

We have reviewed this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR, part 1500), and the Department’s NEPA procedures (29 CFR, part 11). The final rule will not have a significant impact

on the quality of the human environment, and, thus, we have not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires us to assess the impact of this final rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

We have assessed this final rule and determines that it will not have a negative effect on families. Indeed, we maintain that this rule will strengthen families by providing low-income housing and occupational training for low-income families and others.

Executive Order 13211

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act of 1974

The Privacy Act of 1974 is implicated when a regulation: (1) Requires either collection of information that the agency will retrieve by an individual’s name or other personal identifier or would create a program where the agency’s program records will be retrieved by an individual’s name or personal identifier; and (2) involves computerized matching of records from a Privacy Act System of Records with any other records.

This final rule is not affected by the Privacy Act of 1974 as it does not require the Department to collect information on an individual’s name or other personal identifier or involve computerized matching of records from a Privacy Act System of Records with any other records.

Plain Language

We drafted this final rule in plain language.

Therefore, according to the preamble, ETA amends 20 CFR chapter V by adding part 672 to read as follows:

PART 672—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Sec.

672.100 What is YouthBuild?

672.105 What are the purposes of the YouthBuild program?

672.110 What definitions apply to this part?

Subpart B—Funding and Grant Applications

- 672.200 How are YouthBuild grants funded and administered?
- 672.205 How does an eligible entity apply for grant funds to operate a YouthBuild program?
- 672.210 How are eligible entities selected to receive grant funds?
- 672.215 How are eligible entities notified of approval for grant funds?

Subpart C—Program Requirements

- 672.300 Who is an eligible participant?
- 672.305 Are there special rules that apply to veterans?
- 672.310 What eligible activities may be funded under the YouthBuild program?
- 672.315 What timeframes apply to participation?
- 672.320 What timeframes must be devoted to education and workforce investment or other activities?
- 672.325 What timeframes apply for follow-up services?

Subpart D—Performance Indicators

- 672.400 What are the performance indicators for YouthBuild grants?
- 672.405 What are the required levels of performance for the performance indicators?
- 672.410 What are the reporting requirements for YouthBuild grantees?
- 672.415 What are the due dates for quarterly reporting?

Subpart E—Administrative Rules, Costs, and Limitations

- 672.500 What administrative regulations apply to the YouthBuild program?
- 672.505 How may grantees provide services under the YouthBuild program?
- 672.510 What cost limits apply to the use of YouthBuild program funds?
- 672.515 What are the cost-sharing or matching requirements of the YouthBuild program?
- 672.520 What are considered to be leveraged funds?
- 672.525 How are the costs associated with real property treated in the YouthBuild program?
- 672.530 What participant costs are allowable under the YouthBuild program?
- 672.535 What effect do payments to YouthBuild participants have on eligibility for other Federal need-based benefits?
- 672.540 What program income requirements apply under the YouthBuild program?
- 672.545 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?
- 672.550 What are the recordkeeping requirements for YouthBuild programs?

Subpart F—Additional Requirements

- 672.600 What are the safety requirements for the YouthBuild Program?
- 672.605 What are the reporting requirements for youth safety?
- 672.610 What environmental protection laws apply to the YouthBuild Program?
- 672.615 What requirements apply to YouthBuild Housing?

Authority: 29 U.S.C. 2918a.

Subpart A—Purpose and Definitions**§ 672.100 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 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 General Educational Development (GED). Further, they receive occupational skills training and are encouraged to pursue a post-secondary education or additional training, including registered 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 individuals and families and low-income families, as well as public facilities, or in other high wage, high-demand jobs. The program also benefits the larger community because it provides more new and rehabilitated affordable housing.

§ 672.105 What are the purposes of the YouthBuild program?

(a) 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 and high-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals:

(1) To promote leadership skills development and community service activities. YouthBuild programs will foster the development of leadership skills and a commitment to community improvement among youth in low-income communities.

(2) To enable youth to further their education and training. YouthBuild programs will provide counseling and assistance in obtaining post-secondary education and/or employment and training placements that allow youth to further their education and training.

(3) To expand the supply of permanent affordable housing and reduce the rate of homelessness in communities with YouthBuild programs. The program seeks to increase the number of affordable housing units available and to decrease the number of

homeless individuals and families in their communities.

(b) Through these educational and occupational opportunities, to enable youth participants to provide a valuable contribution to their communities. The YouthBuild program will add skilled workers to the workforce by educating and training youth who might have otherwise succumbed to the negative influences within their environments.

§ 672.110 What definitions apply to this part?

Alternative school. The term “alternative school” means a school or program that is set up by a State, school district, or other community-based entity to serve young people who are not succeeding in a traditional public school environment. In order for an “alternative school” to qualify as of part of a “sequential service strategy” it must be recognized by the authorizing entity designated by the State, award a high school diploma or both a high school diploma and a GED and, must be affiliated with a YouthBuild program.

Community or other public facility. The term “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.

Core construction. The term “core construction” means activities that are directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, Construction and Extraction Occupations, in codes 47–1011 through 47–4099. These activities may also include, but are not limited to, construction skills that may be required by green building and weatherization industries but are not yet standardized. A full list of the SOC’s can be found at the Bureau of Labor Statistics (BLS) Web site, <http://www.bls.gov/soc>.

Eligible entity. The term “eligible entity” means a public or private nonprofit 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 school board;
- (4) A community action agency;

(5) A State or local housing development agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this part).

Homeless individual. For purposes of YouthBuild, the definition of “homeless individual” at Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) applies.

Housing development agency. The term “housing development agency” means any agency of a Federal, State or local government, or any private nonprofit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income. As defined in 42 U.S.C. 1437a(b), “income” is: Income 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 paragraph.

Indian; Indian tribe. As defined in 25 U.S.C. 450b of sec. 4 of the Indian Self-Determination and Education Assistance Act, the term “Indian” is a person who is a member of an Indian tribe; and the term “Indian tribe” is 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 of limited English proficiency. As defined in 20 U.S.C. 9202(10), an “individual of limited English proficiency” is: An adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding 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.

Low-income family. As defined in 42 U.S.C. 1437a(b)(2), a “low-income family” is: A family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary of Labor with adjustments for smaller and larger families, except that the Secretary of Labor may establish income ceilings higher or lower than 80 percent of the median for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. Further, as defined by 42 U.S.C. 1437a(b)(2)(3), the term families includes families consisting of one person.

Migrant youth. The term “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 stipend. The term “Needs-based stipends” means additional payments (beyond regular stipends for program participation) that are based on defined needs that enable youth to participate in the program. To provide needs-based stipends the grantee must have a written policy in place, which defines: Eligibility; the amounts; and the required documentation and criteria for payments. This policy must be applied consistently to all program participants.

Occupational skills training. The term “Occupational skills training” means an organized program of study that provides specific vocational skills that lead to proficiency in performing the actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. The occupational skills training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry-recognized credential.

Partnership. The term “partnership” means an agreement that involves a Memorandum of Understanding (MOU) or letter of commitment submitted by each organization and applicant, as defined in the YouthBuild Transfer Act, that plan on working together as partners in a YouthBuild program. Each partner must have a clearly defined role. These roles must be verified through a letter of commitment, not just a letter of support, or an MOU submitted by each partner. The letter of commitment or MOU must detail the role the partner will play in the YouthBuild Program, including the partner’s specific responsibilities and resources committed, if appropriate. These letters or MOUs must clearly indicate the partnering organization’s unique contribution and commitment to the YouthBuild Program.

Public housing agency. As defined in 42 U.S.C. 1437a(b), a “public housing agency” is: Any State, county, municipality or other government entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing.

Registered apprenticeship program. The term “registered apprenticeship program” means:

(1) Registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 20 U.S.C. 50 et seq.); and

(2) A program with a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

Sequential service strategy. The term “sequential service strategy” means the educational and occupational skills training plan developed for individuals who have dropped out of high school and want to enroll in a YouthBuild program. The plan is designed so that the individual sequentially enrolls in an alternative school, and after receiving a year or more of educational services, enrolls in the YouthBuild program.

Transitional housing. The term “transitional housing” means housing provided for the purpose of facilitating the movement of homeless individuals to independent living within a reasonable amount of time. The term includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals who are individuals with

disabilities or are members of families with children.

Youth in foster care. The term “youth in foster care” means youth currently in foster care or youth who have ever been in foster care.

Youth who is an individual with a disability. The term youth who is an individual with a disability means a youth with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) or a student receiving special education and related services under the Individuals with Disabilities Education Act (IDEA).

Subpart B—Funding and Grant Applications

§ 672.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under sec. 173A of the Workforce Investment Act (WIA) to administer YouthBuild as a national program under Title I, Subtitle D of the Act. YouthBuild grants are awarded to eligible entities, as defined in § 672.110, through a competitive selection process described in § 672.205.

§ 672.205 How does an eligible entity apply for grant funds to operate a YouthBuild program?

The Secretary announces the availability of grant funds through a Solicitation for Grant Applications (SGA). The SGA contains instructions for what is required in the grant application, describes eligibility requirements, the rating criteria that will be used in reviewing grant applications, and special reporting requirements to operate a YouthBuild project.

§ 672.210 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity applying for funds (applicant) 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 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 postsecondary education and training opportunities or local in-demand occupations;

(f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:

(1) Local boards, One-Stop Career Center operators, and One-Stop partners participating in the operation of the One-Stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or 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 WIA,

(i) An applicant's ability to enter partnerships with:

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities.

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates.

(3) The workforce investment system which may include:

(i) State and local workforce investment boards;

(ii) State workforce agencies; and

(iii) One-Stop Career Centers and their cooperating partners.

(4) The juvenile and adult justice systems, and the extent to which they provide:

(i) Support and guidance for YouthBuild participants with court involvement;

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or re-entry from incarceration.

(5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate.

(j) The applicant's potential to serve different regions, including rural areas and States that may not have previously received grants for YouthBuild programs; and

(k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

(l) The weight to be given to these factors will be described in the SGA issued under § 672.205.

§ 672.215 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, ETA reserves the right to use such funds to

select additional grantees from applications submitted in response to an SGA.

Subpart C—Program Requirements

§ 672.300 Who is an eligible participant?

(a) *Eligibility criteria.* Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if the individual is:

- (1) Not less than age 16 and not more than age 24 on the date of enrollment; and
- (2) A school dropout or an individual who has dropped out of school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy; and
- (3) Is one or more of the following:
 - (i) A member of a low-income family as defined in § 672.110;
 - (ii) A youth in foster care;
 - (iii) A youth 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 as defined in § 672.110.

(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 section 101(4) of WIA, even if they have their high school diploma, GED credential, or other State-recognized equivalent; 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.

§ 672.305 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in 20 CFR 667.255 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.

§ 672.310 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 activities include:
- (1) 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 individuals with limited English proficiency;
- (iii) Secondary education services and activities, including tutoring, study skills training, and dropout prevention activities, designed to lead to the attainment of a secondary school diploma, GED credential, or other State-recognized equivalent (including recognized alternative standards for individuals with disabilities);
- (iv) Counseling and assistance in obtaining post-secondary education and required financial aid; and
- (v) Alternative secondary school services;

(2) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral to appropriate treatment;

(3) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors, and activities related to youth policy committees that participate in decisionmaking related to the program; and

(4) Supportive services, as defined under Title I of WIA Section 101(46), and provision of need-based stipends, as defined in § 672.110.

(b) Eligible workforce investment activities include:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs) in housing rehabilitation and construction activities described in paragraphs (c)(1) and (2) of this section;

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing; and

(4) Job search assistance.

(c) Other eligible activities include:

- (1) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals and families or low-income families, or transitional housing for homeless individuals and families;
- (2) Supervision and training for participants in the rehabilitation or construction of community or other public facilities, except that, as provided in § 672.505(b), not more than 10 percent of the funds awarded for each grant may be used for such supervision and training;
- (3) Ongoing training and technical assistance for staff of grant recipients

that is related to developing and carrying out the YouthBuild program;

(4) Payment of a portion of the administrative costs of the program as provided in § 672.505(a);

(5) Adult mentoring;

(6) Provision of wages, stipends, or additional benefits to participants in the program as provided in § 672.530; and

(7) Follow-up services as provided in § 672.325.

§ 672.315 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.

§ 672.320 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) Eligible education activities, as specified in § 672.310(a), during at least 50 percent of the time during which they participate in the program; and

(b) Eligible workforce investment activities, as specified in § 672.310(b), during at least 40 percent of the time during which they participate in the program. Grantees must provide the eligible workforce investment activities described in § 672.310(b)(1) as part of their program of eligible workforce investment activities.

(c) The remaining 10 percent of the time of participation can be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

§ 672.325 What timeframes apply for follow-up services?

Follow-up services must be provided to all YouthBuild participants for a period of not less than 9 months but no more than 12 months after participants exit a YouthBuild program. These are services that assist participants in obtaining or retaining employment, or applying for and transitioning to post-secondary education or training.

Subpart D—Performance Indicators

§ 672.400 What are the performance indicators for YouthBuild grants?

(a) The performance indicators for YouthBuild grants are:

- (1) Placement in employment or education;
- (2) Attainment of a degree or certificate;
- (3) Literacy and numeracy gains; and

(4) Such other indicators of performance as may be required by the Secretary.

(b) We will provide the details of the performance indicators in administrative guidance.

§ 672.405 What are the required levels of performance for the performance indicators?

(a) Expected levels of performance for each of the common performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the SGA or grant agreement. Performance level expectations are based on available YouthBuild data and data from similar WIA Youth programs and may change between grant competitions. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

(b) The levels of performance established will, at a minimum:

- (1) Be expressed in an objective, quantifiable, and measurable form; and
- (2) Indicate continuous improvement in performance.

§ 672.410 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.

§ 672.415 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 § 672.410; 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

§ 672.500 What administrative regulations apply to the YouthBuild program?

Each YouthBuild grantee must comply with the following:

- (a) The regulations found in this part.
- (b) The general administrative requirements found in 20 CFR part 667, except those that apply only to the WIA

Title I–B program and those that have been modified by this section.

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's government-wide grants requirements: Circular A–110 (codified at 2 CFR part 215), and Circular A–102 at 29 CFR parts 95 and 97, as applicable;

(2) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 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 OMB Circular A–133 stated at 29 CFR part 99, as required by 29 CFR 96.11, 95.26, and 97.26, as applicable.

§ 672.505 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.

§ 672.510 What cost limits apply to the use of YouthBuild program funds?

(a) Administrative costs for programs operated under YouthBuild are limited to no more than 15 percent of the grant award. The definition of administrative costs can be found in 20 CFR 667.220.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 10 percent of the grant award.

§ 672.515 What are the cost-sharing or matching requirements of the YouthBuild program?

(a) 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 29 CFR 95.23 or 29 CFR 97.24 in the accounting, valuation, and reporting of the required non-Federal share.

§ 672.520 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 § 672.515 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 672.515 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.

§ 672.525 How are the costs associated with real property treated in the YouthBuild program?

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing.

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing.

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 672.510(b), only

10 percent of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following conditions:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

(1) The costs of acquisition of land.

(2) Brokerage fees.

§ 672.530 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 stipends.

(d) The costs of supportive services.

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to an Apprenticeship, Technical, or Secondary Education program; and

(3) Sponsored health programs.

§ 672.535 What effect do payments to YouthBuild participants have on eligibility for other Federal need-based benefits?

Under 20 CFR 667.272(c), allowances, earnings, and payments to individuals

participating in programs under Title I of WIA 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).

§ 672.540 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 29 CFR 95.24 and 97.25, 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.

§ 672.545 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, on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(c) YouthBuild participants who are not registered and participating in a training program approved by the Employment and Training Administration must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

§ 672.550 What are the recordkeeping requirements for YouthBuild programs?

(a) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative

Requirements, at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

Subpart F—Additional Requirements

§ 672.600 What are the safety requirements for the YouthBuild program?

(a) YouthBuild Grantees must comply with 20 CFR 667.274, which applies Federal and State health and safety standards to the working conditions under WIA-funded projects and programs. These health and safety standards include "hazardous orders" governing child labor under 29 CFR part 570 prohibiting youth ages 16 and 17 from working in identified hazardous occupations.

(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.

§ 672.605 What are the reporting requirements for youth safety?

YouthBuild grantees must ensure that YouthBuild program sites comply with the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. A YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at <http://www.osha.gov/recordkeeping/RKforms.html>. Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

§ 672.610 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.

§ 672.615 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; 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 two 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 § 672.110: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 10 years from the time of the issuance of the occupancy permit, unless a time period of more than 10 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 10-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), (b), (c), and (d) of this section.

Signed at Washington, DC, this 26th day of January 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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