DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 652 and Parts 660 through 671

RIN 1205–AB20

Workforce Investment Act

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is issuing a Final Rule implementing provisions of titles I, III and V of the Workforce Investment Act. Through these regulations, the Department implements major reforms of the nation's job training system and provides guidance for statewide and local workforce investment systems that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation. Key components of this reform include streamlining services through a One-Stop service delivery system, empowering individuals through information and access to training resources through Individual Training Accounts, providing universal access to core services, increasing accountability for results, ensuring a strong role for Local Boards and the private sector in the workforce investment system, facilitating State and local flexibility, and improving youth programs.

DATES: This Final Rule will become effective on September 11, 2000.

ADDRESSES: All comments received during the comment period following the publication of the Interim Final Rule (64 FR 18662, *et seq*., Apr. 15, 1999) are available for public inspection and copying during normal business hours at the Employment and Training Administration, Office of Career Transition Assistance, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Copies of the Final Rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The Final Rule is also available on the WIA web site at http://usworkforce.org.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Office of Career Transition Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, Telephone: (202) 219–7831 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This Final Rule does not add any new information collection requirements to those of the Interim Final Rule. Certain sections of this Final Rule, such as §§ 667.300, 667.900, 668.800, and 669.570 contain information collection requirements. These requirements have not been changed. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor submitted a copy of these sections to the Office of Management and Budget for review. No comments were received about and no changes have been made to the information collection requirements.

We have prepared documents providing guidance on specific information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted these documents to the Office of Management and Budget (OMB) for its review. Affected parties do not have to comply with the information collection requirements contained in this document until we publish in the **Federal Register** the control numbers assigned by the Office of Management and Budget. Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. For further information contact: Ira Mills, Departmental Clearance Officer, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–5095, ext. 143.

I. Background

A. WIA Principles

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA) and amends the Wagner-Peyser Act. WIA also contains the Adult Education and Family Literacy Act (title II) and the Rehabilitation Act Amendments of 1998 (title IV). Guidance or regulations implementing titles II and IV will be issued by the Department of Education.

WIA reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. This new law embodies seven key principles. They are:

- *Streamlining services* through better integration at the street level in the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.
- *Empowering individuals* in several ways. First, eligible adults are given financial power to use Individual Training Accounts (ITA's) at qualified institutions. These ITA's supplement financial aid already available through other sources, or, if no other financial aid is available, they may pay for all the costs of training. Second, individuals are empowered with greater levels of information and guidance, through a system of consumer reports providing key information on the performance outcomes of training and education providers. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and the activities of One-Stop partners.
- *Universal access.* Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career.
- *Increased accountability.* The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce investment system must meet—or suffer sanctions. However, State and local entities exceeding the performance levels can receive incentive funds. Training providers and their programs also have to demonstrate successful performance to remain eligible to receive funds under the Act. And participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.
- *Strong role for local workforce investment boards and the private sector,* with local, business-led boards

acting as ''boards of directors,'' focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs that best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.

• *State and local flexibility.* States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets.

• *Improved youth programs* linked more closely to local labor market needs and community youth programs and services, and with strong connections between academic and occupational learning. Youth programs include activities that promote youth development and citizenship, such as leadership development through voluntary community service opportunities; adult mentoring and followup; and targeted opportunities for youth living in high poverty areas.

Many States and local areas have already taken great strides in implementing these principles, supported by grants from the Department of Labor (DOL) to build One-Stop service delivery systems and school-to-work transition systems. The Act builds on these reforms and ensures that they will be available throughout the country.

We wish to emphasize that DOL considers the reforms embodied in the Workforce Investment Act to be pivotal, and not ''business as usual.'' This legislation provides an unprecedented opportunity for major reforms that can result in a reinvigorated, integrated workforce investment system. States and local communities, together with business, labor, community-based organizations, educational institutions, and other partners, must seize this historic opportunity by thinking expansively as they design a customer-focused, comprehensive delivery system.

The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. While the Workforce Investment Act and these regulations assign specific roles and responsibilities to specific entities, for the system to realize its potential necessitates moving beyond current categorical configurations and institutional interests. Also, it is imperative that input is received from all stakeholders and the public at each stage of the development of State and local workforce investment systems.

The cornerstone of the new workforce investment system is One-Stop service delivery which unifies numerous training, education and employment programs into a single, customer-friendly system in each community. The underlying notion of One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. We envision that a variety of programs could use common intake, case management and job development systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs will be available to meet the needs of employers and job seekers. The challenge in making One-Stop live up to its potential is to make sure that the State and Local Boards can effectively coordinate and collaborate with the network of other service agencies, including TANF agencies, transportation agencies and providers, metropolitan planning organizations, child care agencies, nonprofit and community partners, and the broad range of partners who work with youth.

B. Rule Format

The format, as well as the substance, of the Final Rule, reflects the Administration's commitment to regulatory reform and to writing regulations that are reader-friendly. We have attempted to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the regulatory text is presented in a ''question and answer'' format. We have organized the regulations in a way that will help those implementing the new system to recognize the various steps that must be taken to develop the organization and services that make up the workforce investment system. In many cases, the provisions of WIA are not repeated in these regulations. In response to comments, however, we determined that, in a number of instances, the regulations would provide context and be more reader-friendly if the Act's provisions were included in an answer rather than merely cross-referencing the statute.

C. Prior Actions

Since the passage of the Workforce Investment Act in August of 1998, we have used a variety of means to initiate extensive coordination with other Federal agencies that have roles and responsibilities under WIA. In addition, the Department of Labor, the Department of Education, the Department of Health and Human Services, the Department of Transportation, and the Department of Housing and Urban Development continue to meet on a regular basis to resolve issues surrounding WIA implementation.

Before publishing the Interim Final Rule, we also requested and received input from a broad range of sources about how to structure guidance on how to comply with a number of WIA statutory provisions. We solicited broad input on WIA implementation through a variety of mechanisms: establishing a web site to encourage input; publishing a **Federal Register** notice on September 15, 1998; conducting regional and national panel discussions in October 1998; publishing a White Paper announcing goals and principles governing implementation; posting issues on the usworkforce.org web site; sharing a discussion draft of regulatory issues with stakeholders; holding town hall meetings across the country in December 1998; conducting several workgroups in December 1998; issuing draft Planning Guidance in December 1998; and conducting a series of WIA Implementation Technical Assistance Conferences across the country in March and April of 1999.

On April 15, 1999, the Interim Final Rule was published in the **Federal Register**, at 64 FR 18662 through 18764, and a 90-day comment period commenced. We continued to provide information by posting questions and answers on the usworkforce.org web site; publishing a series of consultation papers in April, May and August of 1999, on defining and measuring performance, incentives and sanctions, customer satisfaction, and continuous improvement; conducting a second round of Town Hall meetings across the country in August of 1999; and hosting ''Voice of Experience'' forums in February and March of 2000 where practitioners shared insights and suggestions for successful implementation of WIA. An Interim Final Rule implementing section 188 nondiscrimination and equal

opportunity provisions of WIA, codified in 29 CFR part 37, was published separately in the **Federal Register**, at 64 FR 61692 through 61738, Nov. 12, 1999. Comments received on those regulations will be addressed in the preamble to that Final Rule.

We reviewed every comment received during the comment period following publication of the Interim Final Rule, as well as the experience of early implementing States, and suggestions received from partners and stakeholders when considering whether the Final Rule should differ from the Interim Final Rule. These comments are discussed in the Summary and Explanation of the individual provisions of the Final Rule. Section 506(c)(1) of the Act required the Secretary of Labor to issue this Final Rule implementing provisions of the WIA under the Department's purview by December 31, 1999. While we were unable to meet this deadline, we have endeavored to issue this Final Rule as expeditiously as possible without compromising the quality of the document. Under Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WIA policies, programs, and activities for the Secretary of Labor. We have determined that this Final Rule, as promulgated, complies with the WIA statutory mandate to issue a Final Rule and provides effective direction for the implementation of WIA programs.

II. Summary and Explanation

This section contains our response to comments received on the Interim Final Rule during the comment period. The comments are discussed at considerable length in order to make clear our interpretation of WIA through these final regulations and of their application to some of the challenges that may arise in implementing the Act.

We have set regulations only where they are necessary to clarify or to explain how we intend to interpret the WIA statute, to provide context for interpretations or to provide a clear statement of the Act's requirements. In several instances—for example, the Indian and Native American Programs, and Migrant and Seasonal Farmworker Programs—the regulations were developed in consultation with advisory councils and are more comprehensive in order to assist those grantees. Consistent with the Act, the Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WIA administration.

There are a limited number of changes in the Final Rule because of our commitment to allowing maximum flexibility at the State and local level. Section 661.120 formalizes this flexibility in the regulations. A number of comments suggested that we specify certain groups of providers and participants and types of activities in numerous sections of the regulations. Among others, these comments suggested revising the regulations to: add new definitions, and additional State and local planning requirements; require States and locals to consult with specific organizations in order to fulfill the public comment process requirements; and identify certain types of programs, providers or participants, such as service learning opportunities, and nontraditional employment and training opportunities for women and dislocated homemakers, in matters where States and localities have discretion to define terms and make other discretionary decisions. To provide policy-making flexibility to States and local areas and to avoid suggesting that any one group or activity is more important than those not highlighted in the regulations, we have generally not made those changes. However, we do believe that consultation with and inclusion of these groups is important to obtaining the optimal functioning of the cooperative system envisioned by WIA. We fully expect that States and local areas will consult broadly before adopting plans and policies; and that their workforce investment systems will be structured to include all providers and programs that may help meet the needs of their populations, and equitably serve all population segments within their service areas.

In addition to the changes made based upon the comments received, in order to clarify policy and interpretation and improve upon the Rule's reader-friendly format, we have also made technical changes to correct typographical errors, such as consistent capitalization, abbreviations, grammatical corrections and citations, and for consistency with the regulations implementing the nondiscrimination and equal opportunity provisions of WIA section 188, which were first published in the **Federal Register** on November 12, 1999 (64 FR 61692 through 61738, 29 CFR part 37).

When publishing a Final Rule following a comment period, it is customary to publish only changes made to the rule, however, in order to be more user-friendly, we are publishing the entire Rule, including those parts that have not been changed, for WIA titles I and V. This means that one document which contains all of the regulations and commentary may be consulted rather than needing to compare various documents. Similarly, the new Wagner-Peyser regulations at part 652 subpart C are republished in full.

Description of Regulatory Provisions

Part 660—Introduction to the Regulations for the Workforce Investment Systems Under Title I of the Workforce Investment Act

Part 660 discusses the purpose of title I of the Workforce Investment Act and explains the format of the regulations governing title I.

A few commenters suggested we add the attainment of self-sufficiency to the description of the purpose of title I in § 660.100.

Response: While we agree that the attainment of self-sufficiency is an important goal of workforce investment systems under title I of the Act, we have not added that phrase to the regulation since the current language tracks section 106 of the Act.

Part 660 also provides definitions which are not found in the Act, as well as some of the statutory definitions we felt should be added for emphasis or clarification. Sections 101, 142, 166(b), 167(h) 301 and 502 of the Act contain additional definitions. We received several comments on the definitions contained in § 660.300. One commenter suggested that we add ''youth'' to the definition of ''employment and training activity''.

Response: The three terms, ''workforce investment activity,'' ''employment and training activity,'' and ''youth activity,'' are defined in section 101 of WIA. We have not added ''youth'' to the definition of ''employment and training activity'' since employment and training activities are a separate subset of workforce investment activities under title I, Chapter 5 of the Act. Workforce investment activities are the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, and youth activities.

A commenter requested that we define the term ''labor federation'' as used in relation to nomination requirements for labor representatives to the State and Local Boards, stating ''[i]t is our understanding that [this term] is intended to include AFL-CIO State Federations, State Building and Construction Trades Councils, AFL-CIO Central Labor Councils, and Local

Building and Construction Trade Councils.''

Response: We have added a definition of the term ''labor federation'', similar to that used in JTPA, which will include these groups within that term.

We received several comments on the definition of ''literacy''. One commenter suggested that the definition of ''literacy'' be expanded to mean the ability to read, write and speak in English or an individual's native language, if that is not English.

Response: In order to promote consistency among Federal Programs, title I, section 101(19) of WIA defines ''literacy'' by stating that it is the same definition used in title II, section 203(12) of the Act. Section 660.300 of the regulations restates this definition for the convenience of the reader. Literacy is defined as the ''ability to read, write, and speak in English, compute and solve problems, at the levels of proficiency necessary to function on the job, in the family of the individual and in society.'' No change has been made to this statutory definition.

Another commenter suggested that the term ''literacy'' be amended to include computer literacy since it is an important and necessary workplace skill.

Response: We agree that computer literacy is a key skill, however, as stated above, no changes have been made to the definition of ''literacy'' since it is a statutory definition found in section 203(12) of title II of WIA.

Among the regulatory definitions, we have defined the term ''register'' in order to clarify that programs do not need to register participants until they receive a core service beyond those that are self-service or informational. This point in time also corresponds to the point when the participants are counted for performance measurement purposes. A few commenters suggested that the term ''register'' be redefined to require all adults and dislocated workers who receive services, including those who only receive self-service or informational services, to be registered in order to track universal participation in the workforce investment system.

Response: The process of registration is designed to signal when an individual is counted against the core measures of performance title I programs. Since the Act exempts informational and self-service activities from the core measures, we are not requiring individuals who only receive those services to be registered. However, States and local areas are authorized to collect information beyond what is required at the Federal level. In March 2000, we issued Training and Employment Letter (TEGL) 7–99 which provides additional guidance on the point of registration. This guidance can be found on the Internet at *www.usworkforce.org.* Additional discussion of this issue is contained in part 663 and part 664 of these regulations. Part 666 provides new guidelines on when a service is determined to be self-service or informational. Finally, while participants may not need to be registered until they receive core services for performance measurement purposes, recipients must collect equal opportunity data regarding any individual who has submitted personal information in response to a request by the recipient for such information. See 29 CFR 37.4 (definitions of ''applicant'' and ''registrant''), and § 37.37(b)(2).

Another commenter suggested that the term ''register'' be more clearly defined, and requested a description of the differences between registration, enrollment and participation.

Response: While we have not changed the definition of ''register,'' additional guidance on the registration process and its connection to the performance accountability system can be found in TEGL 7–99, as well as part 663 and part 664 of these regulations. In general, ''enrollment'' is not a term that is being used in the WIA title I performance system. An individual who registers for services is determined eligible and is counted against the core indicators of performance. This registered individual is considered a participant while receiving services (except followup services) funded under subtitle B of WIA title I.

This commenter also suggested that we clarify that information on citizenship and selective service status be collected at the time of registration.

Response: In addition to any other statutory or regulatory requirements, under WIA section 188(a)(5)—''Prohibition on Discrimination Against Certain Non-Citizens''—participation in programs or activities, or receiving financial assistance under WIA title I, must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees and other immigrants authorized to work in the United States. Compliance with the non-discrimination provisions of WIA is addressed in the Interim Final Regulations promulgated by the Department's Civil Rights Center at 29 CFR part 37 (64 FR 61692, November 12, 1999). A discussion of these provisions can be found in the preamble discussion of 29 CFR 37.37(b)(2), at 64 FR 61705.

Section 189 of WIA provides that the Military Selective Service Act (50 U.S.C. App. 453) must be complied with to receive any assistance or benefit under title I. In order to allow the greatest possible flexibility in the provision of services, we will not dictate specific ways to comply with this straightforward requirement.

Several commenters suggested adding definitions of ''contract'' and ''commercial organization'' or ''for-profit entity'' and modifying the definitions of ''grant,'' ''subrecipient,'' and ''vendor'' to ensure consistency with the Federal Grant and Cooperative Agreement Act, (31 U.S.C. 6301), and to reduce confusion about what awards are subject to the uniform procurement requirements at 29 CFR 95.40 through 95.48 and 29 CFR 97.36, and what awards are not subject to these requirements.

Response: We have decided not to add definitions of ''contract,'' ''commercial organization'' or ''for-profit entity'', because these terms are defined or discussed in the Department's rules on uniform administrative requirements at 29 CFR parts 95 and 97 (the ''Common Rules''), as well as in the Department's rules on audit requirements for grantees in 29 CFR parts 96 and 99, all of which are incorporated by reference at 20 CFR 667.200. We are modifying the definitions of ''subrecipient'' and ''vendor'' to cross-reference the discussion in the DOL audit requirements, at 29 CFR 99.210, which contrasts the differences between subrecipients and vendors. Since the definition of ''grant'' in § 660.300, is already quite specific as to the types of organizations which may be awarded grants, we consider changes to this term to be unnecessary. We also are modifying the definition of ''recipient'' to indicate that the term refers to the entire legal entity receiving the award, not just the particular component within that entity which is designated in the award document. The modification is consistent with the definition of ''recipient'' in the JTPA regulations at 20 CFR 626.5 and the definition of ''grantee'' in the Common Rule at 29 CFR 97.3. Also, we are reiterating the Common Rule's definition of the term ''subgrant'' for the convenience of the reader.

Another commenter suggested defining the term ''obligation'' so that Individual Training Account (ITA) commitments could be treated as obligations for purposes of the reallotment and reallocation procedures

of 20 CFR §§ 667.150 and 667.160, even though they might not meet the standards of obligation used by particular State or local governments.

Response: Section 667.150 of the regulations provides for recapture by the Secretary of unobligated balances from States with unobligated balances which exceed 20 percent of the amount allotted in the previous program year, after adjustment for amounts reserved by a State for administration and amounts transferred by the State between youth and adult funds. Reallotment is then made to States which have obligated at least 80 percent of the amounts allotted in the previous program year, after adjustment for transfers and amounts reserved for administration. Section 667.160 covers the recapture and reallocation of amounts within the State using the same factors used in the Secretary's reallotment process.

We have added a definition of ''obligation'' to § 660.300 which, for the purpose of reallotments under 20 CFR 667.150, specifically excludes: (1) Amounts allocated to a single local area State or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. These exclusions were also in effect under JTPA. The purpose of these exclusions is to treat similar financial transactions the same way in all States, even where a State only recognizes a financial transaction as a legally enforceable ''obligation'' if it involves an arms-length award to another party or if performance has already occurred. We also are adding the definition of ''unobligated balance,'' which appears at 29 CFR 97.3, for the convenience of the reader.

With respect to the comment regarding defining commitments under ITA's as obligations, we are not aware of any unique characteristics of ITA's which necessitate expanding the definition of ''obligation'' provided in § 660.300 of these regulations. Commitments under ITA's should be treated the same way as similar commitments of the recipient's or subrecipient's non-WIA funds, whether as obligations or otherwise.

Other commenters suggested we include a definition of the term ''individual with a disability'' to encourage One-Stop center staff to have a knowledge and sensitivity to the needs of such individuals.

Response: Since the provision of quality services to individuals with disabilities is a key facet of the One-Stop service delivery system, we have added the WIA title I, section 101(17) definition of the term ''individual with a disability'' to § 660.300.

One commenter was concerned that the definition of ''veteran'' contained in section 101(49) of the Act was too broad and raised uncertainty as to which veterans were to be served under title I of WIA. The commenter suggested that we replace the definition in the Interim Final Regulations with the definition of ''veteran'' contained in title 38 of the U.S. Code since it provides more specificity and consistency between programs.

Response: Since the definition of ''veteran'' appears in title I of WIA, we are not making any change in the Final Regulation. We encourage States and local areas to take these definitions into account as they undertake their responsibility to assure that the delivery of services under WIA title I programs and activities authorized under the chapter 41 of U.S.C. title 38 partner program are coordinated through the One-Stop service delivery system.

One commenter suggested that we add definitions of a sectoral employment intervention strategy and the self-sufficiency standard. A sectoral employment intervention strategy is an approach to community economic development that connects members of low-income communities to employment opportunities, self-sufficiency wages and/or advancement opportunities by both redirecting training resources and education, and facilitating direct linkages to employers in targeted regional industries. The self-sufficiency standard defines the minimum amount of cash resources needed for a family to meet its basic needs and be self-sufficient.

Response: While we encourage State and Local Boards to develop linkages between their workforce and economic development systems, we do not think it is appropriate to highlight one strategy for achieving such linkages. As for a definition of self-sufficiency, 20 CFR 663.230 requires State or Local Boards to set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, defined in WIA section 101(24). No changes are being made to the regulations.

Part 661—Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act

Introduction

This part covers the critical underpinnings of how the Workforce Investment system is organized under WIA at the State and Local levels. Specifically, it consists of four subparts—General Governance Provisions, State Governance Provisions, Local Governance Provisions and Waiver Provisions. The General Governance subpart broadly describes the WIA system and describes the roles of the governmental partners. The State and Local Governance subparts cover the State and Local Workforce Investment Boards and the designation process, including alternative entities, and the planning requirements. The waiver subpart discusses the processes for obtaining general and work-flex waivers.

Subpart A—General Governance Provisions

Subpart A describes the Workforce Investment system, and sets forth the roles of the government partners in the system: the Federal government, State governments and Local governments.

Section 661.120 provides authority to State and Local governments to establish their own policies, interpretations, guidelines and definitions relating to program operations under title I, as long as they are not inconsistent with WIA, these regulations, and Federal statutes and regulations governing One-Stop partner programs. The reference to Federal statutes and regulations governing One-Stop partner programs has been added to § 661.120 (a) and (b) as a reminder that State and local administration of the One-Stop system must be consistent with the requirements of the Federal law applicable to the partner's program. In the case of local governments such policies, interpretation, guidelines and definitions may not be inconsistent with State policies. This section has also been revised to correct an inconsistency between terms used in the question and answer. The question refers to ''Local and State governmental partners'' while the answer refers to Local and State Boards. We do not intend to exclude the Governors and local elective officials from the authority to develop State and local policies relating to WIA title I, provided those policies are consistent with the Act, regulations and, where appropriate, other State policies. Therefore, paragraphs (a) and (b) are revised to replace the phrases ''Local

Boards'' and ''State Boards'' with ''Local areas'' and ''States'' respectively so that they will not appear to be inconsistent with the terms used in the question.

To assist with the State and local interpretations authorized under § 661.120, we have issued technical assistance guidance, with the participation of other Federal agencies, as appropriate, to help States and localities interpret WIA and the regulations. This guidance is not intended to limit State flexibility, but rather is intended to provide helpful models on which States and Local governments can rely to ensure that their own interpretations are not inconsistent with the Act and regulations. In our role as Federal partner we will continue to provide technical assistance to States and localities, in collaboration with other Federal agencies as appropriate, however we remain committed to the principles in the statute which allow and encourage flexibility.

A commenter suggested that the standard against which State and local policies, interpretations, etc. are measured under § 661.120 should be whether they are ''consistent'' with WIA and the regulations rather than ''not inconsistent.'' The commenter suggests that the current language may send an inappropriate message about the need to conform to statutory and regulatory requirements and may lead to differing interpretations of some provisions.

Response: We don't agree that this provision should be changed. The workforce investment system is a partnership between State, local and Federal stakeholders. One of WIA's key principles is that States and localities have increased authority to implement innovative workforce investment strategies to best serve the needs of the labor market. While we take very seriously our responsibility to ensure that State and local policies, interpretations, guidelines and definitions do not violate the provisions of the statute and these regulations, where differing interpretations are legally possible we believe that States and localities should have the flexibility to implement systems that they feel are best suited to their particular needs. The current regulation best serves this flexibility, because it does not imply that there is only one ''consistent'' interpretation available. Therefore, we have not changed the regulation.

Several commenters expressed differing views regarding the relative roles of State and local partners in the One-Stop system. Some commenters requested that we expressly state that States and localities are equal partners in the One-Stop system, while others requested that we clarify that States have clear authority to promulgate interpretations and other guidance to State and local agencies.

Response: In our view, neither of these positions is absolutely correct. The success of the workforce investment system depends on a commitment, particularly among the governmental entities and the One-Stop partners, to collaborate and form real partnerships. On many matters, the State has the authority to set Statewide policies applicable to local areas. However, WIA also gives certain responsibilities and authority to local areas. Close coordination among State and local government partners is essential to the success of the system. The flexibility of the WIA system offers a unique opportunity for leadership from both the State and local level to work cooperatively with one another to address the specific workforce needs of each community and benefit the State as a whole. We do not think it would be productive to enumerate where each entity has authority, but trust that in establishing the workforce investment system Governors and chief executive officers will take their roles and responsibilities seriously and work together to create a system that best helps their community aid those in need.

According to one commenter, there may be confusion resulting from the language in WIA section 117(d)(3)(B)(i) that holds chief elected officials liable, as grant recipient, for misuse of local formula funds (unless the Governor agrees to undertake such liability). The commenter reported that some local areas were worried that this liability would be interpreted as the personal liability of the elected official.

Response: While we have not changed the regulations, we wish to clearly state our interpretation of this provision. We interpret this provision as holding the chief elected officials (and the Governor, when appropriate) liable in their official capacity and not holding them personally liable for misuse of WIA funds.

Subpart B—State Governance Provisions

1. State Workforce Investment Board: Sections 661.200–661.210 describe the membership requirements and responsibilities of the State Workforce Investment Board (State Board) and procedures for designating an alternative entity to perform the functions of the State Board. Section 661.200(a) requires that the State Board be established by the Governor. Of course, the Governor must select the members of the State Board in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A correction is made to paragraph 661.200(i), to correct a cross-reference to provisions in part 662 identifying One-Stop partners.

WIA and these regulations provide significant flexibility to States and local areas to develop policies, interpretations, guidelines and definitions relating to program operations under WIA title I. Several commenters requested that we require that State and local boards include significant policies and interpretations in the State and local plans or consult with specified parties when developing these policies and interpretations. We do not believe we can mandate these suggestions, but encourage State and local boards to include in the plans any significant policies and interpretations etc., that are not already required to be included. Moreover, under §§ 661.200(j) and 661.305(d), the development of significant policies, interpretations, guidelines and definitions, as an activity of the boards must be done in an open manner. To emphasize this requirement, we have moved these requirements to new §§ 661.207 and 661.307, and have specified that the development of significant policies, interpretations, guidelines and definitions must be conducted in an open manner. We consider policies and interpretations etc,. relating to eligibility requirements and self-sufficiency standards to be the type of significant policies and interpretations etc., that must be developed in an open manner.

One commenter recommended that we require that any newly established State Board review and/or ratify any policies implemented by the entity acting as the Board during the State's transition to WIA.

Response: We find this to be a helpful suggestion, but do not believe it is appropriate to impose it as a mandatory requirement on States. We believe that an effective State Board will periodically review State policies as part of its oversight role. It seems natural that a newly established Board might find the need to reconsider some of the policies implemented by its predecessor. In that case, § 661.230(a) provides the State Board with the authority to submit a modification to the State plan.

The greatest number of comments on part 661 related to State and Local Board membership requirements. Many of the comments on State Boards are equally applicable to Local Boards. We have consolidated our discussion of State and Local Board membership

requirements in the following paragraphs.

We received a large number of comments about the requirement, at §§ 661.200(b) and 661.315(a), that at least two or more members of the State and Local Boards be selected to represent the membership categories set forth at WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v), and that the Local Board contain at least one member representing each One-Stop partner. The comments reflect a tension between the need to provide States and Local areas with the flexibility needed to keep these Boards at a manageable size, with the need for specificity as to what level of participation is guaranteed to stakeholders in the Workforce Investment system. Many commenters felt that the two or more member requirement led to large, unwieldy-sized Boards and requested that this requirement be eliminated. Other commenters sought clarification of the number of members of each partner on the Local Board. Many commenters requested clarification about whether an individual seated on the State or Local Board could represent more than one entity or institution, particularly when multiple grantees of a One-Stop partner program are located in a local area.

Many commenters requested more specificity as to which entities are entitled to a seat on the Boards. For example, many commenters felt that the language in the preamble to the Interim Final Rule did not go far enough in recommending that States consider appointing representatives from both the designated State unit under section 101(a)(2)(B) of the Rehabilitation Act and from the State agency for the blind to represent programs that provide vocational rehabilitation services. These commenters recommended that we amend the regulations to change this recommendation into a requirement that States appoint representatives from both of these organizations. Others sought specific appointment of members representing community-based organizations (CBO's), mental health agencies, disabled youth and disabled youth service providers, disabled adults, literacy providers, non-labor construction workers, and other groups.

Response: In our view, no individual (other than the Governor) or group is entitled to a ''seat'' on a State or Local Workforce Investment Board. However, certain specified groups, including One-Stop partner programs, are entitled to a ''voice'' on the Boards through a representative.

A partner program may feel that it should have the right to choose who sits on a State or Local Board as its representative. The regulations cannot provide this power to the partners, because WIA gives the authority to select State or Local Board members to the Governor or chief elected official (CEO), respectively. However, the Governor's and CEO's discretion to select individuals to serve as representatives of partner programs and other entities on State and Local Boards must be exercised in a manner that is consistent with the requirements set forth in WIA and these regulations. For One-Stop partner programs, the individual selected as the Local Board representative may or may not be the specific individual that each funded entity would prefer, but that individual must be an individual with ''optimum policy-making authority'' within an entity that receives funds or carries out activities under the partner program.

We recognize that the representation issue is a legitimate and serious concern. It is exacerbated by equally legitimate concerns over Board size, especially at the local level. We encourage as broad a representation as possible on all WIA Boards, especially representation of those entities identified as required partners in the Act. We expect that local workforce investment areas will follow the regulations and that States will ensure that all required partner programs have appropriate and effective representation on Local Boards. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations. We view this generally as a matter of local implementation. We believe that consultation between Governors or CEO's and partner programs, and other organizations entitled to representation on the Boards, in the selection of Board representatives will help to develop positive relationships leading to more effective delivery of services, and we encourage such consultations. The final regulations attempt to facilitate this process by providing Local areas with flexibility for finding the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority.

To this end, we have made several changes to the interim final rule. However, we did not change the requirement that each Board contain two or more members representing the groups specified in WIA sections 111(b)(1)(C) (iii)–(v) and 117(b)(2)(A) (ii)–(v). As indicated in the preamble to the Interim Final Rule, we are constrained by statutory language to follow this requirement. One commenter suggested that the provision at 1 U.S.C. 1 may provide justification for a more flexible interpretation of the membership requirement. While this provision provides the general rule that statutory reference to plurals includes the singular, we think that, in this instance, the context of WIA section 111 and 117, indicates that the term ''representatives'' was intended to mean two or more. The requirement that the Local Board contain at least one member representing each local One-Stop partner program is consistent with this interpretation. As is does for the other membership classes specified at WIA section 117(b)(2)(A) (ii) through (v), the Local Board must contain two or members representing the class of One-Stop partner programs identified at section 117(b)(2)(A)(vi). Because each One-Stop system will include many partners, the requirement that the class is represented by two or more members will neccesarily be met by one member representing each partner program. Consequently, we have not changed this requirement.

We have made several changes to clarify what is meant by representation on the State and Local Workforce Investment Boards. We have made changes to accommodate the concerns of those commenters who asked whether an individual seated on the Board could represent more than one entity or institution. While such ''multiple entity'' representation may not be appropriate in all cases, we believe that there may be instances when such representation may be an effective tool for reducing Board size while still ensuring that all parties entitled to representation receive effective representation. Therefore, we have added new paragraphs to §§ 661.200 and 661.315 to permit it when appropriate. For example, where the same State agency has authority for several One-Stop partner programs, such as a State employment security agency which oversees the employment service and unemployment insurance service, the head of the agency (or other official with optimum policy-making authority) may be appointed to the State Board to represent both of these programs. On the other hand, such ''multiple entity'' representation will not be appropriate where the individual so appointed does not have authority to make policy for all of the programs that s/he purportedly represents. For example, appointing a local business

person, who is a member of a veterans' organization, as representative of the 41 U.S.C. chapter 38 veterans' program and of local business and/or the local veterans' organization, will not satisfy the Local Board membership requirements if the individual does not possess optimum policy-making authority within the 41 U.S.C. chapter 38 program and within the veterans' organization and within the business. Similarly, if the State vocational rehabilitation agency (including the vocational rehabilitation agency for the Blind) is primarily concerned with the rehabilitation of individuals with disabilities under section 101(a)(2)(B)(i) of the Rehabilitation Act, then the head of that agency must represent the vocational rehabilitation program on the State Board. An individual from any other State agency would not be an appropriate representative of the vocational rehabilitation program.

We have added a new § 661.203, in which we have defined the terms ''optimum policy-making authority'' and ''expertise relating to [a] program, service or activity'' in order to assist States and Local areas in determining when such representation is appropriate. A representative with ''optimum policy making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. In the case of a One-Stop partner program, an individual who does not have ''optimum policy-making authority'' within an entity that receives funds or carries out activities under the partner program cannot serve as that program's representative on the Local Board. A representative with ''expertise relating to [a] program, service or activity'' includes a person who is an official with a One-Stop partner program and a person with documented expertise relating to the One-Stop partner program.

Finally, we have added new § 661.317 to clarify representation when there are several Local grantees or operating entities of a partner program in a One-Stop system. In such a case, the Local Board membership requirements may be met by the appointment of one member to represent all of the Local partner program entities. Also, § 661.317 permits the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Soliciting nominations from partner program entities may be useful to chief elected officials in identifying the individual who will be able to represent the program most effectively in the work of the Local Board. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it.

To implement the policy described in the joint letter, dated March 24, 2000, from the Assistant Secretary of Labor for Employment and Training, the Assistant Secretary of Education for Special Education and Rehabilitative Services, and the Commissioner of the Rehabilitative Services Administration regarding Vocational Rehabilitation (VR) representation on State Boards, we have added a new paragraph (3) to § 661.200(i). Under this provision, if the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State Plan how the members of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

Other comments on the State and Local Board membership requirements questioned the different descriptions relating to the creation of State and Local Boards, the different processes for selecting the chairpersons of the Boards, and suggested that we mandate that the business majority requirement apply to any subcommittees of Boards.

Response: Section 661.200(a) describes the State Board as being ''established'' by the Governor, while § 661.300(a) describes the Local Board as being ''appointed'' by the CEO. These descriptions are intended to simply reflect the terms used in the statute and are not meant to imply an inferior or superior relationship. Section 661.200(g) provides that the Governor must select a State Board chairperson from the business representatives on the Board, while § 661.320 provides that the Local Board members elect a chairperson from the business representatives. Because these different processes are specified in WIA sections 111(c) and 117(b)(5), we have not changed the rule. With regard to the business majority requirement, we agree with the commenter that a strong role for business representatives is an essential ingredient for successful Boards, but we do not think it is appropriate that the regulations should dictate the internal structure and day-to-day workings of the Boards. Within the framework required by the statute and regulations, States and localities have the flexibility to design Boards that best serve their needs.

A commenter suggested that we add sanctions provisions to make clear that the Governor can refuse to appoint to the State Board a representative of partners which have not cooperated in good faith with the One-stop system at the local level.

Response: As the commenter pointed out, § 661.310 addresses this very issue at the local level. Under this section, one of the sanctions for a partner failing to engage in good faith negotiations over the terms of the local MOU is a loss of representation on the Local Board. We expect that this provision, will be sufficient incentive for Local Boards and One-stop partners to engage in good faith negotiation. If experience does not bear this out, we will consider issuing additional guidance in the future.

A commenter requested that we define the term ''labor federation'' as used in the nomination requirements for labor representatives to the State and Local Boards, stating ''[i]t is our understanding that [this term] is intended to include AFL–CIO State Federations, State Building and Construction Trades Councils, AFL–CIO Central Labor Councils, and Local Building and Construction Trade Councils.''

Response: We have added to 20 CFR 660.300 a definition of the term ''labor federation'', similar to that used in JTPA, which will include groups such as those suggested within that term.

2. Alternative Entities: Because many of the comments relating to alternative entities are applicable at both the State and local levels, we have consolidated our discussion of this issue here. One commenter expressed the view that the requirement in §§ 661.210(c) and 661.330(b)(2), that the State and local plans must describe how the Boards will ensure an ongoing role for any required membership groups not represented on an alternative entity, is not supported by WIA.

Response: We find that the ongoing role requirement is a reasonable interpretation of WIA requirements relating to Board membership and responsibility. It is clear from the statute that Congress intended that certain specified groups have a strong leadership role in the State and local workforce investment systems, as expressed by the representation requirements. The regulatory requirement that Boards provide an ongoing role for any of those statutorily identified entities which are not represented on the alternative entity is consistent with this intent. The regulation does not specify the scope of

a group's ongoing role, but rather permits States and localities to determine it as part of the public planning process. Therefore, we have maintained this requirement. However, as described below, we have made changes to this regulation to provide guidance as to how the ongoing role requirement may be met.

There were several comments regarding the provision in §§ 661.210(d) and 661.330(c) about changes in the membership structure of an alternative entity serving as the State Workforce Investment Board or as a Local Workforce Investment Board. Two commenters thought that the rule was overly restrictive about permitting changes to alternative entities and suggested that we revise the Interim Final Rule to permit incremental changes to these entities so that at least some of the representational groups required by the WIA Board membership requirements could be added to existing entities, or that we permit incremental changes that increase the efficiency and effectiveness of the workforce investment system. A commenter noted that in single workforce investment areas states, where the State Board is acting as the Local Board under WIA section 117(c)(4), the use of an existing state board under the alternative entity provisions may exclude even more partners from participation on the board at the local level.

Response: We are sympathetic to these concerns, but believe that permitting incremental changes to the boards will, in fact, act as a disincentive to the creation of Workforce Investment Boards that include all required representatives, by permitting inclusion of some groups while still excluding other groups. By requiring the establishment of a new WIA-compliant Board whenever the membership structure of an alternative entity is significantly changed, other excluded groups will be able ''to ride the coattails'' of the newly added group. Therefore, because we remain committed to the goal of encouraging fully compliant Workforce Investment Boards in each State and local workforce investment area, the requirement that a new WIA-compliant Board must be created when the membership structure of an alternative entity is significantly changed has not been changed. However, we have added language to clarify the type of situation in which the membership structure of an alternative entity is considered to have been significantly changed. Specifically, a significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category. A change to the charter is not itself grounds for disqualification of an alternative entity. The relevant question is whether the organization or membership structure has been changed. However, we continue to consider the need for a change to the charter as a good indicator of a significant change in the membership structure, and have clarified that this is true regardless of whether the required change has been made.

Other commenters identified the need for additional guidance as to what measures an alternative entity must take to ensure an ongoing role in the State or Local Workforce Investment system for any of the WIA-specified membership groups who are not represented on the alternative entity. As discussed below in relation to the Migrant and Seasonal Farmworker (MSFW) program, commenters have sometimes found that it is difficult to ensure full and active participation in a One-Stop system when a partner or other membership group is not represented on an alternative entity.

Response: To address this problem, we have added language to § 661.210(c) and have added a new paragraph 661.330(b)(3) to identify ways in which to ensure such an ongoing role. For example, the Boards could provide for regularly scheduled consultations, may provide an opportunity for input into the State or local plan or other policy development, or may establish an advisory committee of unrepresented groups. We also require that the alternative entity engage in good-faith negotiation over the terms of the MOU, with all omitted partner programs. We have made a change to more clearly identify those groups which are specified for representation on State and local boards under WIA but are not represented on the alternative entity as ''unrepresented membership groups''. This replaces the somewhat ambiguous term ''such groups'' used in the Interim Final Rule.

3. State Workforce Investment Plan Requirements: Section 661.220 describes the requirements for submission of the State Workforce Investment Plan and the process for review and approval of that plan. A commenter pointed out that the reference to Wagner-Peyser Act State Plan modifications in § 661.230(c) was inaccurate. We have edited § 661.230(c)(2) to reference 20 CFR 652.212. Under her authority to provide for an orderly transition from JTPA to WIA, the Secretary permitted States to submit a transition plan during program year 1999 to allow the provision of WIA services with funds appropriated for JTPA services. Such a plan would be approved for program year 1999, but would not be considered an approved five-year Workforce Investment Plan. To reflect this practice, a new paragraph (e)(3) is added to § 661.220 is added to clarify that a plan that is incomplete or does not contain sufficient information to determine whether it is fully compliant with the statutory and regulatory requirements of WIA and the Wagner-Peyser Act is considered to be inconsistent with these requirements for plan approval purposes.

A commenter requested that the provision of § 661.230(e)(2) describing the plan approval process be revised to more clearly indicate that the portion of the plan describing Wagner-Peyser Act activities, requirements and delivery of services is an integral part of the plan and not a separate plan.

Response: We agree and have made the suggested change.

Some commenters remarked that they found that the State Plan requirements focused on process and compliance rather than on strategic planning issues.

Response: We believe that the State Plan guidelines seeks the information needed to support broad strategic planning objectives while ensuring compliance with the statutory requirements. We acknowledge that it is difficult to balance these two goals. Based upon our experience with early implementing States, we hope to amend the planning guidelines to streamline them, but remain committed to requiring that States submit the information we need to assess whether the plan complies with the statute and regulations.

We received several comments on the need for specific public comment periods for State Plans, consistent with Local Plan requirements. Others felt that modifications as well as planning documents should be subject a public comment period.

Response: We intend that the information contained in the State Plan be subject to the broadest possible stakeholder involvement in policy development and the broadest possible range of public comment. The Interim Final Rule, at § 661.230(d) already requires that plan modifications undergo the same public review and

comment as the State plan. The Workforce Investment Act State planning guidelines set forth the information needed for the Secretary to make an informed judgment about whether a State Plan is consistent with WIA, and the plan review process requires evidence of a public comment period. We have clearly stated the need for an open and inclusive planning process at both the State and local levels and we expect the States to establish the appropriate time lines and procedures. Consequently, no change in the rule is being made at this time, although we will carefully review State plans for compliance with the WIA public comment requirements.

Commenters suggested that we change § 661.220(d) to require that States submit to us all oral and written comments made during the public comment process, including comments made on drafts, and responses to those comments, that we review the responses as part of our plan review process, and that we specify that failure to actively consult with local areas is grounds for plan disapproval. Other commenters suggested that we mandate a 30-day review period as part of the State plan public comment process.

Response: Based upon our review of plans submitted by early implementing States, we have found that requiring submission of comments on State plans does not significantly help the plan review process. Given the short time period for plan review and approval, we are unable to provide any meaningful review to comments submitted with the plan. We do not think it is necessary to impose a mandatory public comment period on the States. We expect that States will undertake a good faith effort to develop State plans through a meaningful public process. We believe that our review of the State plan's description of the process will enable us to ensure that the State planning process complies with this requirement. A failure to develop the plan through the public comment and consultation process described in the regulations could be grounds for plan disapproval under the existing standards. No change has been made to the regulation.

Section 661.240 contains provisions relating to unified plans, submitted under the authority of WIA section 501. On January 14, 2000, the Department, in partnership with the Departments of Agriculture, Education, Health and Human Services, and Housing and Urban Development, and with the assistance of the Office of Management and Budget, issued joint unified planning guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998.* This document was published in the **Federal Register** at 65 FR 2464 (Jan. 14, 2000). We have revised § 631.240(b) to add a new paragraph (2), that specifically provides that States may submit unified plans that contain the information required in the unified planning guidance in lieu of the individual planning guidelines of the programs covered by the unified plan.

One commenter remarked that the unified planning guidelines were too narrowly focused to lead to effective unified planning. Other comments on § 661.240 requested that we hold unified plans to the same public review and comment requirements as required of standalone WIA State plans, that we explain how to resolve different planning timetables for programs included in the unified plan, and that we provide incentives to encourage States to submit unified plans.

Response: We believe that the unified planning guidance is an important first step towards collaborative planning and effective coordination of federal programs. Currently, it is the only planning approach that streamlines existing non-statutory planning requirements. We believe these streamlined planning requirements offer an incentive encouraging States to undertake unified planning. While it may not go as far as some would like, we believe that, as the Federal partners work with the States to acquire more experience with unified planning, we will be able to develop alternative approaches that could offer even greater flexibility and burden reduction.

With regard to the substantive comments on § 661.240, WIA section 501(c)(1) provides that the portion of the unified plan covering a particular program or activity is still subject to the applicable planning requirements of the statute that authorizes the program. Therefore, for unified plans containing the State WIA/Wagner-Peyser Act plan, the WIA plan review and public comment requirements, at § 661.220(d) still apply. Similarly, while the WIA/Wagner-Peyser Act portion of the unified plan is submitted on a five-year planning cycle, the inclusion of a plan on a different planning cycle does not change the plan for that program to a five-year plan. We believe that the time saved through joint planning is itself a strong incentive towards engaging in unified planning. Joint planning also benefits States by leading to an improved use of State and Federal resources, increased coordination at the local level, and burden reduction through elimination of duplicate planning processes. These and other benefits of unified planning are discussed in the unified planning guidance at 65 FR 2464, 2468.

4. Local Workforce Investment Area Designation Requirements: Sections 661.250 through 661.280 discuss the requirements applicable to the designation of local workforce investment areas (local areas). Section 661.250 sets forth the process for designating local areas. Commenters noted that this section did not refer to the provision, at WIA section 116(b), that permits Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

Response: We interpret section 116(b) as limiting single local area designations to only those States which were designated as a single service delivery area State under JTPA, as of July 1, 1998. Section 661.250 is revised to by adding a new paragraph (d) to specifically authorize Governors of States which were single service delivery area States under JTPA, as of July 1, 1998, to designate the State as a single local workforce investment area.

A commenter noted that the applicability of the automatic local area designation provisions for units of general local government of 500,000 or more may depend upon the population statistics used in making designations. An area may or may not be found to meet this threshold population level depending on whether 1990 Census data or more up-to-date estimates are used. The commenter suggested specifying certain data, or specifically delegating the authority to determine which data to use to the Governor.

Response: While we do not believe it is appropriate that we specify the source of the data to be used in the regulations, we agree with the suggestion to specify that the Governor has the authority to determine which population data to use when making designation determinations. Section 661.260 is amended to make this clear.

A commenter noted that § 661.280(c) provides that, on appeal of a denial of a request for designation, the Secretary can require that an area be designated solely upon her finding that the area was not afforded the procedural rights guaranteed by the statute. The commenter suggested that, in that instance, a finding that the area meets the requirements for designation should also be required before the State can be ordered to designate the area.

Response: We think that § 661.280(c) accurately restates the provisions of

WIA section 116(a)(5) that the Secretary may require designation upon a finding of either a denial of procedural rights or a finding that the area meets the requirements for designation. No change has been made to the regulation.

Section 661.290 describes the State's authority to require regional planning by Local Boards. Paragraph (d) of this section provides that regional planning may not substitute for or replace local planning unless the Governor and all the affected CEO's agree to the substitution or replacement. A commenter opined that WIA does not give the Department the authority to undermine the State's authority to require regional planning in this way.

Response: We do not agree that this regulation impermissibly undermines the State's authority. Section 661.290(a) is consistent with WIA section 116 by providing the State with authority to require Local Boards to participate in a regional planning process. The agreement of the local areas is not required for this. Requiring local area agreement before regional planning can replace local planning may reduce the ability of the State to unilaterally impose effective regional planning, since the regional planning may overlap or duplicate local planning. However, we believe that this provision fairly balances the rights of States and localities. In our view, the most effective regional planning will occur when all parties in the region are committed to cooperating with one another.

Subpart C—Local Governance Provisions

This subpart covers the designation of Local Workforce Investment areas and the responsibilities and membership requirements of Local Boards. Because many issues relating to Local Boards and alternative entities are equally applicable at the State and local level, comments on these issues are discussed above, under subpart B.

1. Responsibilities of Chief Elected Officials: Section 300(a) requires chief elected officials to appoint the Local Board in accordance with State criteria established under WIA section 117(b). Appointments to the Local Board must be made in a nondiscriminatory fashion, in accordance with the requirements of 29 CFR part 37. A few commenters found the provision in § 661.300, authorizing the Local Board and the chief elected official(s) in a local area to enter into an agreement that describes the respective roles and responsibilities of the parties to be confusing in light of the statement in 20 CFR 667.705 regarding liability of funds in local areas comprised of more than one unit of general local government.

Response: Under 20 CFR 667.705, when a local area is comprised of more than one unit of general local government, the liability of the individual jurisdictions for funds provided to the local area must be specified in a written agreement between the chief elected officials. This is a mandatory provision. The agreement authorized in § 661.300(c) regarding a description of general roles and responsibilities is optional. Chief elected officials are not required to enter into such an agreement, but the agreement may be a useful tool for specifying the division of duties among the chief elected officials in the local area. No change has been made to the regulations.

A few commenters asked for clarification as to what extent a chief elected official(s) may delegate their responsibilities under title I of WIA.

Response: In general, the chief elected official(s) is authorized to delegate their authority under title I of WIA to other entities such as the Local Board or a local governmental agency. In multiple jurisdiction local areas, the chief elected officials may delegate certain roles as part of the agreement authorized in § 661.300(c), as discussed above. For example, WIA section 117(d)(3)(B)(i)(II) specifically authorizes the chief elected official(s) to designate an entity to serve as a local fiscal agent in order to assist in the administration of grant funds at the local level. Similarly, the chief elected official(s) may designate an entity to carry out their other responsibilities. Under § 661.300(c), the chief elected official(s) may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the chief elected official(s) remains liable for funds received under title I of WIA unless they reach an agreement with the Governor to bear such liability. This is the only situation in which the chief elected official(s) is not liable for funds.

Some commenters requested a clarification of the role of the chief elected official as a One-Stop partner.

Response: This issue is addressed in the preamble to 20 CFR part 662.

2. Local Boards as Service Providers: Section 117(f)(1) of WIA places limitations on Local Boards' direct provision of core services, intensive services, or training services. These limitations and waivers of the limitation on providing training services are set forth in § 661.310. Commenters noted that § 661.310(b) permits a waiver of the prohibition on providing training services to be renewed only once.

Response: This limitation was inadvertent. We have revised this paragraph to indicate that a waiver may be renewed more than once, although no waiver may be for more than one-year at a time.

A commenter opined that the provision in § 661.310(c) that extended the service delivery restrictions of the Local Board to the staff of the Board is not supported by WIA.

Response: We don't agree that this provision is inconsistent with WIA. The limitation on the Local Board's authority to be a service provider in § 661.310(c) is meant to ensure that the Local Board serves as the ''board of directors'' for the local area. This frees the Board from the day-to-day functioning of the local workforce system and allows the Local Board to focus on strategic planning, policy development and oversight of the system. To permit the staff of the Local Board to provide direct services on behalf of the Board would undermine this principle.

However, we read the service delivery limitations in WIA section 117 as applying to the Local Board as an entity and not to the members of the Board as individuals. Therefore, members of the Local Board may not provide services in their capacity as a member of the Board. However, if an individual member of the Board is also an employee of a service provider, then as an employee of that service provider entity s/he may provide services on behalf of that entity. Of course, this must be consistent with federal, state and local conflict of interest requirements. The same rules apply to the staff of the Local Board. Members of the Local Board's staff may also be employees of the entity administering the local area's WIA grant. We acknowledge that many local areas use staff from inter-related agencies to provide support to the Local Board as well as the administrative entity for the grant recipient. When these roles are clearly defined, the fact that an individual works for both the Local Board and the entity administering the WIA grant does not preclude the entity from providing services.

3. Youth Council: Sections 661.330 and 661.335 describe the membership requirements and responsibilities of the Youth Council. Commenters suggested that we amend this section to require that representatives of vocational rehabilitation agencies and members with experience in nontraditional training employment for women be selected for the Youth Council.

Response: We have not made the suggested change, because we do not believe it is appropriate to specify certain groups for Youth Council membership beyond those provided by statute. However, we agree that the viewpoint of these groups could serve the Youth Council well. We encourage chief elected officials to consider appointing such representatives under the existing Youth Council membership categories.

One commenter suggested changes to § 661.335(b)(4) which lists ''parents of eligible youth seeking assistance under subtitle B of title I of WIA'' as required members of the youth council. The commenter expressed a fear that it will be difficult to find parents of participants and former participants who will be likely to make a positive contribution to the youth council. The commenter asked whether a local area will be penalized if it is unable to find parents and participants to serve on the youth council and suggests changing § 661.335(b)(4) to read ''parents, that may include those of eligible youth seeking assistance. . . .''

Response: We recognize the commenter's concern, however, the regulation restates the language of WIA section 117 (h)(iv) and (v). Therefore, these membership categories have been statutorily mandated by Congress. We do not interpret the statutory standard to limit youth council membership to parents of youth participants. Section 117(h)(iv) of the Act requires the youth council to include members who are: ''parents of eligible youth seeking assistance under this subtitle.'' This statutory phrase is somewhat confusing, since it could be read as requiring parents of eligible youth seeking assistance rather than parents of participants who are receiving assistance. We interpret this language to mean that the representatives for this membership category must come from families who currently experience the barriers described in WIA section 101(13)(A) and (B), and in §§ 664.200 or 664.220, or who have faced those barriers in the past. This interpretation allows those families who have successfully overcome their barrers to education and employment to have a voice on the youth council. We believe that it is important that youth councils include the views of parents, especially the views of parents of youth participating in WIA youth programs. We feel it is important that the representatives for this membership category possess a first-hand understanding of the needs and barriers facing eligible youth and strongly encourage chief elected officials to seek out parents of WIA youth participants. Just as the Individual Training Account system in the adult and dislocated worker programs empowers the customer to take an active role in the training process, these membership categories empower the families most affected by youth services to take an active role in designing and improving the system. This interpretation, of course, does not prohibit the appointment of other parents in the community under WIA section 117(h)(2)(B), which authorizes the appointment of ''other individuals as the chairperson of the Local Board, in cooperation with the chief elected official, determines to be appropriate.''

Similarly, this commenter also requested a change to § 661.335(b)(5), which lists ''Individuals, including former participants, and members who represent organizations that have experience relating to youth activities'' as required members of the youth council. The suggestion would have § 661.335(b)(5) state ''individuals, that may include former participants, and members who . . .'' We have not made the commenter's change because the regulation already uses the phrase ''individuals, including former participants . . . .''

4. Local Workforce Investment Plan: Sections 661.345 through 661.355 describe requirements relating to the submission and modification of local workforce investment plans.

A commenter disagreed with the provision, in § 661.345(c), that the Secretary performs the roles of the Governor in reviewing the local plan developed in a single local workforce investment area State, particularly regarding the review of the MOU's. The commenter compared this process with the process in other States where the Governor reviews locally developed MOU's submitted as part of the local plan. The commenter emphasized that development and review MOU's should remain as close as possible to the local level.

Response: We agree that successful implementation of the One-Stop system in a single local workforce investment area State requires strong local involvement. MOU's should be developed at the local level. Section 661.350(c)(3) facilitates local involvement by ensuring that the local chief elected officials in those States retain their roles in the system. However, we believe that an independent review of local plans is necessary. In a single workforce investment area State, where, in essence, the State itself is the local area, we believe it is appropriate that the Secretary undertake the role of providing independent review of the local plan for the State. Since the MOU's are required to be included in the local plan, the Secretary's review will include review of the MOU's. No change has been made to the regulation.

With regard to the required local plan contents of § 661.350, several commenters suggested that we encourage States to require additional items, such as a comprehensive assessment of activities in the local area, a description of services available to displaced homemakers, disadvantaged individuals and to other groups, a description of nontraditional training and employment activities, a local plan for the provision of supportive services, and to use a ''sectoral approach'' to link the needs of employers with the skills of workers.

Response: The authority to require additional items in local plans, beyond the requirements specified in § 661.350, lies with the Governor. We encourage Governors to consider the suggested items when establishing those requirements.

A commenter requested that we add language to § 661.350(a)(3)(ii) to authorize the submission with the plan of a status report on MOU's when some MOU's are still in negotiation. The commenter stated that it appears that it will take some time to negotiate all the necessary MOU's and asks that we recognize this and permit the plan process to move forward.

Response: We recognize that the commenter may have a valid point. Our experience with early implementing States has shown that the negotiation of MOU's can be an involved process. However, because the MOU's are the primary means for coordinating the services of the One-Stop partners, they are the foundation of the entire workforce investment system. The MOU's address issues with the partners such as which services each partner will provide through the One-Stop system, how the costs of the system will be allocated among the partners, how customers will be referred by the One-Stop operator to the appropriate partner, among others. Because the resolution of these issues forms the building blocks of the One-Stop system, we are not prepared to change the regulation at this time. We strongly encourage States and localities to take the necessary steps to ensure that the negotiation of these important documents will be done in a timely manner. However, in recognition of the fact that some local areas may need additional time to develop a fully approvable local plan, we have added a new § 661.350(d), authorizing Governors

to approve local plans on a transitional basis during program year 2000. Governors may use this authority to give transitional approval to local areas that have not finalized their MOU's or other elements of their plan. Such a conditional approval is considered to be a written determination that the local plan is not approved, but will allow implementation of WIA reforms as they finalize the transition from JTPA to WIA. This authority is similar to, and derives from, the Department of Labor's authority under WIA sec. 506(d), to approve incomplete State plans on a transitional basis.

There were a few comments about the requirements for local plan modifications at § 661.355. One commenter suggested that we drop, as unnecessary, the requirement in § 661.355 that the Governor establish procedures for modification of local plans.

Response: While the commenter may be correct that Governors already know their responsibilities so this regulation is not needed, we believe that there is value in clearly specifying the responsibility to establish these procedures so that it is not inadvertently overlooked.

A commenter suggested that we amend the illustrative list of the circumstances when a local plan modification may be required by the Governor, at § 661.355, to include changes to the membership structure of the Local Board among those circumstances.

Response: The regulation as written already includes this factor. The conditions under which a State plan modification is required, in § 661.230(b), also include changes to the membership structure of the State Board.

Another commenter asked, regarding one of the existing circumstances in which a local plan modification may be required—at what point is a ''change in the financing available to support WIA title I and partner-provided WIA services'' significant enough to warrant a modification?

Response: When developing the local plan modification procedure under § 661.355, this is one of the questions the Governor should consider. The answer is likely to be different for different states and possibly for different areas. We do not think it is appropriate to restrict the Governors' authority by setting a federal standard.

Subpart D—General Waivers and Work-Flex Waivers

Subpart D indicates the elements of WIA and the Wagner-Peyser Act that may and may not be waived under either the general waiver authority of WIA section 189(i) or the work-flex provision at WIA section 192. In response to comments, we have made a technical correction in § 661.420, changing paragraph (g) to (f).

We received several comments about the exceptions to the Secretary's waiver authority, described at § 661.410, and work-flex waiver authority, described at § 661.430. Commenters requested that the regulation be amended to specify that the Secretary will not approve waivers of title I of the Rehabilitation Act, nor of the State merit staffing requirements of the Wagner-Peyser Act, and deleting the Older Americans Act from work-flex waiver authority.

Response: Regarding the Rehabilitation Act, the regulations make clear that the Secretary's authority to approve waiver requests is limited to requests for waiver of certain provisions of WIA and the Wagner-Peyser Act. We cannot waive provisions of other statutes. While we are not making the suggested change, we wish to make clear that the Department does not intend, nor do we have authority to entertain or grant waivers of title I of the Rehabilitation Act. Similarly, an exception for the Wagner-Peyser Act State merit staffing requirement is not necessary. Our authority to waive Wagner-Peyser Act provisions is limited to requirements under sections 8 through 10 of that Act. The requirement that Wagner-Peyser Act services be provided by State merit staff employees derives from sections 3 and 5(b)(1) of the Wagner-Peyser Act. Accordingly, we do not intend to, nor do we have authority to entertain or grant waivers of the Wagner-Peyser Act merit staffing requirement. Finally, we have retained the authority for Governors to approve waivers of certain provisions of the Older Americans Act, because WIA section 192(a)(3) specifically provides that authority.

Other commenters suggested that we define the existing exception prohibiting waivers of provisions relating to worker rights, participation and protections to prohibit waivers of provisions relating to labor nominations and appointments to State and Local Boards, opportunities for comment on State and local plans, and the certification process for eligible training providers. The commenters also requested that States be required to establish a public comment process, that includes comment from organized labor, on proposed waivers and a work-flex plan; and asked that we conduct periodic evaluation of the impact of waivers and work-flex activities.

Response: We have not added the suggested definition of the worker rights, participation and protection exceptions. First, we do not agree that the suggested provisions fall within the scope of the worker rights, participation and protection exceptions. Secondly, we do not think it is appropriate to define the scope of these provisions by regulation and believe it will be more effective to deal with waiver requests as they occur. On the other hand, we believe that requests for waivers of the provisions suggested by the commenters will likely fall within other exceptions to waiver authority. Section 661.410(a)(9) excludes waivers of requirements relating to procedures for review and approval of plans, which would exclude a waiver of the public comment requirements for State and local plans. Provisions related to the establishment and function of Local Boards may not be waived. This will prohibit waivers of the nomination and appointment requirements for Local Boards. The eligible training provider requirements seem to fall within the key principles of empowering individuals and increasing accountability identified at § 661.400(b)(2) and (4). Provisions relating to the key principles may not be waived under Work-flex authority, and will only be waived by the Secretary in extremely unusual circumstances when the provision can be demonstrated to be impeding reform.

We agree with the commenters' suggestion regarding the public comment process for waiver plans and work-flex plans. Section 661.430(e) already requires that the State work-flex plan undergo a public comment process, similar to that of the State five-year plan. While WIA section 189(i) does not specifically require that a stand-alone waiver plan go through a similar process (a waiver plan included within the State five-year plan would undergo public review along with the rest of that plan), the requirement for Local Board comment on the waiver plan at WIA section 189(i)(4)(B)(v) and the sunshine provisions for State and Local Board activities at WIA sections 111(g) and 117(e) indicate clear Congressional intent that major decisions involving the workforce investment system be made in a public and open manner. In our view, the decision to request a waiver of statutory or regulatory requirements is such a major decision. Accordingly, we have revised § 661.420(a)(5), to require a description of the process used to ensure meaningful public comment, including comment by business and organized labor, on the State waiver plan. Finally, we agree on the need for

evaluation of the waiver process. Although, we have not yet made specific plans for such a review, we intend to do so in the future.

Part 662—Description of the One-Stop System Under Title I of the Workforce Investment Act

Introduction

The establishment of a One-Stop delivery system for workforce development services is a cornerstone of the reforms contained in title I of WIA. This delivery system streamlines access to numerous workforce investment and educational, and other human resource services, activities and programs. The Act's requirements build on reform efforts that are well established in all States through the Department's One-Stop grant initiative. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging and confusing, WIA requires States and communities to integrate multiple workforce development programs and resources for individuals at the ''street level'' through a user friendly One-Stop delivery system. This system will simplify and expand access to services for job seekers and employers.

The Act specifies nineteen required One-Stop partners and an additional five optional partners to coordinate activities and streamline access to a range of employment and training services. WIA requires coordination among all Department of Labor funded programs as well as other workforce investment programs administered by the Departments of Education, Health and Human Services, and Housing and Urban Development. WIA also encourages participation in the One-Stop delivery system by other relevant programs, such as those administered by the Departments of Agriculture, Health and Human Services, and Transportation, as well as the Corporation for National and Community Service. In addition, local areas are authorized to add additional partners as local needs may require. All of the Federal Agencies will continue to work together to ensure effective communication and collaboration at the Federal level in support of One-Stop service delivery.

Subpart A—One-Stop Delivery System

1. Structure: Subpart A describes the structure of a One-Stop delivery system. Section 662.100, describes the One-Stop system as a seamless system of service delivery created through the collaboration of entities responsible for separate workforce development funding streams. The One-Stop system is designed to enhance access to services and improve outcomes for individuals seeking assistance. The regulation specifically defines the system as consisting of one or more comprehensive, physical One-Stop centers in a local area. Core services specified in WIA section 134(d)(2) must be provided at the One-Stop center as must access to the other activities and programs provided under WIA and by each One-Stop partner. In addition to the statutory list of core services, States and locals are encourated to add additional core services such as the provision of information relating to the availability of work supports, including, Food Stamps, Medicaid, Children's Health Insurance Program, child support, and the Earned Income Tax Credit. In locating each comprehensive center, Local Boards should coordinate with the broader community, including transportation agencies and existing public and private sector service providers, to ensure that the centers and services are accessible to their customers, including individuals with disabilities.

In addition to the comprehensive centers, § 662.100(d) describes three other arrangements to supplement the comprehensive center. These supplemental arrangements include: (1) A network of affiliated sites that provide one or more of the programs, services and activities of the partners; (2) a network of One-Stop partners through which the partners provide services linked to an affiliated site and through which all individuals are provided information on the availability of core services in the local area; and (3) specialized centers that address specific needs. In essence, this structure may be described as a ''one right door and no wrong door'' approach. One-Stop partners have an obligation to ensure that core services that are appropriate for their particular populations are made available at one comprehensive center, and through additional sites, as described in the local plan and consistent with the local memorandum of understanding (MOU). If an individual enters the system through one of the network sites rather than the comprehensive One-Stop center, the individual may obtain certain services at the network site and must be able to receive information about how and where the other services provided through the One-Stop system may be obtained.

Some commenters expressed concern that the description in § 662.100 emphasizes physical locations rather than the development of systems. The commenters suggested that the regulations be expanded to provide that, in addition to the comprehensive center, it is expected that local areas will build a One-Stop system by developing affiliate relationships with existing public and private sector providers. The commenters further suggested that more examples should be offered as to how the centers and affiliates may mix and match services.

Response: The purpose of § 662.100 is simply to describe the general objectives of the One-Stop system and to identify the required components of that system as well as the alternative designs specified in WIA. While we agree that effective networks connecting the centers and affiliates will generally be critical to the success of the One-Stop system, WIA allows local areas significant flexibility in tailoring the design of the system to best meet local needs. Therefore, rather than include examples as part the requirements of this regulation, we will disseminate information and provide technical assistance about how different local areas have designed effective One-Stop systems.

Commenters also requested clarification that physical co-location at the centers was not required for all of the services provided by a partner's program and that each partner was not required to be co-located at the centers.

Response: The description of the One-Stop system in § 662.100 and the requirements for the provision of services at the centers in § 662.250 make it clear that WIA requires the provision of specified core services at the centers. However, § 662.250(b) specifically provides that the core services may be provided at the centers by the partners in a variety of ways, including agreements with service providers at the centers to provide the core services or the provision of appropriate technology, as alternatives to the co-location of personnel. The extent to which services in addition to the specified core services are provided at the centers and how services are to be provided are matters to be addressed in the local MOU's, and are not specified by WIA. We believe the current provisions are clear on these issues and have not made changes to the regulations.

Some commenters also expressed concern that the description of the One-Stop system did not address access for individuals with disabilities, and suggested that we reiterate the applicability of the Americans with Disabilities Act and Section 504 of the

Rehabilitation Act of 1973 to the One-Stop system.

Response: Section 667.275(a)(3) specifically states that the ADA and Section 504, as well as the nondiscrimination provisions of WIA section 188, are applicable to the One-Stop system as well as the other activities administered under title I of WIA. We believe that, as with other uniform requirements, adding this statement to every affected section of these regulations would be duplicative and potentially confusing. The Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) extensively address this issue.

Subpart B—One-Stop Partners

1. Responsibilities: Subpart B identifies the One-Stop partners and their responsibilities in the One-Stop delivery system. The required partners are entities that carry out the workforce development programs. They are specifically identified in section 121(b)(1) of WIA and § 662.200. Section 662.200(b)(1)(i through vii) separately specifies the programs under title I that are included as required partners. Section 662.200(b)(2)–(12) also identifies the other required programs, with some clarification of the particular provisions of certain Acts (for example, the Vocational Rehabilitation Act and the Carl D. Perkins Act) that authorize the required partner program. Section 662.210 identifies additional partners that may be a part of the One-Stop system.

One commenter suggested that the Governor has the authority under WIA to require that additional partners be included in all the local One-Stop delivery systems in the State and asks that the regulation include such authority. The commenter cites section 112(b)(8)(A) of WIA, which requires the State to describe in the State plan procedures to assure coordination and avoid duplication among specified programs, and section 117(b)(1) of WIA, which provides that the Governor establish criteria for the appointment of members of local boards, as the basis for this authority.

Response: We agree that the provisions cited by the commenter authorize the State to require that additional partners participate as partners in all of the One-Stop systems in the State. This includes the program specified in WIA section 121(b)(2)(B)(i) through (iv) or any other appropriate program under WIA section 121(b)(2)(B)(v). We have added a new section 662.210(c) to clarify that the State does have this authority. The State's authority to identify additional partners to be included in all One-Stop systems does not affect the CEO's authority to include locally-identified human resource programs as One-Stop partners. Under WIA section 121(b)(2), the CEO and Local Board may approve any appropriate Federal, State or local program, including programs in the private sector, for participation as a partner in the local One-Stop system.

Entities—Section 662.220 provides a general definition of the ''entity'' that carries out the specified programs and serves as the partner. In light of the responsibilities of the partners, which are described in § 662.230 and which include decisions about the use and administration of program resources, the regulation defines the ''entity'' as the grant recipient or other entity or organization responsible for administering the program's funds in the local area. The term ''entity'' does not include service providers that contract with or are subrecipients of the local entity. Section 662.220(a) provides that for programs that do not have local administrative entities, the responsible State agency should be the One-Stop partner. In addition, § 662.220(b) (1) and (2) specifies the appropriate entities to serve as partner for the Adult Education and Vocational Rehabilitation programs. Entities that serve as the partner under the Indian and Native American, Migrant and Seasonal Farmworker, and Job Corps programs are identified in the parts of the regulations applicable to those programs (parts 668, 669, and 670 respectively).

One commenter requested two clarifications about the partner representing the Adult Education and Literacy programs under title II of WIA. First, while the regulation specifies that the partner for those programs is the State eligible entity or an eligible provider designated by the State entity, the commenter suggested adding authority for the State entity to designate a consortium of eligible providers as the partner. Second, the commenter suggested clarifying that the State eligible entity also has the authority to designate the individual representing the partner on the local boards, not just the entity.

Response: We agree that the State eligible entity may designate a consortium of eligible providers to serve as the local One-Stop partner and have modified the regulation to clarify this authority. However, we assume that any consortium so designated would have mechanisms in place so that it speaks with one voice on behalf of Adult Education and Literacy programs on issues affecting the One-Stop system. We would not expect that the designation of a consortium would require the Local Board to separately negotiate with each member of the consortium about how the responsibilities of the partner will be carried out.

The second issue is addressed in the preamble discussion of 20 CFR part 661.

Another commenter noted that § 662.220(b)(3) only defines national programs under title I of WIA as required partners if such programs are present in the local area and suggested that the regulation apply the same condition to the other required partners.

Response: We agree that the responsibilities of a required partner apply in those local areas where the required partner provides services. We do not believe WIA was intended to require programs not serving local areas to begin to provide services in such areas, but instead to require collaboration through the One-Stop system in any local area in which such services are provided. While we believe that the vast majority of local areas are currently served by the required partner programs, the regulation is modified to clarify this requirement.

Several commenters also noted that several of the programs identified as required partners may be administered by the same entity in the State or local area and the regulation should indicate that one individual from that entity may represent all such programs on the local board.

Response: This issue is addressed in the preamble discussion of 20 CFR part 661.

Partner Responsibilities—Section 662.230 describes and elaborates on the statutory responsibilities of the partners and identifies the five provisions of the Act that describe these responsibilities. These responsibilities include: (1) Making available through the One-Stop system appropriate core services that are applicable to the partner's program; (2) using a portion of funds available to the partner's program, to the extent not inconsistent with the Federal law authorizing the program, to create and maintain the One-Stop delivery system and to provide core services; (3) entering into an MOU regarding the operation of the One-Stop system; (4) participating in the operation of the One-Stop system; and (5) provide representation on the Local Board.

Several commenters expressed concerns about the required use of a portion of the partners' funds to support the One-Stop system. Some commenters suggested that certain authorizing laws, such as the Perkins Vocational Education Act, would not permit such

use. Other commenters suggested that since the WIA statutory language requires that partner funds be used to ''establish'' the One-Stop system, the regulatory requirement be limited to initial start-up of the system and not include any responsibility to use funds to ''maintain'' the system. In addition, some commenters were concerned about whether we could enforce the use of funds requirement and suggested that unless the partners contributed real resources, the overall WIA vision would not be achieved.

Response: WIA section 134(d)(1)(B) specifically requires all of the required partners to use a portion of their funds to support the One-Stop system. We believe the language providing that the use of the partners' funds not be inconsistent with the authorizing law may affect the particular One-Stop activities the partner may support, but is not intended to nullify this requirement. Several of the core services (e.g., outreach) are authorized under all programs, and each partner should collaborate to ensure that the local One-Stop system is providing workforce investment activities that are of benefit to participants in the partner's program. A portion of the partner's funds is then used to support the system in providing those activities. The details of the particular portion and use of those funds are to be addressed in the MOU. These issues are further addressed in the subsequent regulatory provisions of this subpart.

With respect to the responsibility to assist in maintaining the system, we believe that the requirement in § 662.230(a)(2)(i) that a portion of funds be used to ''create and maintain'' the One-Stop system is the appropriate interpretation of the statutory requirement in WIA section134(d)(1)(B) that a partner use a portion of funds to ''establish'' the One-Stop delivery system. There is nothing in WIA or the legislative history to suggest that ''establish'' refers to a one-time start-up activity. To the contrary, all of the partners' responsibilities apply as long as the One-Stop system is in operation and include participation in the operation of the One-Stop system (WIA section121(b)(1)(B)) and carrying out the MOU that includes the details on the funding of the system (WIA sec. 121(c)). We do not believe that Congress intended that the partners continue to participate in the operation of the one-stop system, but that their responsibility to use funds to support that system terminate as soon as some undefined start-up period is completed. Rather, we believe the only reasonable interpretation is that a required partner's responsibility to use a portion of funds to support the system continues along with the participation of the partner in the system. Therefore, we have not changed this provision of the regulations.

With respect to enforcement of these requirements, we are working with the other Federal agencies to ensure that all partner programs are aware of and carry out these requirements. We believe that full participation in the One-Stop system will be of great benefit to the partners' programs and to their participants, and, therefore, these requirements should be viewed as promoting a comprehensive and effective system of service delivery for each local area.

Section 662.240 addresses the core services applicable to a partner's program that are to be provided through the One-Stop system. Section 662.400(a) lists the core services that are described in section 134(d)(2) of WIA, and defines ''applicable'' to mean the services from that list that are authorized and provided under the partner programs. The extent to which core services are applicable to a partner program, as well as the manner in which services are provided, are determined by the program's authorizing statute.

Some commenters suggested we further define many of the listed core services. For example, one suggestion was to require career counseling to include a discussion of self-sufficiency standards to assist in setting long-term employment goals. Another suggestion was to require additional employment statistics information relating to high wage jobs and employment laws. Other suggestions included adding computer literacy to the initial assessment, and information relating to employment rights to follow-up services.

Response: We believe many of the proposed elements would enhance the provision of services. However, we believe they should be disseminated as technical assistance rather than as regulatory requirements. The purpose of this provision is to identify the list of core services contained in the statute that must be made available through the One-Stop system. The specific elements of these services is a matter that may be addressed in the MOU and should be tailored to meet local needs. Therefore, we have not made any changes to the statutory list of core services under this regulation.

Availability of Services—Section 662.250 describes where and to what extent the One-Stop partners must make available the applicable core services. Since section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical center, the regulation requires that the core services applicable to the partner's program be made available by each partner at that comprehensive center. To avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. While a partner would not, for example, be required to duplicate an assessment provided under the Wagner-Peyser Act, the partner would be responsible for any needed assessment that includes additional elements specifically tailored to participants under that partner's program. We encourage partners to work together at the local level to tailor the initial assessment so that the information taken can provide a gateway to the partner program's more specific requirements. However, it is important to note that the adult and dislocated worker partner programs are required to make all of the core services available at the center (see § 662.250(a)).

Flexibility—Section 662.250(b) also provides significant flexibility about how the core services are made available at the One-Stop center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

Proportionate Responsibility: Section 662.250(c) provides that the responsibility for the provision of and financing for applicable core services is to be proportionate to the use of services at the center by individuals attributable to the partners' programs. Section 662.250(d) further provides that the individuals attributable to a partners' program may include individuals referred through the center and enrolled in the partner's program after the receipt of core services, individuals enrolled prior to the receipt of core services, individuals who meet the eligibility criteria for the partner's program and who receive an applicable core service, or individuals who meet an alternative definition described in the MOU. This ''proportionate responsibility'' provision is intended to provide an equitable principle for sharing cost and service responsibilities among the partners. The regulation provides that the specific method for determining proportionate responsibility (for example, surveys) must be described in the MOU.

Additional Sites—Section 662.250(e) provides that, under the MOU, core services may be provided at sites in addition to the comprehensive center. Therefore, it is not required that partners provide core services exclusively at a One-Stop center. If an individual seeks core services at the One-Stop center rather than at the partner's site, they should be made available to him or her without referral to another location, but a partner is not required to route all of its participants through the comprehensive One-Stop center.

There were a number of comments on these provisions about the availability of core services and proportionate responsibility. Commenters questioned whether the requirement that partners provide core services at the One-Stop center went beyond the statute, and whether proportionate responsibility was required by the statute. Several commenters expressed concern that the concepts of proportionate responsibility and attributable individuals did not provide clear direction. In addition, some commenters requested clarification that not all applicants for a partner's program would be attributable to that program while others suggested the regulation should provide that only individuals enrolled in the program should be attributable. Finally, some commenters were concerned that proportionate responsibility would require undue tracking and recordkeeping.

Response: We believe these regulatory provisions are appropriate interpretations of WIA and the general cost principles enunciated in the relevant OMB circulars. We believe that, read together, the requirements of WIA section 134(c)(1), regarding the actual provision of core services and the provision of access to other services, WIA section 134(c)(2), regarding the accessibility of these services at a physical center, and WIA section 121, requiring that the partners provide the applicable core services, support the requirement that each partner provide the applicable core services at the center. As noted above, such core services may also be provided at other sites in the One-Stop delivery system in addition to being provided at the center. Section 662.250 does include provisions to ensure that there is significant flexibility in the manner in which core services may be provided at the center, and does not require partners to provide those core services at the center that are traditionally provided by the Wagner-Peyser program. The Department, in partnership with other federal agencies will provide additional technical assistance to help implement these requirements. We believe these requirements are essential to ensure that basic information and services relating to workforce development can truly be obtained at ''One-Stop'', and that the partners effectively collaborate to provide a seamless system of service delivery.

The principle of a partner's responsibility for the proportionate use of these services by individuals attributable to the program of the partner is derived from general cost principles of the OMB circulars, as well our interpretation of the WIA provisions relating to the required provision of applicable core services. As noted above, we believe this is an equitable principle that is intended to ensure an appropriate level of participation by the partners in a manner that is fair to the partners. We do not want to prescribe how such proportionate use is to be calculated, but simply to identify options that we believe would be acceptable under the circulars for attributing individuals to a program. The regulation does not require that a particular option be used, only that the methods be described in the MOU. Therefore, whether attribution is based on enrollment in the program or some other basis is a matter to be determined locally among the partners. Tracking and recordkeeping will also be affected by how the local area chooses to determine proportionate use and we do not believe such requirements need be unduly burdensome. Consistent with our principle of writing these regulations to provide maximum State and local flexibility, the regulation seeks to balance the need for Federal guidance to ensure that the objectives of WIA are realized with the need for flexibility at the State and local level to tailor specific approaches to meet local needs. We do not want this flexibility to be used to avoid implementing the changes in service delivery required under WIA, but we also do not want to preclude innovative approaches to implementing those changes. Therefore, we intend to retain the regulatory requirements of this section and offer technical assistance to facilitate implementation.

Access to Services—Section 662.260 provides that, in addition to the provision of core services, the One-Stop partners must use the One-Stop system to provide access to the partners' other activities and programs. This access must be described in the MOU. This requirement is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

Several commenters suggested that we maintain a flexible interpretation of the term ''access'' in § 662.260 when referring to the access to activities and services, other than the core services, that a partner must provide through the One-Stop system. These commenters expressed concern that a partner with a broad array of services could not provide all services at a single One-Stop center, and suggested that we encourage flexible delivery models, such as outstationing of staff or electronic access, to meet this requirement.

Response: We have intentionally not defined what constitutes access to these other activities and services in the regulation and the regulation simply requires each local area to describe how access is provided through the One-Stop system in the MOU. We believe access is intended to go beyond the mere listing of a program and location, but instead that the One-Stop will provide added value by assisting customers to identify the services and programs that may best meet their particular needs and by arranging to obtain such services. Co-location of certain services at the center may be the most user-friendly approach to providing access in some areas, while other areas may rely more on electronic and other affiliate connections to ensure access. That is a matter to be determined among the partners in the local area through the MOU and this section of the regulation retains that requirement.

2. Cost Sharing: Section 662.270 provides that the particular arrangements for funding the services provided through the One-Stop system and the operating costs of the One-Stop system must be described in the MOU. Each partner must contribute a fair share of the operating costs based on the use of the One-Stop delivery system by individuals attributable to the partner's program. This is an equitable principle and there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB circulars. To promote efficiency and optimal performance, partner contributions for the costs of the system may be re-evaluated annually through the MOU process. This regulation identifies a number of methodologies, including cost pooling, indirect cost allocation, and activity based cost allocation plans, that may be used. The Department, in consultation with other affected Federal agencies, issued guidance. The guidance was published in the **Federal Register** on June 27, 2000.

There were numerous comments about this section. Many of the comments about the requirement that each partner contribute a fair share to the operation of the One-Stop system based on proportionate use of the system by individuals attributable to the program of the partner were the same as or similar to the comments on proportionate responsibility under § 662.250. Some commenters suggested that the methodology for allocating costs of the One-Stop system be strengthened and clarified. Some commenters suggested prescribing particular approaches, such as requiring cost sharing only be based on real costs directly attributable to the use of One-Stop center space and utilities when the partners are co-located, while others suggested limiting the methods for attributing individuals to a program to services received after enrollment in the program. Some commenters suggested that the regulation provide for pooling of overhead costs and proportionate allocation of service costs. Some commenters expressed concern that the multiple cost allocation methodologies identified in the regulation were at odds with the proportionate use approach, while others expressed concern that the proportionate use approach required extensive recordkeeping and tracking. Some commenters stressed the need for time to determine baseline percentages of how many people each partner serves relative to the total traffic and suggested that we provide additional guidance on developing baselines. A commenter expressed concern that a proportionate cost allocation approach could cause discord and undercut collaboration and co-location, while other commenters expressed concern about whether this approach could be enforced.

In addition, some commenters suggested clarifying that operating costs include both administrative and programmatic costs. Other commenters suggested that the regulations allow the fair share to be contributed ''in-kind''. Some commenters suggested removing the multiple methodologies described in the regulation while others expressed concern that without more specific requirements title I programs would end up paying all the costs.

Some commenters expressed concern that reliance on the OMB circulars based on benefit to the program would be a barrier to One-Stop delivery and suggested a new circular that would promote integrated service delivery should be developed. A number of commenters indicated that it was important that Federal agencies work together to present a coherent message in support of sharing costs and integrating programs and that technical assistance be provided to facilitate the development of acceptable cost allocation methodologies.

Response: We believe that the ''fair share'' requirement of this regulation is the appropriate interpretation of the WIA provisions relating to the contributions of the One-Stop partners and the applicable OMB circulars. The regulation is intended to identify each partner's responsibility to contribute to the operation of the system based on proportionate use, while allowing each local area significant flexibility in providing how that contribution is to be determined. While prescribing a more detailed methodology may provide clearer direction and facilitate more rapid resolution of the cost allocation issue at the local level, it would also significantly limit the ability of each local area to tailor the arrangements to meet their particular needs. Therefore, we believe that the ''fair share'' requirement is a reasonable and flexible standard that should be retained and supplemented by technical assistance that will inform local areas of acceptable approaches in more detail. The cost allocation and resource sharing guidance published in the **Federal Register** by the Department, in consultation with the Federal partner agencies, on June 27, 2000, addresses this issue in more detail.

The proportionate use standard is not intended to be rigid and we do not believe the multiple methodologies identified in the regulation are inconsistent with that standard. The various methodologies offer different approaches that may be used in implementing these requirements. As indicated with respect to § 662.250, we do not believe that this standard necessarily requires extensive tracking and recordkeeping. The burdens attendant to the adoption of a particular cost allocation method are a legitimate factor to be considered in negotiating MOU's. We believe that local areas have the flexibility to refine and modify the cost allocation procedures as more experience is gained. For example, there is the flexibility to refine the development of baselines on proportionate use over time, and such adjustments may be facilitated if the funding arrangements in the MOU are revised annually.

Contrary to the concern that the proportionate use standard will promote discord and deter co-location and collaboration, we believe that standard provides an equitable framework which should assist local areas and partners in reaching agreement and within which a more detailed methodology may be developed that supports the particular design of the One-Stop system in each area. With respect to enforcement, we are working with other Federal agencies to develop models of acceptable methodologies and to assist in ensuring that partners are aware of the opportunities of the One-Stop delivery system and of their responsibilities under WIA.

On the question of the kinds of operating costs of the One-Stop system for which the One-Stop partners must contribute, we believe those costs are the common costs of operating the One-Stop system, and could include such items as space and occupancy costs, utilities, common supplies and equipment, a common receptionist, and other shared staff. However, these common costs will vary depending on the design of the One-Stop system and we intend to address these costs as part of the technical assistance that we are developing in partnership other federal agencies. Therefore, we have not modified the regulation to further define these costs.

On the question of whether the contribution of the partners to the operating costs of the One-Stop system may be ''in-kind,'' which we understand to mean provided with resources other than cash, we understand that the OMB circulars recognize the provision of noncash resources as acceptable in meeting certain costs. However, the contributions of partners may also consist of cash resources, or a mixture of cash and noncash resources. Rather, the determination regarding the forms of the contributions is a matter to be determined locally through the MOU negotiation process, taking into account the needs of the One-Stop system to ensure customer-friendly access to services and the proportionate responsibility of and resources available to the partners. We also intend to address this issue in the technical assistance we will provide with other agencies and have not modified the regulation.

On the issue of reliance on the OMB circulars, while the circulars do set parameters that relate the allocation of costs to the benefit received by a program, we believe they also allow flexibility to develop cost allocation methodologies that support integrated service delivery. We do not expect the issuance of a new circular to address One-Stop delivery, but, as noted above, we are working with OMB and other agencies to identify cost allocation methodologies that will be useful in a One-Stop environment.

Finally, we agree with the comment about the importance of Federal

agencies working together in support of cost sharing and integrating programs. There have been significant joint efforts to assist in implementing WIA, including issuance of the streamlined unified planning guidance, and other joint communications designed to assist the partners in working together. This effort includes the joint technical assistance being prepared on cost allocation methodologies and additional ongoing activities intended to assist in the implementation of the other elements of the One-Stop system.

Allocation Process—Section 662.280 clarifies that the requirements of each partner's authorizing legislation continue to apply under the One-Stop system. Therefore, while the overall effect of linking One-Stop partners in the One-Stop system is to create universal access to core services and to facilitate access to partner services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under the program. As noted above, consistent with this principle, there are a variety of methods for allocating costs among programs. This regulation is intended to clarify that participation in the One-Stop delivery system is a requirement that is in addition to, rather than in lieu of, the other requirements applicable to the partner program under each authorizing law.

There were several comments suggesting that we reiterate in several different sections of part 662 that the requirements of the laws authorizing the programs of the partner continue to apply. For example, commenters suggested that § 662.260, on access to services and § 662.300, on MOU's, be revised to specifically provide that the requirements of the laws authorizing the programs of the partner continue to apply.

Response: We believe that § 662.280 effectively describes the continued applicability of the requirements of the authorizing laws and have not repeated this language in other sections except where the underlying statutory provision specifically makes reference to consistency with the authorizing laws. We have made no change to the regulations.

Subpart C—Memorandum of Understanding (MOU)

Subpart C describes the requirements relating to the local Memorandum of Understanding MOU that governs the operation of the local One-Stop system. Section 662.300 addresses the contents of the MOU that must be executed between the Local Board, with the agreement of the local elected official, and the One-Stop partners. The MOU must describe the services to be provided through the One-Stop delivery system, the funding of the services and the operating costs of the system, the methods for referring individuals between the One-Stop operators and the partners and the duration of and procedures for amending the MOU. The MOU may also include other provisions about the operation of the One-Stop system that the parties consider appropriate. For example, the parties may use the MOU to address the coordination of equal opportunity responsibilities such as the handling of discrimination complaints or other grievances relating to the One-Stop system.

Section 662.310 provides that the local areas may develop a single umbrella MOU covering all partners and the Local Board, or separate MOU's between partners and the Local Board. In many areas, the umbrella approach may be the preferred means to facilitate a comprehensive and equitable resolution of the operational issues relating to the One-Stop, adding information specific to each individual partner organization. The regulation also emphasizes that it is a legal obligation for the partners and the Local Board to engage in good faith negotiation and reach agreement on the MOU. The partners and the Local Boards may seek the assistance of the appropriate State agencies, the Governor, State Board or other appropriate parties in reaching agreement. The State agencies, the State Board and the Governor may also consult with the appropriate Federal agencies to address impasse situations. If an impasse has not been resolved, in addition to any programmatic remedies that may be taken, parties that fail to execute an MOU may not be permitted to serve on the Local Board. In addition, if the Local Board has not executed an MOU with all required parties, the local area is not eligible for State incentive grants awarded for local coordination.

Several commenters suggested that the regulation provide that only required partners ''in the area'' must enter into the MOU and also requested clarification as to whether optional partners were required to enter into MOU's.

Response: We agree that a required One-Stop partner must enter into an MOU only in those local areas in which the partner's program provides services. However, that condition also applies to carrying out the other responsibilities of a required partner, and, as described above, we have modified section 662.220(a) to clarify that condition. We do not believe it is necessary to repeat that condition in this section. We also believe the intent of WIA section 121 is that optional partners must be included in the MOU, or execute a separate MOU with the Local Board, to become part of the One-Stop system. Since the MOU describes the operational details of the One-Stop system, we believe WIA intends that the MOU also be the vehicle for addressing the specified issues of services, costs, and referrals with the optional partners. WIA section 121(c) refers to One-Stop partners as parties to the MOU without distinguishing between required and optional partners. However, we note that the regulation similarly refers to One-Stop partners generally and is not limited to required partners. We therefore do not believe it necessary to modify the regulation.

Some commenters indicated that the involvement of the chief elected official was critical to the successful development and implementation of MOU's and expressed concern that while the agreement of the chief elected official to the MOU was required under § 662.300, the chief elected official was not identified as a party to the MOU in § 662.310.

Response: We agree that the chief elected official has a significant role to play in facilitating the development, completion and operation of the MOU's. This role is explicit in WIA section 121(c), which provides that the Local Board is to develop and enter into MOU's with the agreement of the chief elected official. This role is included in § 662.300 and we are adding similar language to § 662.310. In addition, the chief elected official will often have authority over many of the title I One-Stop partners in the role of grant recipient/fiscal agent for the adult, dislocated worker and youth programs and may play an important role in ensuring that those partners contribute to the effective development and implementation of MOU's.

Some commenters stated that strong guidance and support for MOU's at the State level was essential and that a strategy should be developed to monitor and evaluate MOU's at the State and local levels. Other commenters suggested that local systems would benefit from MOU's that offer incentives or penalties to required partners depending on their performance relative to systemize performance. These commenters also suggested that the regulations should provide incentives to Governors to make MOU's and partnerships strong at the outset so that

regulatory effort need not be spent on developing sanctions and penalties for those who fail to perform as intended. Several commenters questioned whether the sanctions specified in the regulation for failure to execute an MOU were consistent with WIA, arguing that WIA requires that partners be represented on the Local Board without reference to whether or not they have executed an MOU, while other commenters suggested that exceptions to the sanctions be allowed by the regulation where a party has exhibited good faith.

Response: We agree that the Governor and the State have a critical role to play in facilitating the execution of local MOU's. That role is reflected in the requirement in WIA section 112(b)(14) that the State plan describe the strategy of the State for assisting local areas in the development and implementation of fully operational One-Stop delivery systems. The regulation also identifies a State role in assisting local areas to reach agreements on the MOU. We do not believe the regulations need to provide additional incentives for the State to promote strong MOU's since the development of MOU's will generally be critical to enabling local areas and the State to obtain the performance outcome levels needed to qualify for Federal incentive payments. The State also has a significant role since many of the parties to the MOU will be State agencies under the direction of the Governor. We believe it is important that the Governor work with those agencies and with localities to ensure that effective MOU's are executed and implemented. We agree, however, that the suggested inclusion in the MOU of performance-based incentives or penalties, whether based on the relative performance of partners or their shared performance, may be useful in many local areas. We are willing to assist in the development of performance-based provisions that meet relevant legal requirements while promoting State and local objectives. However, we do not believe the regulation needs to contain incentive or penalty provisions since WIA and the regulations already provide for the addition of provisions that the parties deem appropriate.

With respect to the sanctions identified in § 662.310(c), we believe it is reasonable to interpret the reference to representatives of the One-Stop partners on the Local Board in WIA section 117(b)(2)(A)(vi) as referring to those One-Stop partners that meet the requirements for being partners in the local One-Stop system, including executing the MOU. Since the MOU is the vehicle through which the partner's role in the local system is detailed, the inability to reach agreement on that role means that an entity has not assumed the role of a One-Stop partner in that local system for purposes of representation on the Local Board.

On the question of allowing a ''good faith'' exception that would permit local areas to be eligible for a State coordination incentive grant even if the area has not executed an MOU with all required partners, we believe that such grants are only intended to be awarded to areas that demonstrate exemplary coordination activities that are in addition to meeting the minimum requirements for coordination under WIA. We believe that incentive grants are not intended to be awarded to areas that are unable to meet the minimum requirement that the local area have an MOU executed with all required partners, even if the Local Board has acted in good faith in attempting to reach agreement.

We also believe it should be noted that the sanctions specified in § 662.310(c) are in addition to rather than in lieu of any other remedies that may be applicable to the Local Board or to each of the partners for failure to comply with the Federal statutory requirement that they execute an MOU and have clarified this point in the regulation.

Some commenters suggested that the regulation specify that the details of the assessments of individuals seeking services through the One-Stop system be described in the MOU and that we set parameters that will help the States and localities reach agreement on assessment goals, tools and processes.

Response: We agree that the MOU is a vehicle that local areas should use to coordinate how assessments and other services are to be carried out in the One-Stop system. We will work with other Federal agencies and interested State and local partners to provide technical assistance that promotes agreement on and enhances how assessments and other services are delivered. However, we believe that WIA allows States and localities significant flexibility in determining how, consistent with the Federal authorizing laws, such services are carried out and coordinated and, therefore, do not believe it is appropriate to establish parameters for these services in the regulations.

Some commenters suggested that the regulation be modified to require that the MOU's contain specific information on staffing arrangements, including assignment and supervision of staff, staff training and related personnel policies. In addition, these commenters suggested that the regulation require written concurrence from appropriate labor organizations when such arrangements affect their members or a collective bargaining agreement. These commenters also suggested that the MOU contain the assurances described in WIA section 181(b)(7) prohibiting the use of funds to assist, promote, or deter union organizing.

Response: We believe the MOU may be an appropriate vehicle to address certain personnel issues in many local areas. Section 652.216 of these regulations, governing the Wagner-Peyser Act, provides that personnel matters for the State merit staffed employees funded under the Wagner-Peyser Act are the responsibility of the State agency, although, as part of the MOU, Wagner-Peyser funded employees may receive guidance on the provision of labor exchange services from the One-Stop operator. However, we do not believe it would be appropriate to mandate that additional personnel issues be addressed in the MOU. The determination of the extent to which such issues are addressed in the MOU remains with the parties to the MOU under this regulation.

WIA section 181(b)(2)(B) provides that activities carried out with funds under title I of WIA must not impair collective bargaining agreements and that no activity inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned. Therefore, to the extent an MOU provides that title I funds be used in a manner inconsistent with a collective bargaining agreement, written concurrence is required. However, we do not believe it is necessary to restate this requirement in this section of the regulation since this requirement applies to all activities undertaken with title I funds.

Similarly, the prohibition on the use of title I funds to assist, promote or deter union organizing is applicable to the use of all WIA title I funds. However, since this prohibition applies to all WIA-funded activities, we do not believe that WIA requires that an assurance regarding this prohibition be written into each MOU. Local areas may be prudent in doing so, but the regulation has not been modified to require that the MOU contain such a written assurance.

Several commenters suggested that the final rule require MOU's to be available for public review and comment before execution, particularly to training providers.

Response: WIA section 118(b)(2)(B) requires that the MOU's be part of the local plan that is subject to public

review and comment requirements. We believe this requirement ensures public review and that an additional regulatory requirement is unnecessary. However, we do encourage local areas to provide significant opportunities for public input regarding the form and contents of the MOU as early in the process as is possible.

Several commenters suggested that, due to potential shifts in the annual appropriations affecting the programs of the partners, the regulation require annual review of the MOU's by the parties. Other commenters suggested that due to the difficulty in reaching agreement and the need for stability, the regulation clarify that multi-year agreements are permissible.

Response: Section 662.300(b) provides, as does WIA section 121(c)(2)(A)(iv), that the duration of the MOU, and the procedures for modification, must be addressed in the MOU itself and does not prescribe an annual review process. Section 662.310(a) indicates that, in light of the annual appropriations process, the financial agreements ''may'' be negotiated annually, but also allows a multi-year agreement. We believe these provisions are appropriate interpretations of WIA and have not modified the regulations.

Subpart D—One-Stop Operator

This subpart addresses the role and selection of One-Stop operators. One-Stop operators are responsible for administering the One-Stop centers and their role may range from simply coordinating service providers in the center to being the primary provider of services at the center. The role is determined by the chief elected official. In areas where there is more than one comprehensive One-Stop center, there may be separate operators for each center or one operator for multiple centers. The operator may be selected by the Local Board through a competitive process, or the Local Board may designate a consortium that includes three or more required One-Stop partners as an operator. The Local Board itself may serve as a One-Stop operator only with the consent of the chief elected official and the Governor.

This subpart also addresses the ''grandfathering'' of existing One-Stop operators. Section 662.430 provides some continuity for areas that have already established One-Stop systems while ensuring that fundamental features of the new One-Stop system are incorporated. A local area does not have to comply with the One-Stop operator selection procedures if the One-Stop delivery system, of which the operator is a part, existed before August 7, 1998 (the date of the WIA's enactment). However, that One-Stop system must be modified to meet the WIA requirements about the inclusion of the required One-Stop partners and the MOU.

Some commenters suggested that the regulations be modified to allow for a system operator (rather than separate center operators) that may be responsible for the coordination of the entire local one-stop system, or the maintenance and development of the linkages and technology between centers.

Response: While WIA section 121(d) refers to the operator primarily in connection with the operation of centers, we believe that the law does not preclude the expansion of that role to include additional coordination responsibilities relating to the One-Stop system. The particular role may vary depending on the design of the local system. We have modified section 662.410(c) to include the possibility of broader One-Stop operator coordination responsibilities.

Several commenters suggested that the regulations be modified to clarify that the public must have the opportunity to review and comment on documents relating to the selection of a One-Stop operator if a competitive selection process is used.

Response: WIA section 117(e) contains a general sunshine provision that requires the Local Board to make available on a regular basis information regarding its activities, including information on the designation and certification of One-Stop operators. This requirement applies to whatever designation process is used by the local area, whether it be competitive or an agreement with a consortium. Section 662.420(b) referred to this requirement only in connection with the designation of the Local Board as the operator and the designation of an existing operator. We have removed the reference in § 662.420(b) and have modified § 662.410 to clarify that the Local Board's sunshine provision, which is now described in § 661.307, applies to all designations and certifications of One-Stop operators.

Some commenters suggested that the regulation describe the various financial assistance agreements that may be made with the One-Stop operator following the selection process. Specifically, the commenters suggested that the regulation identify grants, cooperative agreements, and procurement contracts as the alternative arrangements and identify the OMB circulars that apply to each arrangement.

Response: We believe that the fiscal and administrative rules relating to the use of WIA title I funds, including the use of such funds to support the One-Stop operator, are appropriately described in 20 CFR 667.200 and need not be restated in each section of the regulations to which they are applicable.

Some commenters suggested that we should encourage the grandfathering of One-Stop operators that were designated pursuant to a collaborative process. These commenters also suggested that § 662.430 appears to impose more requirements on the grandfathering of existing One-Stop operators than apply to new designations and that those requirements should be uniform.

Response: We believes that WIA provides options for the designation of One-Stop operators and intends for each local area to determine the approach that best meets local needs. We will disseminate information relating to the experience of local areas that have used each of the allowable options. We will also modify this regulation to clarify that the only difference between One-Stop systems that choose to grandfather the One-Stop operator and systems that designate the operator pursuant to competition or consortium agreement is the selection process. The WIA requirements relating to the inclusion of required partners, the provision of services, and the execution of the MOU's apply to all One-Stop systems, including those with operators retained under the grandfathering provision. Such systems must be modified, to the extent necessary, to comply with all WIA requirements regarding the One-Stop system. We have modified § 662.430 to make these distinctions clearer.

Part 663—Adult and Dislocated Worker Activities Under Title I of the Workforce Investment Act

Introduction

This part of the regulations describes requirements relating to the services that are available for adults and dislocated workers. The required adult and dislocated worker services, described as core, intensive, and training services, form the backbone of the One-Stop delivery system for services to two workforce program customers, job seekers and employers. The WIA goal of universal access to core services is achieved, among other strategies, through close integration of services provided by the Wagner-Peyser, WIA adult and dislocated worker partners and other partners in the One-Stop center and system. Intensive and

training services are available to individuals who meet the eligibility requirements for the funding streams and who are determined to need these services to achieve employment, or in the case of employed individuals, to obtain or retain self-sufficient employment. Supportive services, to enable individuals to participate in these other activities, including needs-related payments for individuals in training, may also be provided.

These regulations also introduce the Individual Training Account (ITA), which is a key reform element of the Workforce Investment Act. Individuals will now be able to take a proactive role in choosing the training services which meet their needs. They will be provided with quality information on providers of training and, armed with effective case management, an ITA as the payment mechanism. These tools will enable them to choose the training provider that best serves their individual needs.

Along with part 664, this part contains most of the program service requirements that apply to WIA title I formula funds. WIA provides States and local areas with significant flexibility to deliver services in ways that best serve the particular needs of each State and local communities. These regulations support that principle; wherever possible, program design options and categories of service are defined broadly. States and local areas are reminded that they must use that flexibility in a manner that broadens the opportunities available under the Act to all customers. Recipients of financial assistance under WIA title I must be mindful of their responsibilities under the nondiscrimination provisions of section 188, and must not unfairly exclude individuals from opportunities or otherwise make decisions based upon race, color, religion, sex, national origin, age, political affiliation or belief, disability status, or citizenship. The Department published comprehensive regulations implementing section 188 at 29 CFR part 37. 20 CFR 667.275 makes clear that all recipients of financial assistance under WIA title I must comply with 29 CFR part 37 when exercising the flexibility provided by WIA and this Final Rule.

Subpart A—One-Stop System

1. Role of the Adult and Dislocated Worker Programs in the One-Stop System: Section 663.100 provides that the One-Stop system is the basic delivery system for services to adults and dislocated workers. The concept of a single system that provides universal access to certain services to all individuals age 18 or older is a key tenet of the Workforce Investment Act. The regulation reflects the emphasis in WIA to consolidate and coordinate services. The grant recipient(s) for the adult and dislocated worker program becomes a required partner of the One Stop system, and is subject to 20 CFR 662.230 regarding required partner responsibilities, including serving on the Local Board. Access to services through the One-Stop system ensures that individual needs are identified and, to the extent possible, met. The consolidation of and access to services will result in improved services for both adults and dislocated workers.

One comment on § 663.100 noted that adult and dislocated worker programs are separate activities with separate funding streams, and asked whether they might each have separate representatives on the Local Board.

Response: We understand that the heading for § 663.100 may be misleading, in that it may be read to imply that there is a single program serving adults and dislocated workers, which is clearly not the case. As accurately noted by the commenter, these are separate programs with separate funding streams. Accordingly, we have revised the headings and regulatory text in §§ 663.100, 110 and 115 to pluralize the word ''Program,'' to more accurately reflect the discrete nature of the two programs. On the matter of separate representation for each of these programs on the Local Board, we feel the rule already sufficiently addresses this issue in the Local Governance provisions at 20 CFR 661.315, and 662.200(a), concerning the required One-Stop partners. These sections make it clear that the Local Board must have at least one member representing each One-Stop partner program—including the Adult and Dislocated Worker programs. The CEO may select one member to represent the Adult program and a different member to represent the Dislocated Worker program. Or, under new paragraph 661.315(f), the CEO may select one member to represent both of those programs, if that member meets all the criteria for representation for each program. Accordingly, no change has been made to the Rule.

Another commenter observed that Individual Training Accounts were the only method for providing training specifically referenced in § 663.100(b)(3) and suggested that the Final Rule also list all training services, including contract training, OJT, and customized training.

Response: The purpose of § 663.100 is to highlight the key facets of the Adult and Dislocated Worker programs in the One-Stop delivery system, one of which is the establishment of ITAs. Since the purpose of this provision is to highlight ITAs as an important component of the new workforce investment system, rather than to clarify the types of training that may be provided under the adult and dislocated worker programs, no change is being made to the regulations. Section 663.300 clarifies that training services are listed in WIA section 134(d)(4), and that the list is not all-inclusive and additional training services may be provided.

2. Registration and Eligibility: Sections 663.105 through § 663.115 address registration and basic eligibility requirements. These sections provide general guidance in the regulation at § 663.105 on when adults and dislocated workers must be registered. Sections 663.110 and 663.120 contain the basic eligibility criteria for adults and dislocated workers, respectively.

Registration is an information collection process that documents a determination of eligibility. It is also the point at which performance accountability information begins to be collected. Individuals who are seeking information and who, therefore, do not require a significant degree of staff assistance, do not need to be registered. Accordingly, of the core services listed in the Act, only staff assisted services such as individualized job search services, career counseling, and job development will automatically require registration. Additional core services offered at the discretion of the State and Local Boards, and not listed in the Act, may or may not require registration, depending on the degree of staff assistance involved, and other established local policies. Participation in any intensive or training service, whether those specifically listed in the Act, or another offered at the State or Local Board's discretion, will always require registration.

In addition to the responsibility to register participants, EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient. See 29 CFR 37.4 (definition of ''applicant'') and 29 CFR 37.37(b)(2). The point at which such personal information should be collected is within the recipient's discretion; however, the recipient's request for and receipt of that information with regard to a specific individual triggers the accompanying responsibility to collect EO data at the same time. The EO data

must be maintained in a manner that allows the individuals from whom the data was collected to be identified, and that ensure confidentiality. This responsibility is separate from, and might not arise at the same point in the process, as the registration responsibility. We will issue further guidance on this data collection requirement. Further, all requirements of WIA Section 188 and 29 CFR part 37 must be followed during the registration and eligibility determination process to ensure non-discrimination in the assessment process.

Additional information needed to determine eligibility for assistance other than Title I of WIA available at the One-Stop site may also be determined at the same time. Program operators should determine what information they need for cost allocation purposes and when they can most efficiently collect it. Electronic records systems allow information to be collected incrementally as higher levels of assistance are provided.

One commenter felt that the rule at § 663.105(b), which requires registration for any service other than self-service or informational activities, is in conflict with the goal of universal access.

Response: There has been confusion over the issue of precisely when participants must be registered. For the core services listed in the Act, only those core services that are not informational and for which the participant requires significant staff-assistance, such as follow-up services, individual job development, job clubs and screened referrals, will require registration under title I of WIA. This interpretation preserves the goal of universal access and makes the services delivery process as customer-friendly as possible, consistent with the legislative requirements of performance accountability. All persons will have access to core employment-related information and self-service tools without restrictions or additional eligibility requirements. No change has been made to the Final Rule. Additional information on the issue of registration under title I of WIA is contained in Training and Employment Guidance Letter (TEGL) 7–99 which can be accessed at www.usworkforce.org.

We received many comments expressing concern that there is no mechanism in the regulations to ensure that unregistered individuals receiving informational and self-help core services are benefitting from those services. Two comments suggested that One-Stops should either be required to track these individuals' outcomes or that the Department itself engage in some sort of periodic tracking. Another commenter questioned whether a State could collect this information independent of a regulatory requirement to do so.

Response: While we have chosen not to require registration or collection of outcomes information for those using only self-service or informational activities, this does not preclude States and One-Stop operators from collecting a variety of other information about service use, customer outcomes consistent with rules governing confidentiality, and/or customer satisfaction if they so choose. We strongly encourage States and local areas to seek customer feedback regarding the quality of services available, in order to further their continuous improvement efforts. Finally, local areas may also choose to have less formal tracking mechanisms which fall short of official registration, including paper-based or electronic ''sign-in'' when individuals enter the center. Realizing that some assessment of the value of these services is important for determining what resources are devoted to these types of activities we will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

We also received comments which argued that the existing data collection requirements are too burdensome and should be limited. In addressing the data collection requirements in the regulations, we have attempted to strike a reasonable balance which satisfies our reporting needs under WIA without over-burdening States and local areas. No change has been made to the Final Rule in response to these comments. We issued a **Federal Register** notice on WIA title I reporting requirements on April 3, 2000. The purpose of the notice was to solicit comments concerning the new management information and reporting system including the WIA Standardized Record Data, the Quarterly Summary Report and the Annual.

One commenter suggested that, in order to avoid redundancy, individuals eligible for TAA, or NAFTA–TAA, or those referred from the Worker Profiling and Reemployment Services initiative, should automatically be eligible for dislocated worker services and should be specifically included in § 663.115 in the Final Rule.

Response: We agree that most workers certified as eligible for the TAA and NAFTA–TAA programs will also meet the Act's definition of dislocated workers. To determine dislocated worker eligibility, the One-Stop operator must have sufficient information from which to make that determination, and in States with common intake systems, no further collection of registration information may be required in order to determine eligibility. One of the key reforms of WIA is streamlining customer services, and we would encourage local areas to examine methods through which they can determine eligibility for multiple programs at one time, through the coordination of One Stop Center partner activities. We further recommend that TAA and NAFTA–TAA certified workers who qualify as dislocated workers should also be enrolled under Title I of WIA. By doing this, those TAA and NAFTA–TAA workers who are determined to be in need of intensive, supportive or training services would be able to receive any of these services that cannot be provided under the TAA or NAFTA–TAA programs under Title I of WIA. Procedures to govern these processes should be part of the MOU's developed between WIA partners, in accordance with the dislocated worker eligibility determination procedures described in § 663.115(b) of these regulations.

Acceptance of profiled and referred Unemployment Insurance (UI) claimants as eligible dislocated workers is a decision to be made by Governors and Local Boards consistent with the definition at WIA Section 101(9). The policies and procedures established by Governors and Local Boards may include a policy that the UI profiling methodology and referral process meets the criteria in WIA Section 101(9). In such instances, no further documentation would be needed to establish the ''unlikely to return'' criterion at WIA section 101(9)(A)(iii). Other eligibility criteria could also be documented by the unemployment compensation system through this process. Since acceptance of TAA, NAFTA–TAA and UI profiling data to prove eligibility are matters for State or local decision, no change has been made to the Final Rule.

One comment suggested that language be added to § 663.105 in the Final Rule permitting the use by One-Stops of intake application data and other information collected by non-WIA funded providers for registration and eligibility determination.

Response: We support the goal of developing common intake systems that can be used across a variety of programs and which eliminate redundancy of data collection and encourage States and local areas to develop such systems. We

think that these activities are an essential part of the reforms envisioned by WIA and the creation of the One-Stop system and can lead to improved efficiency for program operators and better customer service. One Stop partners must work cooperatively to develop procedures, outlined in the MOU's, which will facilitate such streamlining. At the Federal level we are working with other Federal agencies to develop common definitions and data elements to facilitate this process. Since the integration of intake systems is currently permissible under the regulations as long as all necessary data is collected, no change has been made in the Final Rule.

Another comment suggested State and Local Boards should be prohibited from developing dislocated worker definitions that exclude groups of workers based on their industry, occupation, or union affiliation.

Response: In considering the procedures for determining eligibility, we believe that need for services should be based on individual circumstances, and that State and locally developed definitions must be consistent with WIA section 101(9). There is no language in that Section that we interpret as authorizing an eligibility definition based on industry or union affiliation, thereby allowing any exclusions based on the same. We strongly agree that workers should not be prohibited from receiving services based on their union affiliation. Blanket exclusions based on industry or occupation are too general to accommodate individual needs and unique situations. It should also be noted that the union representative as well as other members of the Local Board have an opportunity to raise concerns regarding consideration of such blanket eligibility decisions, through the WIA ''sunshine provisions'' in sections 111 and 117 and described in new §§ 661.207 and 661.307, governing Board activity, and through the required public comment process.

Many comments from the Vocational Rehabilitation system suggested that eligibility for Vocational Rehabilitation services must remain a distinct concept from eligibility determination for services under Title I of WIA.

Response: While we acknowledge there are separate eligibility criteria for the two programs, we see no need for additional regulatory language on this issue. 20 CFR 662.280 clearly addresses this issue and states that the eligibility requirements of each One-Stop partner's program continue to apply. Additionally, the resources of each partner may only be used to provide services that are authorized and provided for under the partner's program, to individuals that are eligible under such program. We encourage local One-Stops to maximize coordination arrangements which promote convenient and accurate eligibility determination for individuals with disabilities who may need Vocational Rehabilitation services, while maintaining the integrity of the One-Stop Center's integrated service strategy. One benefit of a closely coordinated One-Stop system is increased administrative efficiency, as well as more seamless service to the customer, through the use of common intake systems. Moreover, we emphasize that under 29 CFR 37.7, individuals with disabilities should be served through the same channels as individuals without disabilities, receiving reasonable accommodation as appropriate under 29 CFR 37.8.

Several commenters noted that, under § 663.115, Governors and Local Boards are allowed to develop policies and procedures for the interpretation of the dislocated worker eligibility criteria, and asked how disputes between these parties would be resolved.

Response: While we provide technical assistance on matters of legislative and regulatory interpretation, we look to the State and Local Boards to develop a process to avoid, and if necessary resolve any disagreements. Under 20 CFR 661.120, local policies must be consistent with established State policies, as well as the Act and the regulations. Thus, while Local Boards may develop policies which supplement State policies, they may not adopt policies which conflict with State policies. No change has been made to the Final Rule.

One comment stated that dislocated worker programs serving union members must consult the union in the design and implementation of those programs.

Response: Unions are well-positioned to understand the needs of their members and can be a valuable resource in the design of effective dislocated worker programs. WIA requires that organized labor participate in the development and design of available services to dislocated workers, through their representation on State and Local Boards. Additionally, the public, including the organized Labor community, must have an opportunity to review and comment on the proposed design of programs serving dislocated workers, as part of the plan review and approval process. State and Local Boards are encouraged to use input from all key stakeholders, including employees, their representatives, and employers, and to work collaboratively with them when designing services. It is up to the governance structure at the Local level to set procedures to ensure this input is considered in program planning. Accordingly, no change has been made to the Final Rule.

One commenter requested that the regulations provide that where the Local Board wishes to pursue training services not listed in the Act, that such services must be identified in the Local Plan, and that a review process that includes consultation with labor organizations whose members have skills in the specific training being proposed by the One-Stop operator, prior to funding such activities.

Response: The Act, at section 118(b), provides, among other things, that the Local Plan identify the current and projected employment opportunities in the local area, and the job skills necessary to obtain such employment opportunities. Although the Act does not include ''formal'' consultation with labor organizations whose members have skills like those in which training is proposed, such issues may be addressed as part of the development of the Local Plan, and the public plan review and approval process. Local Boards include representatives of labor organizations who will participate in the development of the Plan, and therefore in the design of training activities to be conducted in the local area. Additionally, the Act, at section 118(b)(7), provides that the Local Plan include a public comment process which includes an opportunity for representatives of labor organizations to provide comments on the Plan, and input into the development of the Local Plan, prior to its submission. In addition, 20 CFR 667.270 provides safeguards to ensure that participants in WIA training activities do not displace other employees. No change to the Final Rule is necessary.

Another commenter suggested that we amend the regulations to require One-Stop operators to consult with the appropriate labor organizations whose members have skills in the area in which the OJT or customized training is proposed in the development of the training contract. The comment does not limit this consultation to circumstances where a collective bargaining agreement is in effect.

Response: WIA section 181(b)(2)(B) requires consultation, and written concurrence of the labor organization and employer, where the proposed training would impair an existing collective bargaining agreement. It does not address consultation in other circumstances. We believe, however,

that informal consultation with organized labor on the nature and scope of proposed OJT or customized training can help to ensure its quality and relevance. The labor representative(s) on the Local Board is in an ideal position to establish policies about the consultation role of organized labor and to help identify situations where appropriate labor organizations should be consulted in the development of an OJT contract. Accordingly, no change to the Final Rule is necessary.

One comment suggested that we define the term ''substantial layoff,'' as found in WIA Section 101(9)(B)(i) and § 663.115, to include situations in which employers use layoff status to avoid their WARN Act obligations to announce a plant closing or significant permanent downsizing.

Response: The purpose of this comment is unclear. However, any definition of the term ''substantial layoff'' for defining an eligible dislocated worker under WIA section 101(9)(B)(i) is irrelevant to employer obligations under the WARN Act. WIA provisions cannot be used to enforce WARN Act employer notification obligations. We believe that the definition of ''substantial layoff'' for WIA purposes is best left to State and local areas to decide in light of their particular economic conditions. We do not plan to further define ''substantial layoff'' at this time.

The same commenter also suggested State and Local Boards be encouraged to develop the broadest possible definition of a general announcement of a plant closing, including information that is ''public knowledge,'' despite the failure of the employer to acknowledge the closing.

Response: Rapid response activity may be triggered by a variety of information sources such as public announcements or press releases by the employer or representatives of an employer, and other less formal information developed by early warning networks, individual phone calls, or other sources. A Rapid Response contact with an employer may confirm a planned plant layoff or closing. ''Public knowledge'' is, however, a very elusive concept and public funds are limited. It is important to have a creditable source of information or confirmation from the employer or some other clearly credible evidence of an imminent dislocation event before triggering rapid response activities. No change has been made to the Final Rule.

3. Displaced Homemaker Eligibility: Section 663.120 clarifies that a displaced homemaker who has been dependent on the income of another family member but is no longer supported by that income, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment, may receive assistance with funds available to Local Boards for services to dislocated workers.

Several commenters recommended that we require State Plans to further discuss the eligibility of displaced homemakers and the service strategies for meeting this group's special needs.

Response: States are required to discuss displaced homemaker service strategies as part of their State Plans (WIA Section 112(b)(17)(A)(iv)). This requirement is addressed in the WIA Planning Guidance for Strategic Five Year State Plans. This requirement is also addressed in, Final Unified Plan Guidance for the Workforce Investment Act, published in the **Federal Register** Vol.65, No. 10 on January 14, 2000, which contains instructions for plan narrative discussions on how special populations, including displaced homemakers, will be served. Services to displaced homemakers are also addressed in 20 CFR 665.210(f), which provides that, among other things, implementing innovative programs for displaced homemakers is an allowable Statewide workforce investment activity. No changes have been made to the Final Rule.

4. Title I Funds: Section 663.145 clarifies how title I adult and dislocated worker funds are used to contribute to the provision of core services, and to provide intensive and training services through the One-Stop delivery system. All three types of services must be provided, but the Local Boards determine the mix of the three services.

One commenter supported the requirement that all three types of services, (core, intensive, and training), must be available through the One-Stop delivery system, but wanted the regulations to limit the provision of the ''discretionary'' services authorized under WIA section 134(e)(1) to those that do not reduce the availability or accessibility of other mandatory services to eligible participants under the Act.

Response: While it is not entirely clear from the comment, we assume that the commenter is referring only to those employment and training activities labeled ''discretionary'' under WIA section 134(e)(1), and not to all ''permissible'' local activities under section 134(e) of the Act. We agree that required activities for eligible individuals take precedence over the permissible discretionary activities described in § 663.145(b), and that core, intensive and training services, as defined in section 134(d)(2) through (4), must be provided in each local area. However, to impose a hard and fast rule on when each State or local area may provide discretionary activities, reduces the flexibility of Boards to make more localized decisions, which is contrary to the reforms of WIA. In the past, these kinds of concerns were addressed through mandatory spending percentages for various categories of services, such as the 50 percent for training provision under the Job Training Partnership Act. The customized screening and referral services listed in section 134(e)(1)(A) may provide useful and necessary services to eligible participants and could be very valuable in some labor markets. The customized employer services listed in section 134(e)(1)(B) are to be provided on a fee-for-service basis and should not result in any diminution of available WIA funds. In either case, it is up to the States and Local Boards to develop a mix of activities and services which will best serve the customers of their area. The resources of all of the One-Stop partner programs should be taken into account when determining the appropriate mix of activities and services to be provided. Once a participant has become part of the WIA system, she/he should be able to receive all the services needed to reach an employment goal. We do not think it is appropriate to attempt to set a rule that constrains the way in which States and Local Boards provide that mix of services as long as mandatory services are made available.

5. Sequence of Services: WIA provides for three levels of services: core, intensive, and training, with service at one level being a prerequisite to moving to the next level. The regulations establish the concept of a tiered approach but allow significant flexibility at the local level. We chose not to establish a minimum number of ''failed'' job applications or a minimum time period but, instead, the regulations allow localities to establish gateway activities that lead from participation in core to intensive and training services. Any core service, such as an initial assessment or job search and placement assistance, could be the gateway activity. In intensive services, the gateway activity could be the development of an Individual Employment Plan (IEP), individual counseling and career planning or another intensive service. Key to these gateway activities is the determination, made at the local level, that intensive or training services are required for the participant to achieve the goal of

obtaining employment or, for employed participants, obtaining or retaining self-sufficient employment. The three levels of services are discussed separately in the regulations.

We received many comments concerning our general approach to regulating participant progression through the sequence of services. The commenters were uniformly pleased that the regulations did not require a certain number of failed job search attempts or minimum lengths of time in one service tier before an individual could be found eligible for the next tier of services. Several commenters, however, felt we should do even more to ensure that the Act is not interpreted as a ''work first'' program. Some comments suggested that we should preclude State and Local Boards from establishing minimum time periods of participation in core and intensive services.

Response: While the regulations do not explicitly preclude State or Local Boards from establishing minimum time periods within each tier of services, we agree that mandatory waiting periods are not consistent with customization of services according to each participant's unique needs. Consistent with our intent to write regulations that maximize State and local flexibility, however, we continue to support the idea that local level program operators are best positioned to determine the appropriate mix, and duration of services.

6. Core Services: Sections 663.150 to § 663.165 discuss the core services. All of the core services that are listed in the Act must be made available in each local area through the One-Stop system. Follow-up services must be available for a minimum of 12 months after employment begins, to registered participants who are placed in unsubsidized employment. We have made a technical correction to § 663.150, to conform with the statutory requirement that followup services be made available ''as appropriate'' to the individual. This means that the intensity of the followup services provided to individuals may vary, depending upon the needs of the individual. Among the core services available is information on targeted assistance available through the One-Stop system for specific groups of workers, such as Migrant and Seasonal Farm Workers, and veterans.

Core services also include assistance in establishing eligibility for the Welfare-to-Work program, and programs of financial aid for training and education programs. The specific form of this assistance is determined at the local level based on the participant's needs and in coordination with the other partner programs. This assistance may include: referrals to specific agencies; information relating to, or provision of, required applications or other forms; or specific on-site assistance.

Another core service is the provision of information relating to the availability of supportive services, including child care and transportation available in the local area, and referral to such services as appropriate. Local Boards are encouraged to establish strong linkages with a variety of supportive service programs and work supports, including child support, EITC, dependent care, housing, Food Stamps, Medicaid programs, and the Children's Health Insurance Program, that may benefit the customers they are serving at the One-Stop Center. Such programs provide key supports for low-income working families and families making the transition from welfare to self-sufficiency.

We also encourage Local Boards to establish strong linkages to child support agencies and organizations serving fathers. WIA services can help raise the employment and earnings of non-custodial fathers and fathers living with their children so that they can better support their children. Child support payments help low income single parents stabilize and raise their income. At the same time, it is important for One-Stop programs to be aware of the impact that child support requirements may have on non-custodial parents who may seek services.

One commenter recommended that the provision of ''brokering services,'' as presently performed by CBO's under JTPA be expressly permitted under Part 663. These services include facilitating and brokering relationships between low-income community residents, local businesses, and specialized groups, as well as referrals to groups to provide training and placement.

Response: While we agree that these brokering services are valuable activities, decisions about program design, including the selection of outreach, recruitment and referral activities, are within the purview of the Local Board, operating within State policies. We expect that Local Boards will consider a wide variety of services in designing their WIA programs. We expect CBO's, as well as other stakeholders, will be an integral part of program planning and design decisions through their membership on the Local Board, their provision of input through the public review process, and in many cases as customer service providers. Accordingly, no change has been made to the Final Rule.

Commenting on § 663.150, one organization remarked on the importance of ensuring that individuals seeking assistance through core services be provided with opportunities for self-service, facilitated self-help, and staff-assisted services.

Response: The service delivery options cited by the commenter are activities specified in the Wagner-Peyser Act regulations at 20 CFR 652.207, to ensure universal access to Wagner-Peyser labor exchange services for job seekers and employers. Although technically, these three levels of service do not apply to core services provided with funds other than Wagner-Peyser funds, practically, it makes sense to have all three service levels available for all core services. Also, in order to best serve the diverse needs of workforce investment customers, both job seekers and employers, multiple service delivery formats must be available. State and Local Plans are expected to address WIA service delivery strategies. Local Plans should ensure that the service delivery design reflects the needs of all customer groups in the mix of self-service, informational and staff-assisted core services. Since the issue is covered in the Wagner-Peyser regulations, no change has been made to the Final Rule.

One commenter asked that the regulations provide a list of available followup services which could be provided to all adults and dislocated workers. The commenter also requested that the regulations ensure that followup services are provided to all participants.

Response: The goal of follow-up services is to ensure job retention, wage gains and career progress for participants who have been referred to unsubsidized employment. While we do not think it is necessary to specify or define followup services in § 663.150(b), to provide further guidance we discuss an illustrative list of possible followup services below. Followup services must be made available for a minimum of 12 months following the first day of employment. While followup services must be made available, not all of the adults and dislocated workers who are registered and placed into unsubsidized employment will need or want such services. Also, as discussed above, the intensity of appropriate followup services may vary among different participants. Participants who have multiple employment barriers and limited work histories may be in need of significant followup services to ensure long-term success in the labor

market. Other participants may identify an area of weakness in the training provided by WIA prior to placement that will affect their ability to progress further in their occupation or to retain their employment. Therefore, we have chosen not to change the regulatory language that such services must be ''made available''.

Followup services could include, but are not limited to: additional career planning and counseling; contact with the participant's employer, including assistance with work-related problems that may arise; peer support groups; information about additional educational opportunities, and referral to supportive services available in the community. In determining the need for post-placement services, there may also be a review of the participant's need for supportive services to meet the participant's employment goals. As provided in § 663.815, financial assistance, such as needs-related payments, for employed participants is not an allowable follow-up service since, under WIA section 134(e)(3)(A), needs-related payments are restricted to unemployed persons who have exhausted or do not qualify for unemployment compensation and who need the payments to participate in training. We expect that the provision of training and supportive services after entry into unsubsidized employment (''post-placement'') will be limited, and will be part of the IEP, clearly documented in the participant case file. Such post-placement training and supportive services may be provided consistent with policies established by the State or Local Board, and determined to be necessary on an individual basis by the One Stop partner.

Several commenters noted there is no uniform understanding of ''assessment'' and that many One-Stop partners have different ideas of what assessment should entail. Some comments also asked for examples or additional guidance concerning best practices in this area.

Response: The purpose of assessment is to help individuals and program staff make decisions about appropriate employment goals and to develop effective service strategies for reaching those goals. We strongly believe that meaningful service planning cannot occur in the absence of effective assessment practices. We also believe there is no single correct approach to conducting assessment—it could be accomplished through the use of any number of formalized instruments, through structured interviews, or through a combination of processes developed at the local level. Further, assessments could be conducted by the One-Stop operator, by a partner agency, or by an outside organization on a contract basis.

Clarifying language has been added to the regulations at § 663.160 which states that initial assessment ''provides preliminary information regarding the individual's skill levels, aptitudes, interests, (re)employability and other needs.'' As a core service, the initial assessment is necessarily a brief, preliminary information gathering process that, among other things, will provide sufficient information about an individual's basic literacy and occupational skill levels to enable the One-Stop operator to make appropriate referrals to services available through the One-Stop and partner programs. Comprehensive assessment, which is an intensive service, is a more detailed examination of these issues and may explore any number of things relevant to the development of a person's IEP. These might include some combination or all of the following: educational attainment; employment history; more in-depth information about basic literacy and occupational skill levels; interests; aptitudes; family and financial situation; emotional and physical health, including disabilities; attitudes toward work; motivation; and supportive service needs. We expect that all partner agencies in the One-Stop, under any applicable State policies, will work to achieve consensus on the required components of the assessment system for the One-Stop system at any local level. In doing so, they should take into account any special assessment needs that may be experienced by individuals with disabilities and other populations with multiple barriers to employment. As we proceed with the implementation of WIA we will consider gathering ''best practices'' on the delivery of assessment services to share with the system.

One commenter suggested adding language to § 663.160 mandating that assessment and service strategies identified in IEPs conducted by a non-WIA program, satisfy the conditions of WIA, thereby making participants eligible for intensive and training services under the Act.

Response: Because there are differences in the legal and program requirements among the various programs that might provide assessments, we do not think we can require that all assessments from any source be accepted as valid for WIA. We do, however, support efforts to create common intake systems and to share data across programs, thereby eliminating duplication of effort for program staff or customers. We also believe that assessments, evaluations, and service strategies developed by partner agencies for individuals are the product of that agency's unique expertise, and, therefore, should be given careful consideration. We encourage Local Boards and partner agencies to develop MOU's, with required and optional partners, that provide for procedures to ensure that, where appropriate, partner assessments will be accepted as valid for WIA, and WIA assessments will be accepted as valid for partner programs. Of course, to be acceptable, an assessment, from any source, must provide the information needed by the One-Stop operator or the partner program. Local Boards and partner programs should work together to develop assessment tools that will serve all partner interests. If necessary for WIA purposes, the One-Stop operator may choose to supplement assessment information provided from another agency. Given the limited funding available, it is important to avoid duplication of services. No changes have been made to the Final Rule in this section.

Subpart B—Intensive Services

1. Intensive Services for Adults and Dislocated Workers: Section 663.200 discusses intensive services. It provides that intensive services beyond those listed in the Act may also be provided. Out-of-area job search expenses, relocation expenses, internships, and work experience are specifically mentioned to clarify that they are among the additional intensive services that may be provided. Intensive services are intended to identify obstacles to employment through a comprehensive assessment or individual employment plan in order to determine specific services needed, such as counseling and career planning, referrals to community services and, if appropriate, referrals to training.

Several commenters supported § 663.250 which provides that there is no minimum amount of time for individuals to stay in core or intensive services, stating that this approach maximizes local flexibility and ensures that each person's needs are properly addressed. In general, the comments received on subpart B related both to expanding or limiting allowable intensive services, to listing specific populations as among those potentially eligible for intensive services, and to proposing definitions of ''self sufficiency.''

We received several comments on the definition of intensive services at

§ 663.200(a). Two comments wanted nearly all of the specific statutory language illustrating intensive services, at WIA Section 134(d)(3)(C), reiterated in this section. They also requested that ''orientation and mobility training for persons with disabilities'' be added to the list of allowable intensive services. One commenter recommended adding to the list of intensive services ''English as a Second Language (ESL), Vocational Education integrated with ESL (VESL), Functional Context Education Programs that integrate literacy or ESL and job training.'' Another commenter asked that the Final Rule define literacy to include reading and math literacy.

Response: § 663.200(a) refers to the provisions at WIA Section 134(d)(3)(C) on the types of intensive services. The list of services in this section is not intended to be all inclusive and may be expanded by State Boards and Local Boards based on, among other things, local conditions and the needs of the various populations within the local area for such additional intensive services. Although the types of services recommended by the commenters may have merit for certain populations and would be permissible WIA-funded intensive services, we believe that the determination of the specific types of intensive services to be provided are matters for local decision-making and should be an integral part of the State and Local Plan process. Clearly, we expect State and Local Boards to consider the needs of the local population, including individuals with disabilities and other special needs populations, in the design and delivery of services which respond to those needs. It is also expected that concerned parties will have the opportunity to contribute to the planning and design of local programs and services through either representation on the State and Local Workforce Investment Boards or the open plan review and comment process.

On the suggestion of including ESL, VESL and Functional Context Education Programs that integrate literacy or ESL and job training as intensive services, we note that WIA section 134(d)(4)(D), which describes ''Training services,'' specifically includes adult education and literacy activities provided in combination with other job skills training. Such adult education and literacy training activities, when combined with a job may include ESL, and other needed educational services for participants, including reading and math literacy, as determined by Local Board policies, and the individual assessment. As indicated above, the list of intensive services is not all inclusive. However, language skills independent of skills training would appear to be of limited value in leading to (re)employability for individuals without significant work histories and occupational skills. We expect that basic language skills will be provided as a short-term prevocational service when part of an Individual Employment Plan in which such activities are followed by additional language skills training as a ''training service,'' in accordance with procedures established by the State or Local Board. Such determinations are for State and local decision-making. No change has been made in the Final Rule.

Several commenters expressed concern about the inclusion, at § 663.200(a), of internships and work experiences as intensive services, rather than as training services. Some commenters were concerned that participants could be exploited in unpaid work experience and recommended that we establish time limits (*e.g.*, not to exceed 90 days) for such activities, and emphasize that labor standards apply. One commenter thought that there may be a potential conflict with Wage and Hour rules if work experience is in the private for-profit sector and unpaid. Other commenters wanted to exclude work experiences with private for-profit employers, limiting it to public and private non-profit entities, and allow placement with private for-profit employers only for on-the-job training (OJT), because of the potential for abuse by employers that the commenter believes has occurred in the past.

A few commenters indicated that since internships and work experiences are designed to impart specific skill and behavioral competencies they should be defined as ''training'' rather than ''intensive services.'' One comment suggested that, consistent with prior JTPA provisions, work experience under WIA should be only for those individuals with no significant work history. Another comment asserted that, given the high cost of providing work experience, participants could be best served by job readiness or some other intensive service.

Two commenters indicated that internships and work experience must be measured through outcomes, including training-related placements, career ladders, and competencies. One of the commenters added that these must be paid activities. One commenter recommended that the Final Rule make clear that work experience could be with a public sector employer, including a service or conservation corps.

Response: We understand the commenters' general concerns regarding internships and work experience, particularly unpaid work experience. We expect that work experience will be paid in most cases and labor standards will apply in any situation where an employer/ employee relationship, as defined by the Fair Labor Standards Act, exists. We have revised § 663.200(b) to clarify this policy.

We believe that the use of unpaid internships and work experiences should be limited and based on a service strategy identified in an Individual Employment Plan, and combined with other services. We expect that such activities will be of limited duration, based on the needs of the individual participant. State and Local Boards are responsible for developing policies on the use, and duration, of both paid and unpaid internships and work experiences as a service strategy. Similarly, we expect that, along with other activities, State and Local Boards will monitor and evaluate the effectiveness of intensive services, including internships and work experience, in responding to the needs of participants and the results on participant outcomes. While not minimizing the commenters' concerns, there are good examples of local programs using paid and unpaid work experience which respond to the needs of participants, for example the School-to-Work Opportunities initiative provided many young people the experience the needed to secure higher paying, higher skilled employment.

On the issue of defining internships and work experience as ''training'' rather than ''intensive services,'' we believe that such services may respond to the needs of particular clients which, when combined with core services already received and other intensive services, may result in positive employment outcomes without the need for ''training'' services. For other clients, such experiences may prove beneficial in identifying the need for, and referral to, needed training services consistent with the Individual Employment Plan. No change has been made in the Final Rule.

On the issue of limiting internships and work experience to the public and private non-profit sectors, we feel that such a limitation would unnecessarily restrict the employment opportunities for clients seeking services and, to a degree, limit customer choice since the majority of employment opportunities exist in the private for-profit sector. Nothing in the rule prevents Local Boards from providing work experience with community service or conservation

service corps programs. No change has been made to the Final Rule.

2. Delivery of Intensive Services: We received a few comments on the provisions in § 663.210 about how intensive services are to be delivered. A few commenters wanted to revise § 663.210(a) to address special needs populations by adding at the end of the first sentence ''*,* including specialized One-Stop centers as authorized.,'' and, in the second sentence inserting after ''service providers'' and before ''that''—'', which may include contracts with public, private for-profit, and private non-profit service providers, and including specialized service providers (*i.e.*, community rehabilitation programs for persons with disabilities).''

Response: Section 134(c)(3) of the Act authorizes specialized centers as part of the One-Stop service delivery system. Language has been added to § 663.210(a) in the Final Rule to clarify that intensive services may be provided through such specialized One-Stop centers. Section 134(d)(3)(B)(ii) of the Act provides that intensive services may be provided through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit entities approved by the Local Board, and as noted, language has been added in the Final Rule at § 663.210(a) to reflect the statutory provision on delivery of intensive services through contracts with service providers, and have clarified that such service providers may include specialized service providers. However, we have not added the parenthetical phrase related to community rehabilitation programs.

One commenter felt that the Final Rule must make clear that intensive services cannot be provided through individual training accounts or vouchers.

Response: We believe that the statutory and regulatory provisions are sufficiently clear on how WIA-funded services are delivered to participants. The Individual Training Account is a tool for providing WIA title I funded training services under section 134(d)(4)(G). The requirements for delivery of intensive services are described at WIA section 134(d)(3)(B) and § 663.210. Consistent with our policy of providing flexibility to States and local areas, we believe the method of delivery of intensive services is a matter of State and local discretion, provided that the statutory and regulatory requirements are met. Therefore, no change has been made to the Final Rule.

3. Participation in Intensive Services: Section 663.220 explains that intensive services are provided to unemployed adults and dislocated workers who are unable to obtain employment through core services and require these services to obtain or retain employment, and employed workers who need services to obtain or retain employment that leads to self-sufficiency. Sections 663.240 through § 663.250 specify that an individual must receive at least one intensive service, such as the development of an Individual Employment Plan with a case manager or individual counseling and career planning, before the individual may receive training services and that there is no Federally required minimum time for participation in intensive services. Each person in intensive services should have a case management file, either hard copy, electronic or both. Section 663.240 explains that the case file must contain a determination of need for training services, as identified through the intensive service received.

A number of commenters expressed concern that § 663.220(a) describes eligibility for unemployed individuals as simply requiring that they are unable to obtain employment through core services while § 663.220(b) describes employed and/or dislocated workers as in need of intensive services to obtain or retain employment that leads to self-sufficiency. Commenters felt this appeared to set a double standard and conflicted with the provisions of Titles II and IV of WIA which clearly tie self-sufficiency to employment in all cases. The commenters felt that these provisions might be interpreted to mean that unemployed individuals may be put in jobs that do not lead to self-sufficiency. Commenters recommended that the Final Rule provide that States and Local Boards may set their own standards for employment, e.g., using the Self-Sufficiency Standard for all job-seekers.

Response: We agree that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. However, that is different from establishing eligibility for adults and dislocated workers to receive intensive services under WIA. The eligibility criteria set forth in § 663.220 restates the statutory definition established in WIA section 134(d)(3)(A). The reference to employment leading to self-sufficiency appears only in WIA section 134(d)(3)(A)(ii), governing the eligibility of employed individuals to receive intensive services. A determination that an employed or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. Although the statute establishes slightly different eligibility criteria for unemployed and employed adults and dislocated workers to receive intensive services, we do not believe that there is a direct conflict with the provisions of WIA Titles II and IV concerning self-sufficiency as it relates to Adult Education and Literacy Programs and Vocational Rehabilitation Programs, respectively.

While it is true that the difference in eligibility for intensive services for unemployed and employed adults and dislocated workers might be interpreted to mean that unemployed individuals can be put in jobs which do not lead to self-sufficiency, we want to make clear that the eligibility criterion is a service requirement and not an employment outcome. Other provisions in WIA pertaining to wage and benefit requirements, which appear at WIA section 181, labor standards, at WIA section 181(b), employment in demand and growth occupations, at WIA section 134(c)(4)(G)(iii), and employment in jobs with upward mobility, at WIA section 195(1), to cite a few, all enhance opportunities for employment which allows for self-sufficiency. Additionally, the performance standard measures, at WIA section 136(b)(2)(A), will also be a spur to placing, and retaining, participants in jobs with good, self-sufficient wages. As the eligibility criteria are statutory requirements which the Secretary does not have authority to change, no change has been made to the Final Rule.

We agree with the suggestion the State and Local Boards be allowed to set their own standards for employment, using the self-sufficiency standard developed by the State or Local Boards for all employment. There is nothing in the Act or Interim Final Rule that would preclude such a policy as a goal for participant outcomes. Any such policy must meet the minimum requirements in § 663.230 for defining self-sufficiency. While statutory language prevents us from mandating such a policy, we do strongly recommend it. No change has been made to the Final Rule.

One commenter suggested that leaving it solely to the One-Stop operator to determine who is in need of more intensive or training services could be problematic, particularly if the operator is a for-profit entity which could financially benefit from limiting access to intensive and training services.

Response: WIA contains provisions which address this commenter's concerns. Section 121(d) of WIA provides that the Local Board, with the agreement of the chief elected official

(CEO), is authorized to designate or certify One-Stop operators and to terminate, for cause, the eligibility of such operators. The eligibility provisions for One-Stop operators at WIA section 121(d)(2)(A) provide that such operators must be designated or certified through a competitive process or through an agreement between the Local Board and a consortium of entities that, at a minimum, must include three or more of the One-Stop partners described at WIA section 121(b)(1). In addition, the One-Stop operators are subject to the provisions of the local Memorandum of Understanding which must include, among other things, methods for referral of individuals between the One-Stop operator and the One-Stop partners, for the appropriate services and activities. Potential problem areas may also be identified through local program monitoring and oversight, requiring that action be taken to correct identified deficiencies. Additionally, the regulations, at 20 CFR 667.600, provide for the establishment of local grievance procedures for handling complaints and grievances from participants and other interested parties affected by the local workforce investment system, including an opportunity for local level appeal to the State. These and other provisions will help State and Local Boards ensure the integrity of the new program. Accordingly, no change has been made to the Final Rule.

We received a few comments about to the sequencing of intensive and training services at § 663.240.

One commenter supported the requirement that participants must receive at least one intensive service such as development of individual employment plan or individual counseling and career planning before receiving training services. Another commenter wants an Individual Employment Plan to be required for any worker seeking intensive or training services.

Response: We agree that doing an Individual Employment Plan for participants determined eligible for intensive services is a good idea, and we recommend that an IEP be developed for every individual who uses intensive or training services. However, the Act provides that the development of an Individual Employment Plan is only one of the intensive services that may be provided to individuals determined to be in need of such services; it is not a condition to receive that service. Accordingly, no change was made to the Final Rule.

One commenter acknowledged that the One-Stop partners, the Local Board, and the CEO must participate in the development of policies for eligibility beyond core services, but recommended that these policies must also be available for public review and comment to assure fairness in the selection process.

Response: We agree with the comment and believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. While we cannot mandate their inclusion, we encourage Local Boards to include such a policy in their local workforce investment plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. The sunshine provision requires that the Board make information about its activities publicly available through open meetings and minutes of meetings, on request. These requirements also provide an opportunity for public input into Local Board plans and policies. No changes have been made to the Final Rule.

A few comments requested that a new sentence be added at the end § 663.220(b) to read: ''Persons with disabilities and other special needs populations may also qualify for intensive services.''

Response: Eligibility for intensive services is open to all unemployed adults and dislocated workers and all employed adults and dislocated workers who meet the eligibility criteria and are determined to be in need of such services. To single out specific populations in the regulations would imply that there are different criteria for those populations to receive intensive services, which is not the case. Individuals with disabilities and other special needs populations may as easily qualify for intensive services under the existing eligibility criteria as any other person or group since the eligibility criteria are based on need for the services. In addition, any barrier to employment an individual may face (which may include a disability) should be taken into account during the process of determining eligibility for intensive services. We believe that the existing language adequately addresses the statutory requirements, and is consistent with the key principle to provide maximum flexibility to States and local areas, that additional proscriptive language in regulations is not needed.

4. Self-sufficiency: Section 663.230, discusses how ''self-sufficiency'' should be determined. WIA requires a determination that employed adults and dislocated workers need intensive or training services to obtain or retain employment that allows for self-sufficiency as a condition for providing those services. Recognizing that there are different local conditions that should be considered in this determination, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least the lower living standard income level. State Boards or Local Boards are empowered to set the criteria for determining whether employment leads to self-sufficiency. Such factors as family size and local economic conditions may be included in the criteria. It may often occur that dislocated workers require a wage higher than the lower living standard income level to maintain self-sufficiency. Therefore, the Rule allows self-sufficiency for a dislocated worker to be defined in relation to a percentage of the lay-off wage.

From our review of the comments received on § 663.230, it appears that there is some confusion with respect to the term ''self-sufficiency'' and how it applies under WIA. A number of commenters are clearly under the mistaken impression that the provisions of §§ 663.220(b) and 663.230 treat ''employment leading to self-sufficiency'' as a performance outcome measure under WIA, which is not the case. The commenters raised the point that the manner in which self-sufficiency is defined could impact performance outcomes if standards are set low in one area and higher in another. If such measures will be used in comparisons across State and local lines, setting higher standards for employment that leads to self-sufficiency could negatively impact the outcomes achieved by the local system with higher standards.

WIA section 136 establish the WIA performance accountability system, including State and local performance measures intended to assess the effectiveness of States and local areas in achieving continuous improvement of WIA Title I–B funded workforce investment activities. Although the core indicators of performance for WIA adult and dislocated worker activities look at outcomes such as wage gain, job retention and other factors in determining successful performance of the programs; ''self-sufficiency'' is not one of the statutory core indicators. Section 663.230 is not intended to imply that this is the case.

Unlike predecessor employment and training programs, WIA opens up employment and training services to

employed adults and dislocated workers. In doing so, the Act establishes certain criteria that employed workers must meet in order to receive services beyond core services. As indicated in our response to the comments received on the ''Participation in Services'' sections, the use of the term ''self-sufficiency'in § 663.220(b) only applies in the context of establishing eligibility for employed adults and employed dislocated workers to receive intensive services under WIA. A determination that an employed adult or dislocated worker is in need of intensive services to obtain or retain employment that allows for self-sufficiency is one of the criteria for the receipt of such services. This provision serves as a ''limiter'' in determining service eligibility for such employed workers, which helps ensure that intensive services are provided to those employed adults or dislocated workers most-in-need of such services, such as individuals employed in low skill/low wage jobs and dislocated workers who may be working but who have not achieved the wage replacement rate for self-sufficiency defined by a State or Local Board for dislocated workers.

As indicated above, the regulations at § 663.230 were developed with the recognition that the ''self-sufficiency'' definition would vary from State-to-State, and even from area-to-area within a State. Therefore, the regulations provide that, for the purposes of determining the eligibility of employed and dislocated workers for intensive services, State and Local Boards are responsible for establishing the criteria for determining whether employment leads to self-sufficiency. Accordingly, the regulation provides maximum flexibility, requiring only that self-sufficiency mean employment that pays at least 100 percent of the lower living standard income level (LLSIL).

In general, the majority of the comments received on § 663.230 dealt with two areas: (1) recommendations on factors that should be included in defining ''self-sufficiency,'' and (2) the need for a more reliable measure of self-sufficiency than the LLSIL.

A few commenters asked why, since the LLSIL takes family size and economic conditions into account, there was a need to require the use of other factors in determining self-sufficiency. The commenters also asked for clarification of the purpose of asking State and Local Boards to set additional criteria for self-sufficiency, as well as the benefit to a local system.

Response: Under JTPA, the LLSIL was used as one of the ceilings to measure whether a participant was economically disadvantaged. Service Delivery Areas had little discretion in setting local definitions different from the statutory definition. Under WIA, in contrast, the LLSIL is a floor to measure whether a job leads to self-sufficiency and States and local areas have broad discretion to set a standard above that floor. The Preamble to the Interim Final Rule clearly indicates that factors such as family size and local economic conditions may be included in criteria developed by a State or Local Board to define self-sufficiency. The LLSIL also includes, and is adjusted using, these and other factors. In acknowledging that conditions vary from place to place, we have maintained maximum flexibility by allowing States and Local Boards to determine what self-sufficiency means in their areas, which may include other factors not included in determining the LLSIL.

As indicated above, State and Local Boards are responsible for determining self-sufficiency and must develop criteria for making that determination. The reason for authorizing the State and Local Boards to develop criteria for making these determinations is that State and Local Boards are best able to judge such factors as the cost of living in a local area and the wages available in jobs in the local area. Thus, they are best able to set a standard for self-sufficiency that meet the needs of their local economy. The ''benefit'' to a local system is the flexibility provided to develop such criteria, above the established floor of the LLSIL, so that local conditions may be taken into account. Therefore, no change has been made to the Final Rule.

A number of commenters stated that since the regulations use self-sufficiency as a means to measure WIA success, it should be defined in an individualized way. Further, data collection systems must be able to account for higher living expenses experienced by persons with disabilities in any determination of ''self-sufficiency''. One commenter added that Federal and State work incentives used by people with disabilities should not be viewed as lack of self-sufficiency. Another commenter said that self-sufficiency must also include measures for long-term success in the labor market.

One commenter noted that the regulations say that self-sufficiency for employed dislocated workers may be defined relative to a percentage of the layoff wage, and suggested specifying in the Final Rule that for displaced homemakers, self-sufficiency may be defined as a percentage of household income before displacement. One commenter indicated that the definition for self-sufficiency must include discrete measures for benefits, particularly health benefits. Also, the commenter suggested that we provide guidance and technical assistance to State and Local Boards to help them develop measures of self-sufficiency that are tied to family wage/benefit levels needed to live in local communities.

Response: The regulations provide that State and Local Boards have the responsibility for developing the criteria for determining whether employment leads to self-sufficiency. With the exception of establishing the minimum LLSIL requirement for such criteria, we have refrained from establishing further criteria in the regulations to provide maximum flexibility to State and Local Boards in developing such criteria. That flexibility includes tailoring definitions of self sufficiency to meet factors peculiar to an individual or group. The State and Local Boards are in the best position to develop criteria which reflect local economic conditions and other factors impacting on the financial needs of the populations to be served, in defining self-sufficiency for determining eligibility for intensive services. Although the factors suggested by the commenters may have merit, and serve as examples that Boards might consider, the development of such criteria is subject to local decision-making and should be explored at that level. We do, however, expect State and Local Boards to consider, among other things, the needs of individuals with disabilities, and other special needs populations with multiple barriers to employment, in the development of such criteria. We have modified § 663.230 to reflect this expectation.

One commenter stated that the regulations must require Local Boards to consult with organized labor and community based organizations in the development of self-sufficiency measures, and wants the process for establishing and updating self-sufficiency measures included in the plan as well as all plan modifications.

Response: Organized labor and community-based organizations will participate in the development of self-sufficiency measures by virtue of their representation on State and Local Boards, along with other representatives and local partners on the board. As with other policies and procedures not specifically addressed in the Local Plan requirements at WIA section 118, we believe that, although not specifically required, such self-sufficiency policies should be included in the Local Plan and available for public review and comment. While we cannot mandate

inclusion, we encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, they are, their development, as an activity of the Board, is subject to the Sunshine Provision at WIA section 117(e) and new section 20 CFR 661.307.

One commenter, while appreciative that self-sufficiency as it relates to intensive services is set at the lower living standard income level, added that research has shown that a ''true'' standard for self-sufficiency should be even higher, at 150 percent of the lower living standard. The comment concluded that this level has a potential for setting a high bar for measuring success under WIA—sending a signal that the system has not succeeded when individuals end up in minimum wage jobs. The commenter urged that the regulations require that the Local Plans spell out how the local areas will define self-sufficiency, so that it may be subject to public comment and review. Another commenter felt that the LLSIL is not a reliable measure of self-sufficiency, and recommended that the Bureau of Labor Statistics (BLS) develop a new LLSIL that reflects the costs of self-sufficiency for today's families, including the cost of child care. Until such a measure is developed it was recommend that the self-sufficiency floor be set at 150% of the LLSIL.

Response: As indicated earlier, ''self-sufficiency'' is an eligibility criterion for the determination of need for intensive services for employed workers. Also, the regulations set the floor for self-sufficiency at employment that pay *at least* 100 percent of the LLSIL. State and Local Boards may adjust the level upward in defining employment that leads to self-sufficiency, based on, among other things, local conditions and the needs of the populations to be served. Our intent in drafting § 663.230 was to give State and Local Boards maximum flexibility to define ''self-sufficiency''. As indicated above, we intended to use the LLSIL as a floor below which Boards cannot go in their definition. We agree with the commenters that there are good arguments that the ''real'' measure of self-sufficiency will be above the LLSIL in most areas, sometimes significantly above it. We think that one of the important purposes of the workforce investment system is to help customers find jobs that will support them and their families. We expect that State or local definitions will reflect this reality and this purpose. We do not, however, wish to constrain State and local discretion too far. Neither can we reasonably select a higher floor that we can be sure will cover all of the variety of economic conditions that exist in this diverse nation. Therefore, no change has been made to the Final Rule.

One commenter wanted to know what action we will take if the State Board and the Local Board decide to set different criteria for self-sufficiency and they do not agree?

Response: It is entirely possible that self-sufficiency measures developed by a State Board and a Local Board may, in some respects, differ depending upon local conditions and other factors that may not be present in other areas within the State. The regulations provide maximum flexibility to State and Local Boards to address this issue. It is also possible that the State board might establish some general guidelines for use by Local Boards in developing such measures, with latitude for the Local Boards to tailor the measures to their local needs. However, since Local Boards must comply with the State policies, State Boards are encouraged to adopt policies that Local Boards can adapt. We do not anticipate that this will be a problem area, however, if it does become one, we are available to provide technical assistance upon request.

One commenter felt that using the minimum requirement of the LLSIL will result in various definitions for different individuals, depending on the size of the family, and suggested it is more reasonable to use a percentage of the area's average annual income.

Response: We agree that the LLSIL is based on family size and will result in different income levels for individuals, depending on family size. The LLSIL is adjusted for regional, metropolitan, urban, and rural differences and family size. The use of a single measure as suggested would be an insufficient measure of self-sufficiency because it would exclude other factors that impact on such a determination, most importantly family size. We encourage State and Local Boards to adopt definitions which reasonably reflects local economic conditions and family needs, and made no change to the Final Rule.

One commenter would like the definition of low-income to be changed to 100 percent of LLSIL, rather than 70 percent.

Response: The term ''low income individual'' is statutorily defined at WIA section 101(25). We do not have authority to change this statutory provision. However, § 663.230 provides that, at a minimum, self-sufficiency is at least 100 percent of LLSIL for determining if employed adults and dislocated workers need intensive services. No change has been made to the Final Rule.

We received comments on the definition of an Individual Employment Plan at § 663.245. One commenter recommended inserting, ''including support services'' between the words ''appropriate combination of services'' and ''for'' in order to ensure that the potential need for supportive services is discussed and that appropriate information, supportive services and referrals for services are provided. Another commenter suggested replacing the word ''strategy'' with ''process'' to convey a more interactive mode between case manager and client.

Response: Section 663.245, defining the Individual Employment Plan, provides that these plans will identify the appropriate combination of services for the participants to achieve their employment goals. The ''appropriate combination of services'' would, by definition, include supportive services if determined appropriate, based on the need of the individual participant. To single out a specific service in the regulations would imply that the service is a plan element in all cases, which is not the necessarily the case. A determination on the need for services, and the appropriate service mix to respond to those needs, are made at the local level on a case-by-case basis. On the suggestion to replace ''strategy'' with ''process,'' while not wanting to appear to quibble over the choice of words, we feel that, in this case, the former is the more proactive word and conveys the idea of a well planned approach for individual employment goals worked out in an interactive way by the case manager and the participant, as envisioned under WIA. No changes have been made to the Final Rule.

One commenter felt that the employment goals should include earning a self-sufficiency wage. States should be encouraged to pursue innovative strategies to meet that goal, as provided for in the Act, including access to training and employment in nontraditional fields for women, entrepreneurship training and asset-building instruction and guidance.

Response: As indicated earlier, we think that self-sufficient employment is an important goal for all employment whether under WIA or any other program. The workforce investment system contemplated under WIA encourages State and Local Boards to develop innovative approaches in the design and delivery of services which respond to the needs of all job seekers, including those suggested by the commenter. The Act, however, only requires a determination that

employment leads to self-sufficiency when deciding whether an employed adult or dislocated worker is eligible for intensive or training services and we do not think we can require it as a precondition to all employment. Therefore, no change has been made to the Final Rule.

Some comments addressed § 663.250, which provides that there is no minimum length of time a participant must spend in intensive services.

One commenter recommended that, even though § 663.250 places no minimum time limit for participation in intensive services before receiving training services, local One-Stop systems be urged to provide sufficient intensive services to ensure that individuals are well prepared for training and long term employment opportunities. Another commenter said that States and Local Boards must be precluded from establishing minimum and maximum time periods for participation in intensive services.

Response: Section 663.250 recognizes that the duration of intensive services will vary among individual participants. State and Local Boards have the flexibility to develop policies on the delivery of intensive services, which may include limits on the duration of particular services, depending on the types of services provided and the needs of the participant. We expect that the time spent in intensive services will be sufficient for the participant to receive needed services, consistent with employment goals, and have modified § 663.250 to reflect that expectation. We have not made a change in the regulations in response to the comment suggesting we preclude States or Local Boards from establishing minimum and maximum time periods for participation in intensive services, since we want to ensure State and local flexibility in this important area.

A commenter recommended that States be required to establish measures for determining the ongoing effectiveness of intensive services to assure that participants receive the maximum benefit.

Response: Under WIA sections 111 and 117, State and Local Boards are required to monitor and evaluate the effectiveness of the WIA program and we expect this to include monitoring the effectiveness of intensive services to respond to the needs of participants and to produce good participant outcomes. Additionally, the State, in accordance with WIA section 136(e), must conduct ongoing evaluation studies of Statewide title I–B workforce investment activities. Such studies are intended to promote, establish, implement and utilize methods for continuously improving such activities in order to achieve high-level performance within, and high-level outcomes from, the statewide workforce investment system. The State is required to periodically prepare and submit reports of the evaluation studies to State and Local Boards to promote efficiency and effectiveness of the statewide system in improving the employability for job seekers and competitiveness for employers. We think that these requirements meet the intent of the commenter's request. No change has been made to the Final Rule.

Subpart C—Training Services

1. Training Services: Training services are discussed in §§ 663.300 and 663.320. Training services are designed to equip individuals to enter the workforce and retain employment. Under JTPA, a dislocated worker participating in training under title III of JTPA is deemed to be in training with the approval of the State Unemployment Compensation Agency. With such approval, unemployment compensation cannot be denied to the individual solely on the basis that the individual is not available for work because he or she is in training. Although there is no comparable provision in WIA, this JTPA provision will remain in effect during the transition period under the Secretary's authority to guide that transition from JTPA to WIA. We will seek an amendment adding similar language to WIA which would deem all adults participating in training under title I of WIA to be in approved training for the purposes of unemployment compensation qualification.

One commenter asked that we clarify in the Final Rule that, under WIA, training may be provided to both employed and incumbent workers.

Response: While this statement is true on its face, we believe there is confusion within the workforce development community about the distinctions between ''employed'' and ''incumbent'' workers. The State Board defines the term incumbent worker since incumbent worker training is an allowable statewide activity under WIA section 134(a)(3)(A)(iv)(I). Funding for incumbent worker training must be drawn from the State's combined adult, youth, and dislocated worker ''15-percent funds.'' As provided at 20 CFR 665.320(d)(2), the State may also use a portion of its dislocated worker ''25-percent rapid response funds'' to devise and oversee strategies for incumbent worker training. These *latter* funds, however, may not be used to directly fund the incumbent worker training itself. These individuals do not necessarily have to meet the eligibility criteria for dislocated workers contained at section 101(9) of the Act nor do they have to meet the criteria for employed adults and dislocated workers under WIA section 134(d)(4)(A).

''Employed'' adults and dislocated workers may also receive training services through the One-Stop system under WIA when certain conditions are met. These individuals must meet the statutory definition of an eligible adult or dislocated worker and, to receive intensive services, and ultimately training, an employed individual must be determined by a One-Stop operator to be in need of such services to obtain or retain employment that leads to self-sufficiency. Funding for these activities comes from the ''formula'' funds provided to the Workforce Investment Area.

One commenter felt that, in order to protect participants, any training service that a Local Board offers that is in addition to those listed in the Act must be identified in the Local Plan so that there can be public review and comment. Similarly, any additional training services that are offered after the approval of the Local Plan must also be subject to public review and comment.

Response: We agree with the comment and believe that, although not specifically required, the training services that the Local Board intends to offer should be included in the Local Plan and available for public review and comment. While inclusion is not mandated, we encourage the Local Boards to include such information in their plan development process. This allows the Local Board to communicate its vision and its proposed priorities in the delivery of services, and ensures that all interested parties have an opportunity to review and comment on those proposed policies. We also agree with the comment that the plan should contain policies concerning plan modifications, including a definition of ''substantive change,'' and provide that when such changes occur there should be a similar process allowing for public review and comment. As indicated in earlier discussions on Local Plan requirements, if such policies are not included in the plan, they are, as an activity of the Board, subject to the sunshine provision at WIA section 117(e) and new § 661.307 and must be developed in an open manner. No change has been made to the Final Rule.

Two commenters suggested that the regulations should list non-traditional job training, including entrepreneurial training, asset building, financial literacy training, micro enterprise

development, and vocational English as a Second Language training, as well as other kinds of training services not specifically listed in the Act.

Response: We support the provision of a wide variety of training services for eligible customers of the workforce development system, including all those mentioned by the commenter. As noted in the regulations at § 663.300, the list of training services in the Act is not all-inclusive and additional services may be provided. We believe that this language provides State and Local Boards the flexibility necessary to offer training services appropriate to their particular needs, without prescribing to the Local Boards what those services should be. Accordingly, no change has been made in the Final Rule.

2. Determining the Need for Training: Section 663.310 provides, among other things, that the One-Stop operator or partner determines the need for training based on an individual (1) meeting the eligibility requirements for intensive services; (2) being unable to obtain or retain employment through such services; and (3) being determined after an interview, evaluation or assessment to be in need of training. Section 663.310 requires that, to receive training, an individual must select a program of services directly linked to occupations in demand in the area, based on information provided by the One-Stop operator or partner. If individuals are willing to relocate, they may receive training in occupations in demand in another area.

We received numerous comments about the impact of training eligibility criteria on individuals with disabilities. The commenters were concerned about the requirement that eligible individuals must be found to have the skills and qualifications to successfully participate in the selected program of training services. Commenters felt that this could limit the opportunities available for disabled persons.

Response: While we are sensitive to these concerns, we must point out that this criterion is taken directly from the Act at section 134(d)(4)(ii), and is, therefore, a required element for all One-Stop operators making training eligibility decisions. This criterion applies only to training funded by WIA title I and not to training funded by other WIA partners. We believe all training eligibility decisions should be made on the basis of each individual's skills, abilities, interests, and needs. It would, of course, be inappropriate to enroll any individual, whether or not they are disabled, into training programs for which they did not have the skills to be successful. We also recognize that care must be taken not to stereotype persons with barriers to employment, including disabilities, when evaluating their skills, abilities, interests, and needs. Occasionally, some question may arise as to whether a particular individual—such as a person with disabilities—has the capacity to be successful in a given training program, taking into consideration the availability of reasonable accommodation or modification under 29 CFR 37.8. An advantage of the One-Stop service delivery structure is that partner agencies with specialized expertise will be available, when necessary, to assist with determinations as to what training may fall within a particular individual's skills and qualifications. We encourage One-Stop operators and staff to take advantage of the unique expertise of these partners when serving individuals with special needs. We also note that individuals with a disability, or any others, who feel they have been improperly assessed by One-Stop staff regarding their skills and qualifications may appeal the decision using the appropriate local grievance or complaints procedures established in accordance with WIA section 181(c) and 20 CFR 667.700. No change has been made to the Final Rule. An individual who feels that he or she has been discriminated against because of his or her disability may file a complaint in accordance with procedures for processing discrimination complaints, as set forth in 29 CFR 37.70 through 37.80.

One comment suggested that § 663.310 was not sufficiently specific in linking training services to occupations in demand, as required by the Act.

Response: The language used in the rule at § 663.310(c) is essentially the same as that found in the Act at section134(d)(4)(A)(iii). Section 134(d)(4)(A)(iii), discussing eligibility for training uses the phrase ''directly linked to the employment opportunities in the local area or in another area. . . .'' In contrast, section 134(d)(4)(G)(iii), dealing with ITA's uses a slightly different phrase, ''directly linked to occupations that are in demand in the local area. . . .'' We assume that when Congress uses different language, it means different things. In this case, we think that the differences in phrasing mean that a person may be eligible to receive training if she/he seeks training in an occupation in which there are jobs available in the local area or in another local area to which the person is willing to relocate. On the other hand, training may not be financed through an ITA unless the training sought is in an occupation in demand in the local area or in an area to which the participant is willing to relocate. Thus, if a participant is found eligible for training because he/she seeks training in an occupation in which there are employment opportunities available but which is not classified by the local area as an occupation in demand, the training can only be provided if it can be arranged through one of the three exceptions to ITA's. While it is possible that individual may not be able to receive WIA-funded training because of this distinction, we think that there will not be many cases where this occurs. Since § 663.310 correctly reflects the statutory language, no change has been made to the Final rule. We do, however, encourage State and Local Boards to consider a range of approaches for identifying ''employment opportunities in the local area,'' including allowing participants to demonstrate employer-identified job opportunities.

We received a number of comments about the effects of the requirement that training programs selected must be directly linked to demand occupations in the local area, or in another area to which the individual is willing to relocate, on individual with disabilities. Commenters felt that this could restrict persons with disabilities from participating in the title I program and suggested granting a waiver of the requirement in appropriate cases.

We think that the commenters' concerns about the occupations in demand requirement are misplaced. As discussed above, the requirement for training eligibility is that the training must be linked to an employment opportunity available in the local community or in a place to which the participant is willing to relocate. The phrase on which the commenters focus, the occupations in demand requirement, is an eligibility condition for receipt of an ITA. Thus, a participant may be eligible for and receive training in any occupation (job) that is available to the participant. If the job is not in an occupation in demand, the participant may not be able to have the training funded through an ITA, but may still receive the training through one of the exceptions to ITA's, for example, through contracted training provided by a CBO with demonstrated effectiveness in serving populations with special needs. No change has been made to the regulations.

There were several other more general comments about the criteria governing training eligibility. One commenter urged that training services be linked with employment opportunities in high

wage/high skill demand occupations that provide career and upgrade opportunities.

Response: We agree that this is a worthy goal, and one which promotes employment opportunities leading to economic self-sufficiency. However, in order to ensure that State and Local Boards retain maximum flexibility to establish training policies that best meet their unique needs and circumstances, we have refrained from including additional regulatory requirements. The regulations do contain other provisions that impact on this issue. The provisions on performance accountability, at 20 CFR 666.100, include measures on, among other things, job retention, wage gains and credentialing which may serve as an incentive to stress training in high wage and high skill demand occupations. No change has been made in the Final Rule.

Similarly, another comment suggested that § 663.310(c) be modified to clarify that training should only be for employment opportunities ''that provide a self-sufficiency wage.'' We agree, in concept, that the ultimate goal for all employment, whether under WIA or any other program, should be self-sufficiency for the job seeker. We expect that State and Local Boards will consider a wide range of issues including training for jobs that allow participants the opportunity to attain self-sufficiency. Section 663.310, as written, is essentially a recitation of the Act's training eligibility provisions. No change has been made to the Final Rule.

One comment suggested that the One-Stop partners, the Local Board, and the chief elected official must participate in the development of training eligibility policies, and that those policies must also be made available for public review and comment to assure fairness in the selection process.

Response: We agree that the Local Board, which must include representatives of the One-Stop partner agencies, is the entity responsible for making policy at the local level. We also believe that, although not specifically required, such policies should be included in the Local Plan and available for public review and comment. We encourage the Local Boards to include such a policy in their plan development process. If such policies are not included in the plan, their development, as an activity of the Board, is subject to the sunshine provision at WIA section 117(e) and new section 20 CFR 661.307. No change has been made to the Final Rule.

Another commenter suggested that Title I of the Act ''radically'' and ''bureaucratically'' restricts access to job skills training, and believed that the regulations require unemployed individuals to accept any job available, regardless of whether that job enables the participant to rise above the poverty level or not.

Response: We strongly disagree that the regulations require the result suggested by the commenter. The intent is not to require unemployed individuals to accept just any job. As we have stated above, in responding to comments on eligibility for intensive services, the different eligibility criteria for unemployed adults or dislocated workers should in no way be construed to allow participants to be placed in jobs that do not provide the opportunity for participants to attain self-sufficiency. The regulations clearly state there are no federally imposed minimum waiting periods before participants can progress to the next tier of services. Neither is there a federally imposed minimum number of failed job searches to demonstrate eligibility for the next tier of services. Rather, the regulations reflect our position that decisions regarding which services to provide, and the timing of their delivery, are best made on a case-by-case basis at the local level. Finally, we again note that neither the Act nor the federal regulations mandate a ''work first'' system that forces individuals into the first-available employment, regardless of whether or not that employment leads to self-sufficiency. No change has been made to the Final Rule.

3. Requirements When Other Grant Assistance is Available to Participants: Section 663.320 implements the requirements of WIA section 134(d)(4)(B), which limit the use of WIA funds for training services to instances when there is no or insufficient grant assistance from other sources available to pay for those costs. The statute specifically requires that funds not be used to pay for the costs of training when Pell Grant funds or grant assistance from other sources are available to pay those costs. Section 663.320 is intended to give effect to this WIA requirement and still give effect to title IV of the Higher Education Act (HEA), as amended (20 U.S.C. 1087uu), which prohibits taking into account either a Pell Grant or other Federal student financial assistance when determining an individual's eligibility for, or the amount of, any other Federal funding assistance program.

Section 134(d)(4)(B) of WIA requires the coordination of training costs with funds available under other Federal programs. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell Grant, § 663.320(b) requires that program operators and training providers coordinate by entering into arrangements with the entities administering the alternate sources of funds, including eligible providers administering Pell Grants. These entities should consider all available sources of funds, excluding loans, in determining an individual's overall need for WIA funds. The exact mix of funds should be determined based on the availability of funding for either training costs or supportive services, with the goal of ensuring that the costs of the training program the participant selects are fully paid and that necessary supportive services are available so that the training can be completed successfully. This determination should focus on the needs of the participant; simply reducing the amount of WIA funds by the amount of Pell Grant funds is not permitted. Participation in a training program funded under WIA may not be conditioned on applying for or using a loan to help finance training costs.

With such coordination and arrangements, the WIA counselor is likely to know the amount of WIA funds available to the WIA participant when calculating the amount of financial assistance needed for the participant to complete the training program successfully. The WIA counselor needs to work with the WIA participant to calculate the total funding resources available as well as to assess the full ''education and education related costs'' (training and supportive services costs) incurred if the participant is to complete the chosen program. This also ensures both that duplicate payments of training costs are not made and that the amount of WIA funded training is not reduced by the amount of Federal student financial assistance in violation of 20 U.S.C. 1087uu.

It is important to note that the Pell Grant is not school-based; rather, it is a portable grant for which preliminary eligibility can, and should, be determined before the participant enrolls in a particular school or training program. The Free Application for Student Aid (FASA), which is used to establish Pell Grant eligibility, should be readily available at all One-Stop centers for assistance in the completion of these ''gateway'' financial aid applications.

Section 663.320(c) implements the requirements of WIA section 134(d)(4)(B)(ii). This section permits a WIA participant to enroll in a training program with WIA funds while an application for Pell Grant funds is pending, but requires that the local

workforce investment area be reimbursed for the amount of the Pell Grant used for training if the application is approved. Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement.

In the limited cases where contracts are used rather than ITA's, the contracts negotiated by the One-Stop center must prohibit training institutions or organizations from holding the student liable for outstanding charges. Otherwise, the performance agreements would be undercut because the incentive for the institution or organization to perform would be removed. Also, the practice of withholding Pell Grants from students is prohibited by the U.S. Department of Education.

We received a few comments on Pell Grant issues. One commenter stated that WIA section 134(d)(4)(B) does not require disbursement from that portion of Pell paid to WIA participants for education-related expenses. The commenter recommended that, although the issue was discussed in the preamble to the Interim Final Rule, the rule should be modified to state that the training provider must reimburse only for ''tuition portion'' of the Pell grant. The commenter also raised the issue of the need for reimbursement arrangements for WIA funds used to ''underwrite the training'' with training provider while Pell funding is pending. The commenter also requested clarification on whether tuition costs include or exclude specifically required fees for lab, supplies and other fees. Another commenter noted that the regulations appear to assign the One-Stop operator the responsibility for making arrangements with training providers to process reimbursements when WIA participants enroll in training while their application for a Pell Grant is pending. This precludes the other One-Stop partners from having this responsibility. The commenter recommended that we replace all references in the regulations that assign specific responsibilities to the One-Stop operator with language that allows for flexibility.

Response: We will continue to work with the U.S. Department of Education to address the coordination of Pell grant assistance with WIA title I funded training assistance. We will provide additional guidance to the WIA Workforce Development System through administrative issuance. We are also pursuing a legislative amendment to make clear the order of payment for training costs for individuals eligible for both WIA activities and Pell Grant educational assistance. In the meantime, we have adopted the changes suggested by the commenters.

Subpart D—Individual Training Accounts

1. Definition of an Individual Training Account: Sections 663.400 through 663.430 contain information about Individual Training Accounts (ITA's). A key reform tenet of the Workforce Investment Act is that adults and dislocated workers who have been determined to need training may access training with an Individual Training Account which enables them to choose among available training providers, thus bringing market forces into federally funded training programs. Section 663.410 provides a definition for an ITA that seeks to provide maximum flexibility to State and local program operators in managing ITA's. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts, or policies regarding exceptions to the limits of the ITA, rather they provide that authority to the State or Local Boards.

One commenter felt that the accountability requirements in the Act and regulations deny States and Local Boards the flexibility needed to ensure that individuals have enough financial power over their use of ITA's, but believes that this is a necessary result of the accountability requirements of the Act and regulations. The commenter suggested that, to accomplish the desired flexibility, Congress and the Department must lower performance and accountability expectations.

Response: We believe the performance and accountability expectations of the Act must be balanced against the flexibility provided to the State and Local Boards to design their ITA programs. The performance and cost information that training providers must submit to be identified as an eligible provider of training services under WIA section 122, combined with the negotiated local area performance measures, are essential for ensuring high quality individual and program-wide outcomes. Within this structure, we have attempted to give State and Local Boards the maximum possible discretion to develop ITA programs. No change has been made to the Final Rule.

Procedures for making payments—State and Local Boards have the authority to establish procedures for making payments for ITA's funded under WIA section 134(d)(4)(g) and § 663.410. There were a number of comments about the nature of payments to training providers under ITA's. Two commenters suggested that the regulations explicitly state that payments to community colleges for a training program or program segment must be made under the same terms that the colleges require of other students, rather than incrementally. Other commenters supported the current language in § 663.410 that offers the flexibility for incremental payments to training providers.

Response: We generally agree that the normal form and manner of tuition payments to community colleges should not change as the result of the use of ITA's. At the same time, we do not want to prohibit Local Boards from adopting methods that tie payments to contractually agreed upon benchmarks that can benefit both participants and training providers, and support the achievement of performance measures. No change has been made to the regulations.

One commenter, which favored retention of the regulatory language authorizing interim payments, seemed to believe that such a payment methodology would also apply to the supportive services that an ITA participant might be receiving.

Response: We do not read the regulations to require that when a Board chooses to make incremental payments for training, it is under an obligation to pay for other associated services in that same manner.

Another commenter recommended that the regulations require an ITA payment system that incorporates independent verification procedures that will ensure that the training provider has measured and certified the training received. That same commenter also suggested we establish a payment system that is efficient and easy to use while providing the strongest fiscal controls to prevent abuse.

Response: We have chosen not to impose a particular payment procedures but we note that the process of identifying eligible training providers in and of itself helps to ensure quality training. We also encourage Local Boards to adopt other practices that promote quality training, such as documentation by the training provider of the delivery of training or the participant's achievement of agreed upon benchmarks or outcomes, on-site and desk reviews of the training provider and regular contact with the participant. We also agree that payment systems should be designed to ensure strong fiscal accountability and to

prevent fraud and abuse. No change has been made to the Final Rule.

Role of the case manager—WIA section 134(d)(4)(A)(ii) provides that one of the eligibility criteria for adults and dislocated workers to receive training services is that, after an interview, evaluation, or assessment and case management, the participant has been determined by a One-Stop operator to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services. Commenters supported the role that is described for case managers in § 663.410, that is, assisting the participant to select the eligible provider from which to purchase training. One of these commenters further suggested that we emphasize the need for skilled, professional case managers while another pointed out that demonstration studies on the use of vouchers have found that skill, professional case management was the key factor in determining the effectiveness of vouchers

Response: We acknowledge the critical role of case managers and urge, where necessary, States and/or local areas to arrange quickly for staff training to ensure case managers have the understanding and knowledge to carry out this role effectively. We believe, however, that prescribing the role of case managers in the regulations is inconsistent with our principle that the regulations should permit State and Local Boards the maximum possible flexibility. The regulations have not been changed.

National data collection and evaluation of the new ITA system: There were also comments urging us to collect information on the actual costs of training and to conduct evaluations of the relationship between training and job placement, as well as the relationship between the amount and duration of ITA's and the success of workers in securing jobs that provide self-sufficiency. Additionally, the commenter asked us to establish a system to collect information on outcomes for ITA's including the relationship of training to job placement.

Response: We believe that both evaluations and analyses of JTPA SPIR data have already demonstrated the strong relationship between training, including training durations, and outcomes. The evaluations that will be conducted of current ITA demonstrations will further examine the issues raised by the commenters. Also, WIA section 136(d)(2)(A) requires States to report on entry into unsubsidized employment that is related to the training provided to participants, and section 136(d)(2)(C) requires States to report the cost of workforce investment activities (which include training) relative to the effect of the activities on the performance of participants, to the Department as part of their annual report. We encourage State and Local Boards, as part of their ongoing responsibility to manage performance, to examine those same issues. In addition, we will continue to provide technical assistance regarding various program design issues and the implications and potential unintended consequences that must be considered in making ITA policy decisions. No change has been made to the Final Rule.

Two other commenters suggested that the regulations authorize the use of ITA's to pay the full cost of customized training programs in which tuition is not otherwise charged.

Response: The Act specifically identifies customized training as an exception to ITA's. In general, customized training is provided based on a specific training curriculum ''customized'' to the particular worker skill needs of a specific employer or group of employers. While participants may choose to participate in such training, there is no provision for customer choice among training providers, rather there is a single training provider who has been selected to ''customize'' the training. Because there is no customer choice on the part of the participant, ITA's are not an appropriate mechanism for customized training. On the separate issue of the use of WIA funds to pay for the full cost of customized training, we are constrained by section 101(8)(C) of the Act, which requires the employer to pay not less than 50 percent of the cost of the training. No change has been made to the Final Rule.

2. Limitations on the amount and duration of ITA's: A number of commenters raised concerns about the policies that State and Local Boards might establish with respect to a dollar and/or duration limitation for ITA's. Section 663.420 provides guidance for State and Local Boards in their policy decisions to impose amount or duration limits on ITA's. In general, although the regulations allow limits, we expect that the limits will be realistic and will neither preclude people from getting the training that they need nor providers from participating in the system. In setting limits, State and Local Boards need to consider the factors described above to be sure that the limits are not too restrictive.

A commenter recommended that the limits on ITA's be as flexible as possible to allow workers to invest in training that will lead to a living wage and long-term self sufficiency and a second urged State and Local Boards to consider the needs of different populations in setting limits.

Response: Section 663.420(b)(1) allows State and Local Boards to establish limits based on a participant's needs, which should include the need for a job that leads to self-sufficiency. In addition, § 663.420(b)(2) allows State or Local Boards to set a range of limits, an option which Boards may choose when considering the varying needs of different population groups. These two options provide considerable flexibility to the Local Board to support a policy that provides for variations in the funding of ITA's. Thus, particular occupational training that leads to self-sufficiency, or furthers other goals of the workforce investment, could be set at different dollar limits. Similarly, Local Boards could seek to ensure a large number of providers of entry level skills training are available to aid participants in avoiding transportation costs and long commutes during training. While we agree with the comment, and do not want limits of amount of duration to preclude people from getting the training they need or training providers from participating in the system, in order to preserve State and local flexibility, no change has been made to the regulations.

To ensure that State and Local Board are able to make informed decisions about how effectively different populations can be served under an ITA system, commenters recommended that we encourage State and Local Boards to gather data from training providers and other stakeholders on the actual costs of and time needed for training. One commenter focused this concern on low-income unemployed individuals. The commenter asked that we include affirmative examples to States and Local Boards in regulations or in guidance to ensure that such limitations do not impede the success of intervention. Other commenters suggested that there is evidence that previously established limits have been too restrictive to effectively serve low income populations.

Response: We believe that is important for the eligible training provider list to include sufficient numbers of training providers to ensure that customer choice is a reality. This means that State and Local Boards must develop ITA policies that ensure the marketplace can operate and that a number of training providers across a

wide variety of occupations will believe it is in their best interests to apply to become an eligible provider. If the number of training providers seeking to be included on the eligible provider list is sufficient to ensure healthy competition, then the need for extensive cost analysis may be eliminated. No change has been made to the Final Rule.

We have begun to develop additional information about ITA's, including information drawn from a new ITA demonstration that will explore a number of approaches to the administration of ITA's and provide a laboratory for stakeholders and local operators to visit and observe. We will use this information to provide guidance to the system through conference workshops.

Numerous comments concerned § 663.420, which gives the State or Local Board the authority to establish limits on the dollar amount and the duration of an ITA. Several commenters were concerned that cost and duration limitations on ITA's will limit customer choice. They were especially concerned that cost limitations would be set too low to provide a range of eligible training providers from which to choose. The commenters voiced concern that the cost limitations could be set at amounts less than the actual cost of training services. They requested that we provide regulations or guidance to ensure that ITA administration does not become a limiting factor in serving job seekers. Similarly, many commenters felt that limits on the amount and duration of an ITA conflicted with Title I of the Rehabilitation Act and limits informed choice of individuals with disabilities.

Response: We are also concerned that the dollar and duration limitations could have the potential for limiting customer choice. Consequently, § 663.420(c) provides that these limitations should be implemented in a manner that maximizes customer choice. We emphasize that any limits established by a State or Local Board apply only to training under Title I of WIA, not to training under Title I of the Rehabilitation Act. We also note that, under WIA, access to training or any other services is not an entitlement. Local Boards must exercise discretion in establishing ITA's for eligible participants. The regulations at § 663.420(b) permit State and Local Boards to establish ITA limitations in a number of different ways and provides substantial discretion to allow for other circumstances such as the availability of other funding, the contribution such training would make to the overall workforce skill needs of the community, or the needs of the individual participant to be taken into consideration.

We have added language to § 663.420(c) to clarify that any ITA limitations that are established may provide for exceptions to the limitations in individual cases. We believe that more effective programs will include this type of flexible limitation policies, so that individuals are not excluded from training solely because of an ITA limitation. In establishing guidance or limits on training funding, a number of factors may be taken into consideration, such as the skill shortages identified by local employers, the costs of training to address these occupations in demand, and the training needs and interests of the participants. The availability of other funding resources should also be considered in the development of the training portion of the Individual Development Plan, including Rehabilitation Act funds, TANF, Pell Grants, and other Federal and State funding. Coordination and cost sharing between Local Boards and Rehabilitation Act grantees as well as other partners with training funds is a matter for local negotiation and inclusion in the MOU. 20 CFR part 662 contains a detailed discussion of MOUs.

DOL's WIA title I performance accountability specifications do not measure cost per participant, therefore, the setting of cost limitations for ITA's will not have an impact on the performance accountability system. The decision to establish cost and duration limitations should be made after fully considering their benefits to the overall workforce system and their effects on individuals and populations in need of training. In making such decisions, State and Local Boards should consider all public costs, not simply available WIA funds, the value of such training in contributing to the competitiveness of local businesses that may be ''at risk'' or may be expanding and other economic development benefits.

One commenter suggested that the language in § 663.420(a) which gives the State or Local Board responsibility for establishing dollar and duration limits be revised to give the Local Board the sole responsibility.

Response: State and Local Boards both play an important role in the ITA/eligible training provider systems. Local Boards have an important familiarity with the local labor market and local training providers, while the State plays an important leadership role in the establishment of the workforce investment system as a whole—including the ITA/eligible training provider system. As a result, no change has been made to the Final Rule.

One commenter asked how disagreements between a State and Local Board over the establishment of limits to ITA's would be resolved.

Response: The State Board's limits would prevail in such a case. State or Local Boards should consider the range of costs and types of training in demand by employers throughout the State in setting limits. Policies concerning spending limits on ITA's should not unduly exclude eligible providers or unduly limit customers' training options in any geographical area of the State. Any cost limits established by State or Local Boards apply only to WIA funds, and not to the total cost of training. Where the cost of the desired training exceeds the established State or Local Board limit for ITA's, an eligible participant should still be able to access WIA ITA funds, when the WIA training funds will be supplemented with funds from other sources—such as Pell Grants, scholarships, severance pay and other sources. Section § 663.420 has been changed by adding a new paragraph (d) to reflect the ability of participants to access ITA funds when the ITA funds will not pay the full cost of training. This approach is supported by § 663.310(d) which provides that training services may be made available to employed and unemployed adults and dislocated workers who are unable to obtain sufficient grant assistance from other sources to pay the cost of training and require WIA assistance in addition to other sources of assistance.

Although discussing limits to ITA's, one commenter suggested that State and Local Boards be required to establish criteria and written policies governing access to and the distribution of ITA's and that the process for developing these policies be required to include consultation with appropriate labor organizations. Further, the commenter suggested that such policies be available to the interested parties, the general public and all individuals served through the One-Stop system.

Response: The State is required, in 20 CFR 661.220(d), to provide an opportunity for public comment on and input into the development of the state plan prior to its submission. The required opportunity for public comment requires that representatives of labor organizations, as well as representatives of business and chief elected officials be afforded the opportunity to comment. Similarly, § 661.345(b)(2) requires that the Local Board provide an opportunity for public comment on and input to the development of the local workforce

investment plan, prior to its submission, be provided to representatives of labor organizations and business. WIA section 117(e) also requires the Local Board to provide information to the public on Local Board activity.

We believe that access to and distribution of ITA's is based broadly on the Local Board's policy decision about the amount of funding to be devoted to training services and, more narrowly, on individual participants' need for training and their eligibility for it. We strongly encourage Local Boards to consult with a variety of organizations, including organized labor, when making policy decisions concerning ITA's. No change has been made to the Final Rule.

A commenter recommended that we should include a prohibition on discrimination on the basis of union affiliation in the selection of training programs.

Response: We believe that WIA section 122 and Subpart E of part 663, which provides further direction regarding eligible training providers, establish sufficiently objective procedures to ensure against discrimination in the selection of training offered either by unions or by employer organizations. No change has been made to the Final Rule.

Another commenter requested authority for training providers to reject students with ITA's where they think the student will not succeed in, or benefit by, the program.

Response: There is no requirement that eligible training providers must accept any participant who seeks to enroll under the local workforce investment area's ITA program. Further, we are not limiting an eligible training provider's ability to set entrance criteria or screening tests to determine that the participant is likely to success in the particular training curriculum. We believe that the intensive services provided to a participant, especially assessment and career counseling in consultation with the case manger in developing a realistic Individual Employment Plan, combined with customer-oriented information on eligible training providers that reflects the entrance criteria for the desired training curriculum, will be critical to the participant's selection of appropriate training in which they can achieve success and ultimately, job placement. No change has been made to the regulations.

3. Exceptions to ITA's: The Act, at § 134(d)(4)(G)(ii), and the regulations at § 663.430, provide that, under certain limited circumstances, contracts for training rather than ITA's may be used. Specifically, on-the-job training contracts with employers and customized training contracts are authorized. Contracts may also be used when there is an insufficient number of eligible providers in a local area. This exception applies primarily to rural areas. The exceptions to ITA's are to be used infrequently. The Act reforms the local service delivery system by eliminating the current practice of assigning participants to contracted training services and instead establishing a system that maximizes customer choice in the selection of training providers. When the Local Board determines there are an insufficient number of eligible providers in the local area to accomplish the purposes of a system of ITA's, and intends to use contracts for services, there must be at least a 30 day public comment period for interested providers.

Contracts for Special Populations—Section 663.430(b) also authorizes contracts for training when the Local Board determines that there are special populations that face multiple barriers to employment and that there is a training services program of demonstrated effectiveness offered by an eligible *provider.* Section 663.430(a)(3) explains that an eligible provider in this case is a community based organization (CBO) or other private organization. We have received many suggestions about this exception and the extent to which it may be used.

Response: Generally, it is our position that this exception is intended to meet special needs and should be used infrequently. Those training providers operating under the ITA exceptions still must qualify as eligible providers, as required at § 663.505. We believe that effective eligible training providers, including CBO's and other training providers, can and will compete for individual training accounts and that providers should view the use of ITA's as an opportunity to expand their customer base.

Numerous comments recommended that the list of special participant populations be expanded to include individuals with disabilities who require multiple services over extended periods of time. Other commenters recommended that the list also be expanded to include older individuals or low income older individuals. Two commenters disagreed, in part, with the recommendation that individuals with disabilities be included as a special participant populations. They made the point that such individuals should not be automatically perceived as a special participant population and excluded from benefitting from ITA's.

Response: The Act does not specifically list any of these populations in section 134(d)(4)(F)(iv). The Act and § 663.430(b) do, however, list as one of the four special participant populations defined in the Act ''Other hard-to-serve populations as defined by the Governor involved.'' As a result, Governors have the authority to add additional groups, such as individuals with disabilities, to the list contained in the statute. Other provisions that assure that persons with disabilities will have full and fair access to WIA services. For example, section 188(a)(2) provides that no individual shall be excluded from or denied benefits under any WIA title I program or activity on the basis of disability. Regulations implementing this provision are found at 29 CFR part 37. In addition, section 112(b)(17) of the Act requires the Governor to describe, in the State Plan, how the State will serve the employment and training needs of ''individuals with multiple barrier to employment (including older individuals and individuals with disabilities).'' We believe that this direction, which is included in the WIA State Planning Guidance, provides sufficient direction for consideration of these and other population groups not specifically mentioned in section 134(d)(4)(F)(iv) of WIA. The requirement for public comment on the plan in § 661.220 of the regulations allows interested parties the opportunity to promote the interests of those two groups.

In addition, we would like to clarify that within the special participant populations that are listed in the Act and that are identified by the Governor, there will be individuals for whom an ITA is the most appropriate avenue to employment. We encourage One-Stop operators and intensive service providers to consider all training options when working with special participant populations. It is important that consumer reports reflect adequate information to determine the appropriateness of training provided by an eligible training provider with regard to accessibility, auxiliary aids and services, etc., to enable customers with special needs to make an informed choice.

One commenter recommended that the Governor be required to solicit comments from key stakeholders, including business, organized labor, and CBO's, when identifying additional populations.

Response: Section 112(b)(17)(A)(iv) of the Act requires the Governor to have this information in the State plan, which is, of course, subject to comment.

No change has been made to the Final Rule.

Criteria for ''Demonstrated Effectiveness'': Section 663.430(a)(3), provides that when the exception for special populations is used, the Local Board must have in place criteria it developed to determine ''demonstrated effectiveness,'' particularly as it applies to the special participant population it proposes to serve. This determination is in addition to meeting the requirements for qualifying as an eligible training provider. The criteria listed in the regulation are illustrative and Local Boards should develop specific criteria applicable to their local areas.

One commenter suggested that, in selecting CBO's as training providers through a contract for services to serve special participant populations, State and Local Boards should be able to consider quality training even if that training program is not included on the eligible provider list.

Response: We cannot agree to that recommendation since WIA section 122 requires that all training providers meet the requirements for inclusion on the eligible provider list. Section 122(f) lists two exceptions to the requirement that deliverers of training services be eligible training providers; on-the-job training and customized training. We interpret these exceptions to be exclusive; providers of all other training services must go through the eligible provider process. No change has been made to the Final Rule.

One commenter felt that one of the criteria of demonstrated effectiveness established in § 663.430(a)(3), ''financial stability,'' was too restrictive and should not be a factor in considering CBO's which have a record of providing crucial services to disadvantaged groups.

Response: In order to ensure the proper expenditure of Federal funds, we believe the financial stability of a CBO or of any private organization is relevant in a Local Board's determination when selecting a training provider for special participant populations. While financial stability is not the only factor that a Local Board may consider, and may not be the decisive factor, it is reasonable for a Local Board to consider the financial stability of an organization in which it may invest scarce training funds. No change has been made in the Final Rule.

The same commenter also recommended that we change § 663.430(a)(3)(ii) to establish, as an alternative to the listed program measures, the criterion of a demonstrated ability to do outreach to and serve populations that face multiple barriers.

Response: Section 663.430(a)(3) does not limit Local Boards to the listed factors in establishing criteria for demonstrated effectiveness. The Local Board may also consider the CBO's or private organization's success in reaching out to disadvantaged populations. No change has been made to the Final Rule.

Another commenter suggested expanding the criteria for demonstrated performance to include the attainment of a self sufficiency wage.

Response: Although we have, in § 663.230, established a minimum definition of self-sufficiency—employment that pays at least the lower living standard income level, as defined in WIA section 101(24)—the criteria for determining whether employment leads to self-sufficiency is left to the State and Local Boards. This means the criteria to be applied could vary substantially from area to area. In addition, the performance accountability system, established in section 136 of WIA, does not refer to attainment of self-sufficiency. While, as we have said above, we recognize the importance of self-sufficiency as a goal for all employment and training activities and urge State and Local Boards to adopt that standard, we are not prepared to impose that standard on the system. However, § 663.430(a)(3) does not limit the ability of the State or Local Board to adopt additional criteria of demonstrated effectiveness by including attainment of self-sufficiency as a measure of demonstrated performance. No change has been made to the regulations.

One commenter suggested expanding the criteria for demonstrated performance to include the demonstrated ability to serve ''hard to serve'' populations.

Response: We have modified § 663.430(a)(3)(ii) to clarify that the criteria listed in that section are among the ways available to demonstrate effective delivery of services to hard to serve populations.

4. *Requirements for Consumer Choice:* WIA section 134(d)(4)(F), and the regulations, at § 663.440, identify the information on training providers that must be made available to One-Stop center customers. They require Local Boards to make available, through the One-Stop centers, the eligible training provider list as well as the performance and cost information associated with each provider. Section 663.440(c) provides additional guidance on how participants may use that information to select a training provider and have an ITA established on their behalf. We received a number of comments on the contents of the information, the manner in which it would be made available, and the level of authority the Local Board and the One-Stop operator will have in establishing ITA's.

A commenter expressed concern that, if the same entities that establish ITA's also offer training, they will have the potential to steer individuals toward their own training services.

Response: The introduction of ITA's was intended to maximize customer choice and reduce any forms of inappropriate referral practices that may have existed. The limited circumstances in which exceptions to ITA's are authorized are a further safeguard against the recurrence of such practices. The Act, at Section 117(f)(1)(B), also establishes stringent conditions that a Local Board must meet before a Governor can consider a waiver of the general prohibition against a Local Board's provision of training. Further, the Act, at section 134(d)(4)(F), requires Local Boards to make available through the One-Stop centers the eligible training provider list and the program and cost information associated with each eligible provider. The availability of that information will allow participants to assume more control over the choice of training provider. Finally, through its monitoring and oversight role, the State may identify and review any unusual patterns of eligible provider usage to determine if corrective action is necessary. We believe these protections are sufficient to avoid the practices the commenter fears. No change has been made to the final regulations.

Another commenter asked how customer choice requirements apply to incumbent workers.

Response: It is important to recognize the difference between incumbent and employed workers. As we have explained above, incumbent workers are individuals who are employed, however, not all incumbent workers are also eligible for services to employed worker as described in WIA sec. 134(d)(3)(A)(ii). Training for incumbent workers is specifically authorized only as a Statewide Workforce Investment Activity under WIA section 134(a)(3(A)(iv)(I) and § 665.210(d). This is an optional activity in which the States may decide to engage. Generally, incumbent worker training is developed with an employer or employer association to upgrade skills training of a particular workforce. It usually takes place in the workplace or after work hours for employees of a specific employer or employer association.

There is no requirement that all incumbent workers to be trained must be determined to be in need of training services to obtain or retain employment that allows for self-sufficiency. Frequently, such training is part of an economic development or business retention strategy developed by a State. In such cases, the employer is involved in the arrangement of the training curricula and usually has a role in the selection of the training provider. Since the training is usually arranged by the employer with a specific training provider, there is no customer choice on the part of the individual incumbent worker other than whether or not to participate in the training. This issue is also addressed in the preamble discussion of 20 CFR part 665.

In contrast, when a One-Stop operator determines that an employed worker meets the eligibility criteria, established under WIA Sec. 134(d)(3)(A)(ii), for training with local (formula) funds, that worker should is no different from any other worker found eligible for training services and must enjoy the same degree of consumer choice as any other person eligible for training. An Individual Employment Plan would be developed for the employed worker as part of the intensive services provided to the participant and a training plan, if so indicated, developed in the same manner as for any other participant. Since the customer choice requirements do not apply to incumbent worker training, no change has been made to the regulations.

Availability of training funds—There were several comments about the language in § 663.440(c) which requires a One-Stop operator to refer an eligible individual to a training program and establish an ITA ''unless the program has exhausted funds for the program year. . . .'' One commenter suggested that, to avoid the early exhaustion of program funds, we should add language requiring the use other available State and local resources, particularly for incumbent workers, before using WIA funds for ITA's. Another commenter felt that the language infringed upon a Local Board's authority to allocate funds among core, intensive and training services, presumably by mandating the expenditure of funds on training at the expense of core and intensive services.

Response: It is important to emphasize that, under section 134(d)(4)(B), the opportunity for an individual to enroll in a training program does not rely exclusively on the availability of WIA training funds. In all cases, the resources of partners as well as Federal, State, local and personal funding sources should must also be taken into account in the development of the Individual Employment Plan. Thus, an eligible individual may receive intensive services and receive assistance in making arrangements for training regardless of whether the local WIA program has exhausted training funds for the program year and is unable to provide an ITA. Since we have already discussed the requirements to consider and use other funding sources in § 663.320, we do not think it is necessary to add an additional mandate that operators consider other funding sources before approving training. Section 195(2) of the Act establishes a ''maintenance of effort'' type of requirement by mandating that WIA funds be used for activities that are in addition to those already available in the local area, and § 663.310(d) specifies that training services may be made available to eligible adults and dislocated workers who are unable to obtain grant assistance from other sources. In an effective One-Stop system, the One-Stop operator will have knowledge of additional resources and will be able to coordinate WIA services with those of other partner programs, thus increasing the opportunity to provide increased services to customers of all the partner programs. Finally, incumbent worker training activities are funded from statewide workforce investment funds authorized under section 134(a)(3)(A)(iv)(I) and rather than local training funds.

In response to the second comment, the ''exhausted funds'' language of § 663.440(c) is not intended to contradict, and must be read in conjunction with, the Local Board's authority to determine the appropriate mix of core, intensive and training services in the local area, described in § 663.145(a). In recognition of this, we have changed § 663.440(c) to clarify that a One-Stop operator must refer an individual to training and establish an ITA except when the Local Board determines that training funds have been exhausted.

The commenter also suggested that the costs of referral to training be borne by the One-Stop operator.

Response: No change has been made in the regulations since § 663.440(d) already requires that the cost of that referral be paid by the applicable Title I adult or dislocated worker program.

Another commenter suggested that in order to assure ''true'' customer choice, the consumer information provided by the Local Board should include a listing of the types of jobs into which providers have placed people and the wages earned in those jobs.

Response: WIA section 122(d) does not require eligible training providers to submit specific information on jobs, although the Governor or the Local Board may choose to include such a requirement; that same section does, however, require the submission of information on wages and permits requiring the submission of information on the percentage of individuals who obtain employment in an occupation related to the program (WIA sec.122(d)(1)(A)(i)(II)). We note, though, that the information required by section 122(d) must be submitted for each specific training program on the list of eligible training programs, not for the eligible provider's full range of programs. Information on the specific training program, along with information submitted at the Governor's or Local Board's option on training-related placements, may serve as a useful substitute for the specific job information the commenter seeks. As discussed further in subpart E, WIA section 122(d)(3) sets conditions under which additional information may be requested. No change has been made in the regulations.

Another commenter supported the requirement in § 663.430(a)(2) for a public comment period of 30 days before a Local Board can determine that there is an insufficient number of eligible training providers in the local area to accomplish the purposes of ITA's.

Response: The regulations retain that requirement.

Subpart E—Eligible Training Providers

Subpart E describes the methods by which organizations qualify as eligible providers of training services under WIA. It also describes the roles and responsibilities of Local Boards and the State in managing this process. Although no single entity has full responsibility for the entire process, the State must play a leadership role in ensuring the success of the eligible provider system. The Governor establishes minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and for all subsequent eligibility determinations. The Local Board may establish additional local performance levels for subsequent eligibility determinations. The eligible provider process requires a collaborative effort among the State, Local Boards, and other partners. The regulations attempt to amplify and clarify the intent of the Act, by linking statutory language on eligible providers in WIA section 122 with the provisions covering Individual Training Accounts

(ITA's) in WIA section 134. In § 663.505, the regulations clarify that all training providers, including those operating under the ITA exceptions, must qualify as eligible providers, except for those engaged in on-the-job and customized training (for which the Governor may establish qualifying procedures, as discussed in § 663.595). Finally, in order to ensure the strong relationship between the eligible provider process and program performance, § 663.530 establishes a maximum eighteen month period for an organization's initial determination as an eligible provider.

Before publication of the Interim Final Rule, some traditional providers of training under previous workforce programs, such as community-based organizations, expressed concern that they would face difficulties in participating in this system. The regulations clarify that such organizations have the opportunity to deliver training funded under WIA, provided that they deliver services that customers value and meet training performance requirements. It is important that States provide access to these organizations in order to maximize customer choice. States should provide access to a broad and diverse range of providers, including CBO's, while maintaining the quality and integrity of training services.

A commenter recommended that the Act and the regulations for subpart E be changed to permit use of a competitive procurement process, such as that permitted for youth providers in the Act, since the identification of eligible training providers for adult training services was viewed as ''overly complicated.''

Response: We recognize that the eligible training provider requirements may present significant implementation challenges to States and local areas. However, these requirements are essential to the new system envisioned under WIA, in which consumer choice and accountability are key principles. Although ITA's must be used for most training services, contacts for training are permissible in certain limited circumstances (discussed in § 663.430): for customized or on-the-job training (OJT); when there are a limited number of providers, or for programs of demonstrated effectiveness offered by CBO's or other private organizations for special participant populations facing multiple barriers to employment. Under 20 CFR 661.350(b)(10), Local Boards are required to describe in their local plan the competitive process to be used to award contracts for training services when exceptions are made to the use of ITA's. No change has been made to the Final rule.

Several commenters suggested that language should be added in § 663.500 and throughout the subpart to clarify that programs, not providers, are made eligible, and that eligibility is not automatically conferred on all of an eligible provider's programs.

Response: We agree that clarification is needed. We have added language throughout the subpart (in §§ 663.500, 663.510, 663.515, 663.535, 663.550, 663.565, 663.570, 663.585, and 663.590) to clarify that:

- *programs* as well as providers must be eligible;
- providers are eligible to provide training services *only* for the programs described in their applications;
- the Local Board and the Governor may require application information on providers as institutions, in addition to information regarding programs;
- application requirements for all *programs* not eligible under the Higher Education Act nor registered under the National Apprenticeship Act (regardless of the type of provider) fall under the Governor's initial eligibility procedures;
- providers submit performance information on *programs* and those *programs* that don't meet performance levels must be removed from local lists;
- providers may continue to be eligible if at least one of their programs is eligible (even if other of their programs are determined ineligible and removed from the local and State lists); and
- State and local lists must include information on eligible training *programs* as well as providers.

A number of commenters wanted us to add specific language in § 663.500 and throughout this subpart on the need to assure that there is diversity in the types of programs offered and in entrance requirements, that community-based organizations are included, and that nontraditional employment for women be a suggested focus for new training providers.

Response: Under § 663.440(a), training services must be provided in a manner that maximizes consumer choice. We agree with the commenters that maximizing consumer choice requires that Governors and Local Boards ensure that eligible training provider systems offer a diverse array of high-quality programs that meet the varying career interests, skill levels, and training needs of WIA customers, including low income adults, dislocated workers, and other priority groups under WIA. Governors and Local Boards are strongly encouraged to provide outreach, technical assistance, and leadership to different types of providers, including CBO's and providers of non-traditional employment and training opportunities, in order to ensure a diverse array of high-quality training options. In fact, 29 CFR 37.42 requires recipients (including Governors and Local Boards) to conduct outreach efforts to various populations. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have, in many local areas, proven to be a key source of quality programs. We do not think it would be useful to try to prescribe a uniform rule to cover the variety of State and local selection processes and criteria that will exist. We encourage Governors and Local Boards to administer the selection process in a manner that assures that significant numbers of competent providers, offering a wide variety of programs are available to customers, and have added language indicating this to § 663.500.

A number of commenters were concerned that the requirements in section 122 of the Act and all of §§ 663.500 through 663.595 of the regulations would be in conflict with ''informed choice'' requirements in title I of the Rehabilitation Act of 1973, as amended by title IV of the Workforce Investment Act. Commenters noted that State Vocational Rehabilitation (VR) agencies have their own vendor approval procedures, maintain their own vendor lists, and that some organizations that work with persons with disabilities may not be on a WIA eligible training provider list.

Response: While VR agencies are required partners in the One-stop system, participants in VR-funded services can select vendors, including training providers, approved under the State VR agency's procedures and policies. Only when VR participants also use WIA title I funds must training services be from a provider and program eligible under WIA title I.

Both title I of WIA and Section 102(d) of the Rehabilitation Act (title IV of WIA) contain provisions that we believe are intended to serve the same goal—providing participants with the opportunity and the means to make informed choices about the services they receive. Title I of WIA mandates that training be delivered in a manner that maximizes consumer choice and requires the use of ITA's, provision of descriptive and performance information on eligible providers and programs, and delivery of intensive services, such as assessment and case management. Similarly, section 102(d) of the Rehabilitation Act requires State VR agencies to implement policies to

assure that individuals can exercise informed choice in decisions related to assessment, selection of employment outcome, specific vocational rehabilitation services, the entity that will provide services, the employment setting in which services will be provided, and the methods available for procuring services.

We encourage State VR agencies and WIA systems to harmonize and coordinate their respective policies and procedures on informed consumer choice and the creation of lists of, and information on, eligible or approved providers of training services. Both systems could explore, for example, common application requirements or approval criteria for vendors of training services, expediting the application or approval process to assure timely inclusion of vendors from the partner system, providing outreach to their respective providers on how they can become eligible or approved under the partner's system, and creation of a common, accessible consumer information system on programs and providers that can be used by participants in both WIA title I and VR as they exercise their choice.

As we noted earlier, we encourage Governors and Local Boards to ensure that the eligible training provider system provides access to a broad diversity of programs that can accommodate the varying needs, career interests and preferences of priority groups under WIA. We encourage Governors and Local Boards to make sure that State and local WIA procedures, while maintaining the quality and integrity of training services, afford adequate and timely opportunities for applications from training programs and providers serving individuals with disabilities. Also, when developing initial and subsequent eligibility procedures, under §§ 663.515(c)(1)(I) and 663.535 (a)(1), Governors must solicit and take into consideration the recommendations of providers. We encourage Governors to extend this opportunity to providers offering training services to individuals with disabilities. Since we do not see a conflict between WIA's customer choice and VR's informed choice requirements, no change has been made to the Final rule.

Section 663.505—What are Eligible Providers—One commenter wanted to ensure that § 663.505 permits apprenticeship programs with applications pending to be recognized as eligible training providers.

Response: Apprenticeship programs awaiting State or federal approval can be recognized as eligible by Local Boards. However, since such programs are not yet registered under the National Apprenticeship Act, the provider would have to apply under the Governor's procedures for initial eligibility, which requires the provision of performance and cost information. No change has been made to the Final rule.

A commenter suggested that § 663.505 (b)(2)(iii), be revised to specifically mention service or conservation corps as other eligible providers of training services.

Response: Service or conservation corps programs are among the types of programs that could be eligible to provide adult training services under State and local initial eligibility procedures. There are many types of organizations that could apply and become eligible, but we do not think it is appropriate to try to enumerate them all, or to specify certain groups. No change has been made to the Final rule.

One commenter wanted us to ensure that CBO's, whose eligibility is discussed in § 663.505(b)(2)(v), are not left out as eligible training providers simply because they are not ''automatically'' eligible under WIA section 122(b)(1).

Response: Since most CBO's and their programs are not HEA-eligible, they will have to provide program performance and cost information in initial applications and their programs will have to be determined eligible by the Local Board. However, we anticipate that many CBO programs will be able to meet performance requirements both initially and subsequently, and thus will be included on local and State lists. As noted earlier, we strongly encourage States and Local Boards to provide outreach and technical assistance to providers such as CBO's, to ensure that there is a wide array of providers and programs that can both accommodate WIA participants' diverse training needs and career interests and meet accountability requirements. Community-based organizations, recognized at § 663.590 as being able to apply and be determined eligible, have proven able in many communities to meet these skill needs and career interests while increasing participants' earnings and employment. We encourage CBO's to take part in the consultation process required under §§ 663.515(c) and 663.535(a). Under these provisions Governors must solicit and take into consideration the recommendations of training service providers and interested members of the public on both initial and subsequent eligibility procedures. We believe that the regulations adequately protect the interests of CBO's, thus, no change has been made to the Final rule.

Section 663.508—Definition of a Program of Training Services—A number of commenters felt that the definition of a program of training services in § 663.508 should be clarified. The commenters suggested that a course or sequence of courses leading to a ''competency or skill recognized by employers'' and ''a training regimen that provides individuals with additional skills or competencies generally recognized by employers'' were similar, but vague. Commenters wondered if one definition applied to services for the unemployed while the other applied to such services for the employed, and what the word ''generally'' was intended to convey. One commenter recommended that the definition require that competencies and training regimen be identified and approved prior to training, and several commenters suggested that the competencies approved by labor organizations or labor-management committees should be acceptable. Another commenter suggested that the regulation clarify that the competencies and skills could include increased literacy or increased English language abilities.

Response: The definition of a program of training services was intended to ensure that individuals using ITA's have access to a broad array of training options, and that no arbitrary limits would be established as the length, nature, location or outcomes of the training, unless required under other parts of the Act or regulations (such as requirements for on-the-job training and customized training at §§ 663.700–663.720). We did not intend to differentiate between training programs for the employed or unemployed. Section 663.508 has been revised to clarify that a program of training services can consist of one or more courses or a training regimen, and that either of these can lead to a formal credential (such as a degree or certificate) or to the acquisition of skills and competencies recognized by employers for a specific job or occupation, as well as general skills and competencies necessary for a broad range of occupations, or job readiness. Section 663.508 has also been changed to indicate that the skills and competencies should be recognized by employers and identified in advance. Such competencies may include literacy or English language abilities. We encourage Local Boards and Governors to develop application requirements that solicit information on the skills and competencies to be taught and how

these are ''recognized'' by employers, labor-management committees, or labor organizations, particularly when programs do not offer a formal credential. We also encourage Governors and Local Boards to create policies and procedures for initial and subsequent eligibility (and data reporting) to accommodate situations in which WIA participants' training plans do not require a full ''program,'' but rather only part of a program or courses from different programs.

Section 663.510—State and Local Roles in Managing the Eligible Provider Process—One commenter asked that § 663.510 be modified to ensure that the public is provided access to the provider list and performance information, that the lists are provided upon request, and that satellite and affiliate offices of the One-Stop system also receive the list.

Response: Under § 663.555, the State list and consumer reports containing performance information must be made available throughout the One-stop system as a core service to the general public, to WIA participants, and to participants whose training is supported by other One-Stop partners. We strongly encourage States and local One-Stop systems to assure that the list is available in all satellite and affiliate offices. In addition, under 29 CFR 37.9, the provider list and performance information must be made available in alternate formats to individuals with disabilities. Since the regulations already accommodate the commenter's request, no change has been made to the Final rule.

A number of comments criticized § 663.510 for failing to address States' and Local Boards' responsibility to ensure that available training options include nontraditional occupational training for women, small business development and other programs targeting particular populations or industrial sectors for which there may be high demand. Commenters asked that the Final Rule include language requiring States and localities to ensure that the eligibility determination process assures the availability of non-traditional training options for women. One commenter wanted the regulations to require States and Local Boards to conduct outreach to CBO's that provide services to disadvantaged populations to help them apply for certification and contracts.

Response: As noted earlier, in order to support informed customer choice by WIA participants with diverse skill needs and career interests, Local Boards and Governors should make every effort to ensure there is a broad range of programs and providers identified on State and local lists. We strongly encourage States and Local Boards to conduct outreach and technical assistance to various types of providers in order to enhance the likelihood that customers will have access to a broad range of programs and providers. Since the State and Local Boards are accountable for their own performance, they must ensure that programs other than HEA and NAA programs included on the initial lists and all programs included on subsequent lists have met minimally acceptable levels of performance. Although we strongly encourage States and Local Boards to take affirmative steps to make sure that programs offering non-traditional training and programs offered by CBO's are included on their eligible provider lists, ultimately, the programs must meet State and local performance requirement to be included. We cannot require States and Local Boards to include programs that do not meet their legitimate performance standards. Thus, no change has been made to the Final rule.

One commenter requested that the regulations clarify that cost and performance information is required for *all* providers, as indicated, in the commenter's view, by the requirement at § 663.510(c)(3) that the designated State agency disseminate the State list ''accompanied by performance and cost information related to each provider * * *''

Response: The commenter is partially correct. For *subsequent* eligibility, performance and cost information is required of *all* programs. For *initial* eligibility of *non-HEA and non-NAA programs and providers,* § 663.515(c)(3)(ii) requires Local Boards to use the Governor's procedures for determining eligibility and those procedures must require that appropriate portions of cost and performance information be provided. For *initial* eligibility of *HEA and NAA programs and providers,* § 663.515(b) provides that the application contents are determined by Local Boards, which are not required to request performance and cost information. Local Boards are not precluded from requesting such information, but the Act does not permit performance levels to be used in determining initial eligibility of HEA and NAA programs. No change has been made to the Final rule.

One commenter was concerned that, as local lists are combined to form a State list, as discussed in § 663.510, some programs and providers could be included for which a Local Board would not want to allow customers to use title I training funds. The commenter further recommended that the regulations give final authority to Local Boards to choose what programs and providers to include on a local list.

Response: We recognize that Local Boards may have legitimate concerns about the quality or integrity of a program or provider. Such concerns may arise if a program from another area's performance is unknown or lower than the levels set by the Local Board for subsequent eligibility, if there have been, or continue to be, problems known to the Local Board related to training program inputs (such as curriculum, instruction, or equipment) or if the provider has not complied with administrative or financial requirements. These problems may exist for programs and providers included by other Local Boards or by the Local Board itself. However, the Board must permit eligible participants to choose from providers on the State list which *must* include: (1) HEA and NAA programs which submit complete applications for initial eligibility in accordance with the Local Board's requirements, (2) non-HEA, non-NAA programs which meet the criteria in the Governor's procedures, and (3) programs placed on the list by another Local Board and approved by the State agency.

The Act, at section 122(e)(4)(b), requires that individuals eligible to receive training have the opportunity to select any eligible provider from any local area that is included on the State list. Local Boards are required to make this list available to the local One-Stop system. We believe that, to maximize customer choice, Local Boards must ensure that participants are informed about the State and local lists, encouraged to use them, and informed of their right to choose any programs on the list. For individuals determined eligible for training services, there are only three conditions a Local Board can impose on participants using ITA's: the training must be in an occupation for which there is demand, the individual must have the qualifications to succeed in the program, and the selection occurs after consultation with a case manager. Since Local Boards must allow title I funds to be used in the programs selected by training participants if these three conditions are met, Local Boards should ensure that the participants select the provider that best suits their individual needs especially when the provider is not located in the local area. Local Boards are encouraged to consider:

• *Enhancing the quality of information on programs and providers.*

High quality information can aid customers in making informed judgments and steering clear of questionable programs or providers. We encourage Local Boards to make recommendations on the types of information to be collected as part of the Governor's procedures for initial eligibility for non-HEA, non-NAA programs and providers and to ensure that their own applications for HEA and NAA programs and providers solicit the needed types of information and to obtain appropriate information to determine subsequent eligibility. Extensive supplementary information on providers and programs can also be included on the local list under § 663.575 and Local Boards and case managers can present additional information during the decision-making process, or encourage WIA customers themselves to acquire additional information on programs and providers under consideration. Local Boards can also coordinate with one another on the types of information required in initial applications and in supplementary information, to assure that there are high levels of information on programs in all local areas.

• *Providing quality guidance and continuing case management.* Individuals eligible for training services select a program after consultation with a case manager. States and Local Boards can take steps to ensure that case managers: encourage individuals to fully utilize the information available in the local or State list and in the consumer reports; provide additional information beyond the lists and consumer reports; assist individuals in doing their own research on programs or providers; and help individuals identify specific options and systematically compare them. If an individual does chose a questionable program, case managers can monitor the individual's progress and the training program's performance, in order to identify and take action to avoid potential problems.

• *Creating procedures to assure high performance.* State and Local Boards can create procedures to hold questionable providers accountable for performance. For example, procedures could permit ITA's to be paid incrementally upon completion of specific milestones.

Because the Act encourages broad customer choice, we do not think it appropriate to change the regulations. State and Local Boards have the flexibility to help individuals to make the best choice for their circumstances.

A commenter wanted § 663.510 to ensure that Local Boards have the flexibility to set policy on providers and programs that reflects local conditions and that the State cannot add its own providers to the State list.

Response: WIA section 122(e)(2) makes it clear that, in compiling the State list, the State has authority to include only providers and programs submitted as part of local lists. The State has no authority to include additional providers and programs. However, Local Boards have only limited authority to determine which programs or providers are included or excluded from the local list. Rather, the Local Board must, for initial eligibility, include all HEA and NAA programs and providers for which complete applications are submitted and include non-HEA and non-NAA programs which meet the Governor's criteria, which are not required to, but may, permit adjustments to performance levels for local conditions. For subsequent eligibility, all programs must meet minimum acceptable performance levels specified in the Governor's procedures and adjusted according to the Governor's procedures for local factors and the characteristics of the population served by the providers. Local Boards have the flexibility to require higher, but not lower, levels of performance. We encourage Local Boards to actively participate in the development of the procedures for determining initial and subsequent eligibility.

We recognize that, during both initial and subsequent eligibility, there may be programs which a Local Board believes are valuable in meeting local workforce needs that do not meet performance levels (or other criteria) and, therefore, cannot be included on the local list. To avoid this situation, we encourage local Boards to make their recommendations on the Governor's initial eligibility procedures, an opportunity which Governors are required to make available to Local Boards under § 663.515(c)(1)(I). As discussed earlier, in order to ensure access to a broad array of programs that can meet customer's diverse skill needs, career interests, and preferences, we also encourage Local Boards, to provide outreach and technical assistance to providers.

We recognize that, in other instances, a Local Board may reluctantly have to include programs or providers which it believes are questionable on the local list. To avoid individuals selecting questionable programs or providers or to prevent any problems if they are selected, we encourage Local Boards to explore the approaches suggested above, for enhancing the quality of information, providing high quality case management and guidance, and creating procedures to enhance performance. Since the regulation accurately reflects the statutory requirements, no change has been made to the Final rule.

One commenter was concerned that the Preamble and § 663.510(b) were inconsistent in discussing the need for setting performance levels for initial eligibility.

Response: It was unclear what the commenter found inconsistent. The Governor determines the initial eligibility procedures, including appropriate of levels of performance, for non-HEA and non-NAA programs and sets minimum acceptable levels for all programs for subsequent eligibility (though such levels can be increased by the Local Board). These provisions are included in §§ 663.515 and 663.535.

Another commenter stated that the process for determining eligible providers, as described in § 663.510, should be as transparent as possible, and allow qualified providers to become eligible while setting sufficient thresholds to limit participation of unqualified providers.

Response: We believe that the Act and regulations provide States and Local Boards with the opportunity to set up systems that will be transparent and achieve the goals suggested by the commenter. No change has been made to the Final rule.

Some commenters questioned whether §§ 663.510(c)(2) and 663.515(d) give too much authority to designated State agency by authorizing it to *verify* performance information on providers' programs submitted by the Local Board. One commenter felt that the regulations exceed the language of the Act, which only requires that the State determine if performance levels are met. Another commenter suggested that the regulations should not shift this responsibility onto States and that, if States have this responsibility, we should provide support and technical assistance in carrying out verification. The commenter also suggested that the Act appears to require a duplicative function by Local Boards and the designated State agency in determining if performance levels are met.

Response: We agree that the Act, in section 122(e)(2), specifies that the State *determines* if performance levels are met for programs submitted on local lists. However, we believe that the role of the State agency in verifying performance information is implicit in the statutory scheme, based on the State agency's authority to enforce provisions of section 122(f)(1) on the intentional submission of inaccurate performance information (which can only be determined as inaccurate if there is a

way to verify the information submitted) and on the requirement that providers submit *verifiable* program-specific information. We have changed the language in § 663.510(c)(2) to clarify that the State agency must determine if programs meet performance levels, and, in so doing, may verify the accuracy the performance information submitted. We have also revised § 663.515(d) to clarify that the designated State agency determines if the performance levels are met for programs Local Boards submit as part of their local list. In addition, since State agency consultation with the Local Board is required under section 122(f)(1) and verifiable information is required to be submitted to the Local Board, we believe that the Act also provides implicit authority to Local Boards to verify performance information and to report suspected inaccuracies to the State agency. We have added language in a new paragraph 663.510(e)(4) to clarify that Local Boards may perform verification of performance information, under the Governor's procedures. Technical assistance on verification and other aspects of implementing WIA section 122 is being planned.

We agree that the roles of the State agency and Local Boards may overlap in determining if programs meet performance levels and in verifying performance information, and we encourage States and Local Boards to work toward eliminating needless duplication. The Act does not, however, authorize the State to review Local Boards' determinations of programs that do not meet the performance levels and are, therefore, neither included on local lists nor forwarded to the State. No change has been made to this aspect of the Final rule.

Section 663.515—Initial Eligibility Process—One commenter suggested that initial eligibility criteria for institutions offering degree programs be accreditation or approval by the appropriate authority and, for institutions that offer certificate programs, appropriate licensing by the State.

Response: In determining initial eligibility, Local Boards have the option to request information about accreditation and approval from HEA-eligible and NAA-registered programs and providers as part of the application and to include such information on the local list. However, we do not believe that Act provides authority for *any* approval criteria for HEA and NAA programs and their providers, as long as completed applications are submitted and the program or provider meets the eligibility criteria of WIA section 122(a)(2)(A) and (B). We note that to be eligible under HEA title IV, providers must be accredited, and, if a public institution, approved by appropriate State authorities. For non-HEA and non-NAA programs and their providers, the Governor's procedures could require that State licensing, or any other applicable criteria, be used for both approval or information purposes. No change has been made to the Final rule.

We encourage State WIA systems to work with State public education, and licensing authorities to harmonize, coordinate, or strengthen requirements for all types of programs and providers, since the strictness and consistency of approval, licensing and accreditation for providers and programs varies widely between—and even within—States. Similarly, requirements for certificate programs, offered at both HEA-eligible and non-HEA-eligible providers, vary widely in terms of length, content, and rigor.

Another commenter asked that §§ 663.515 and 663.535 require the Governor to allow sufficient time for labor organizations and businesses to provide comments on initial and subsequent eligibility procedures and suggested a minimum of 30 days. The commenter also wanted the regulations to require that State and local labor federations be part of the consultation process.

Response: We view the comment and consultation provisions in this section, as throughout the Act, as cornerstones of the new system envisioned in the Act. To assure there is adequate time for comments, while permitting as much State flexibility as possible, we have added language at §§ 663.515(c)(1)(iii) and 663.535(a)(3) to require Governors to establish and adhere to a specific time period for the consultation and comment process during the development of procedures for initial and subsequent eligibility. We strongly encourage Governors to take affirmative steps to include State and local labor federations in the comment and consultation process, but we do not think additional changes to the Final rule are warranted. Under the rule as written, Governors are required to solicit and take into consideration the recommendations of providers of training services, which may, in some areas, include labor federations involved in providing apprenticeship or other training, and must provide an opportunity for representatives of labor organizations to submit comments on the procedures.

A commenter suggested that Governor's procedures for initial eligibility require evidence that training providers have consulted with labor organizations who represent workers having the skills in which training is proposed.

Response: While such an activity may be desirable, the Act does not provide authority to require Governors to include such a provision in their initial eligibility procedures. The contents of applications for initial and subsequent approval are left to the Governor's discretion, after appropriate consultation. We encourage Governors to consider such consultation requirements for initial eligibility, in order to assure that programs are of high-quality and match current skill requirements. We also encourage both Governors and Local Boards to consider including information items in initial eligibility procedures and applications that will help consumers identify if programs have been subject to review and approval by appropriate labor and industry organizations. No change has been made to the Final rule.

One commenter was concerned that the 30 days, permitted in section 122(e) of the Act, for the State agency to determine if programs submitted by Local Boards meet the performance criteria for initial and subsequent eligibility, was insufficient. The commenter recommended that State agencies be given 90 days.

Response: We recognize that until State data collection and records linkages systems are in place, States will have difficulty in meeting the timing requirement for verifying information and for determining if performance levels are met. Since the law specifies that the State agency has only 30 days, the State may not be able to determine if such levels are met on all programs' performance and the State may have to develop a prioritizing or sampling system. However, we also recognize that in a number of circumstances, timing problems will persist even once such data systems are in place, since there are time lags in accessing UI quarterly records for verifying program performance information. We have added language in § 663.530 to provide that, in the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.

A number of commenters expressed suspicion that initial eligibility procedures, by providing complete discretion to Governors and Local Boards, would result in programs being determined eligible on the basis of arbitrary performance and cost thresholds, and thus lead to ''creaming''

of programs and participants. Commenters expressed concern that the regulations do not define an ''appropriate portion of performance and cost information'' and ''appropriate levels of performance'' and asked that we define these terms and offer examples of how States and Local Boards could set up initial eligibility procedures to assure a diverse provider system. Commenters suggested several other remedies: requiring or allowing use of adjustment or weighting factors for the local area and participant characteristics; encouraging use of data from outside the JTPA system to ensure a wide array of performance information; requiring Governors to set aside technical assistance funds to help small, nonprofit CBO's with application and data collection activities; requiring information on growth occupations and growing sectors in the area; and requiring that CBO's be listed as examples of interested members of the public to whom opportunities to comment should be provided.

Response: We believe that the Act provides broad discretion to Governors to determine initial and subsequent eligibility procedures. Since we want to provide as much flexibility to States as possible, we have not defined what constitute ''appropriate portions of performance and cost information'' or ''appropriate levels of performance.'' However, we are concerned that all procedures and practices be fair and not arbitrary, and that they be based on research, information from past experience, and sound management approaches. We are also concerned about practices that result in ''creaming'' of participants or lead to a lack of training options that meet the diverse skill needs and career interests of WIA participants. We plan to develop technical assistance on development of initial and subsequent eligibility criteria.

As noted earlier, we strongly encourage outreach and technical assistance by States and Local Boards to providers in order to assure that WIA participants have access to a broad range of programs. Also, we strongly encourage CBO's to take advantage of the public comment and consultation required to be provided by the Governor in the development of procedures for initial eligibility for non-HEA, non-NAA programs and subsequent eligibility for all programs. No change has been made to the Final rule.

One commenter requested clarification on how both initial and subsequent eligibility under WIA fits with requirements of State and national systems for accreditation, approval, and performance information. Several commenters recommended that the WIA system for collecting and disseminating performance information be used in other systems.

Response: The Act recognizes the value of at least two other national recognition systems, in the requirements for HEA and NAA programs for initial eligibility. We encourage all One-Stop partners at the State and local level to harmonize and coordinate performance requirements and to enhance systems for certification, licensure, and accreditation. We encourage all partners to avoid the creation of, or resolve, duplicative or conflicting requirements regarding programs, institutions, and data on individuals. We also support the creation of unified data collection systems that can reduce administrative burden while permitting information to be generated to meet reporting requirements under many programs. We believe that WIA's requirements will strengthen accountability and customer choice by supplementing existing systems established through State and federal higher education requirements and State licensing agencies. Information disseminated on individual training programs' performance under WIA will be a significant addition to the accountability systems currently in place, and will provide the general public, program administrators and front-line staff access to information that, in most parts of the Nation, has never before been available. We encourage Governors and Local Boards to consider ways to make use of performance and cost information already available through these other systems. We do not think, however, that WIA section 122 gives the authority to mandate this kind of coordination; thus, no change has been made to the Final rule.

Section 663.530—Time Limit for Initial Eligibility—A number of commenters expressed approval of the clear expression of how long initial eligibility may last and supported the swift transition to subsequent eligibility when all providers would be subject to the performance requirements. One commenter, however, was concerned that the requirement in § 663.530 that initial eligibility be only 12 to 18 months will create problems for institutions eligible under the Higher Education Act that will not be able to compile information in time for subsequent eligibility determination.

Response: We agree that, in certain circumstances, providers will have difficulty in collecting all the performance information required; similarly, the designated State agency may have difficulty verifying the information, particularly because of the lag time in using UI quarterly records. However, because of the critical importance of performance information for consumer choice and accountability, initial eligibility should be extended only in very limited circumstances, such as for new programs for which no data under the methodology the Governor selects would be available within 12 to 18 months. In other circumstances, Governors' procedures could permit an extension of initial eligibility of up to six months, when insufficient data is available. In such cases, it may be a good idea to partially assess performance by using the information that is available even if it is only partial information (such data on all students that recently left a program even if no WIA client information is yet available) or by using survey-based information until UI records can be used for verification. We have added language to § 663.530 to permit Governor's procedures to extend initial eligibility in limited circumstances.

Section 663.535—Subsequent Eligibility—One commenter wanted § 663.535 to be revised to clarify that the State agency can verify information on performance and cost effectiveness for subsequent eligibility.

Response: As discussed above, we have changed § 663.510 to clarify that the State, as well as the Local Board, may verify performance information in the process of determining if performance levels at initial and subsequent eligibility are met. The Act authorizes the State agency to determine if the performance levels are met for programs submitted by the Local Boards. The State does not have a role in reviewing performance of programs *not* approved by the Local Board and not included on local lists. However, there is nothing to preclude Local Boards from delegating to the State agency the authority to perform all initial determinations of eligibility of non-HEA and non-NAA programs, and subsequent eligibility determination for all programs, although responsibility for this process still remains with the Local Board. The Act does not explicitly authorize the State agency to determine ''cost-effectiveness,'' but rather requires that the information on the costs of the training services be required in applications for initial eligibility of non-HEA and non-NAA and for all programs for subsequent eligibility. Although States and Local Boards may choose to use the available cost and performance information to determine the cost-effectiveness of training programs, the decision to do so is a matter of State or

local discretion. We have made no additional change to the final regulations.

Several commenters were concerned that provider requirements at § 663.535 will not take into account the characteristics of the population served and the difficulties in serving these populations.

Response: These concerns are addressed in our response to similar comments on adjustments to performance levels in the discussion of § 663.540.

Section 663.540—Types of Performance and Cost Information Required and Extraordinary Costs of Collecting Performance Information—One commenter was concerned that federal requirements on confidentiality of student records possibly presents a major problem for developing information on students not funded with ITA's.

Response: We recognize that regulations and administrative guidance for the Federal Educational Rights and Privacy Act (FERPA) under 20 U.S.C. § 1232g, as issued by the U.S. Department of Education, may need to address the issue of how States can assure that performance information on all students in eligible programs can be developed, particularly when UI quarterly records must be used, as required under section 122 of WIA. We are working with the U.S. Department of Education to identify how State WIA systems, State education systems, and educational institutions can comply with FERPA and also generate the information required under WIA and plan to issue joint guidance that will assist States in complying with FERPA. No change has been made to the Final rule.

One commenter recommended that the law and regulations be changed so that information on all participants in a program, which may be difficult to obtain, is not required.

Response: We believe that eliminating this information would vitiate one of the key elements needed for maximizing customer choice. As the commenter recognizes, the Act requires performance information on all students in a program. State WIA systems are encouraged to work with State public education and licensing authorities to harmonize, coordinate, or strengthen information requirements in all systems. No change has been made to the Final rule.

One commenter recommended that Governors be allowed to require additional verifiable performance information describing the demographics of the populations served in a training program, including age, race, national origin, English proficiency, sex, and disability. The commenter further recommended that all such information be included in the consumer reports system.

Response: 29 CFR 37.37(b)(2) requires recipients, including training providers, to ''record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee.'' Governors should consider the merits of including such information in the consumer reports system. No change has been made to the Final rule.

Several commenters wanted the regulations to require Governors and Local Boards to demonstrate how local area factors and population characteristics are considered in determining performance levels for subsequent eligibility as well as requiring that Governors and Local Boards to demonstrate that the most disadvantaged are being served.

Response: Under § 663.535(f), the Governor's procedures already must ensure that Local Boards takes such factors into consideration. As we have said above, Governors and Local Boards should assure that all WIA participants who may have multiple barriers to employment have access to programs that can effectively serve their needs. No change has been made to the Final Rule.

A number of commenters noted that § 663.540 does not define what constitute ''extraordinary costs'' and that differences of opinion on this matter should be an allowable basis to appeal denial or termination of eligibility. Some commenters recommended that training providers be given explicit authority to present to their Local Board and Governor evidence of extraordinary costs and that a response should be required within a reasonable period of time. They further suggested that, if additional resources or cost-effective data collection methods were not provided, the provider would be exempted from submitting the performance information. One commenter recommended that providers which, after presenting evidence of extraordinary costs involved in providing performance information, receive neither additional resources nor cost-effective information-collection methods, should be exempted from submitting information on their programs' performance and that such programs should remain eligible. By contrast, one commenter wanted to assure there were limits on the amount of funds Governors must offer to training providers who need additional funds to collect performance information.

Response: The Act requires Governors to provide additional resources or cost-effective methods of data collection when providers experience extraordinary costs in providing required information, under section 122(d)(1)(A)(ii), on program participants who receive assistance under the adult or dislocated worker programs, or in providing additional information under section 122(d)(2). In order to assure that Governors provide such assistance, § 663.540(c) has been revised to require that the Governor establish procedures by which such costs can be determined. While Governors must define the methodology to be used in determining such costs and either provide the funds or procedures to help defray or lower these costs when they are determined to be extraordinary, we have not mandated that the Governor or Local Board is required to defray all of the provider's extraordinary costs. Reasonable parties may differ over whether information costs are extraordinary and whether the State has undertaken reasonable means to defray or lower such costs. States and local areas will have to devise a system under which disputes regarding extraordinary costs can be reasonably resolved. For example, a Local Board may base its initial decision on the basic information required, while attempting to reach agreement on the costs of the additional information. If a provider is denied eligibility because it has not provided the required information, section 663.565(b)(4) provides an opportunity for review of that decision.

Section 663.555—Dissemination of the State List—Several commenters want the state list of eligible training providers to be made available to the public and not just individuals.

Response: Section 663.555 already provides that the list and consumer reports are required to be widely disseminated and made available as a core service throughout the One-Stop delivery systems in the State. We believe that the One-Stop system is the appropriate way to ensure wide access of the list, so no change has been made to the Final rule.

Section 663.565—Loss of Eligibility and the Appeals Procedures—A number of commenters recommended there be a time limit required for prompt resolution of appeals and suggested 60 days as the limit.

Response: States must develop procedures that assure prompt resolution of appeals. Unlike other provisions in WIA, for example, section 181(c), which establish time limits for

the resolution of grievances or appeals, section 122(g) does not establish a time limit on the appeal; it leaves the details of the procedure to the Governor. We do not think we can mandate a time limit where Congress has chosen to give the Governor the discretion to fashion an appeal procedure. We do, however, strongly encourage States to establish and adhere to time limits for such appeals and to make those time limits consistent with the time limits in their other WIA appeal procedures. No change has been made to the Final rule.

One commenter noted that the criteria for termination of eligibility do not address situations in which institutions lose their license to operate, when they or their programs lose accreditation, or State educational agency approval, and when providers violate State or local laws.

Response: The criteria for initial eligibility for non-HEA and non-NAA programs are determined in the Governor's procedures and may cover a number of different situations, such as when programs are in violation of State and local laws or have lost their license to operate. WIA section 122 does not mandate the detailed criteria to be used in determining eligibility for providers and programs, but rather permits Governors and Local Boards to set application information requirements and determine that the information is complete. For example, information on the status of a program or provider as eligible under HEA, registered under NAA, and on accreditation or compliance with various State and local laws could be required and included on the State or local list). The only criteria in WIA for termination of subsequent eligibility are limited to: not meeting performance levels, intentionally submitting inaccurate information, and noncompliance with the Act and its regulations. If a State or Local Board asks for information about accreditation status or compliance with laws and the provider submits inaccurate information, it may be subject to termination under § 663.565(b)(3). Because WIA is silent about what happens if a provider's license accreditation status change during the period between initial and subsequent eligibility determinations or between annual subsequent eligibility determinations, we want to clarify that Governors may set procedures for resubmission of initial applications or other information in cases where the status of a provider or its program has changed.

The same commenter noted that § 663.565(b)(1) requires that Local Boards must remove programs that do not meet performance levels from the local list, while, under § 663.565(b)(2), States only may remove such programs from the State list, which could result in incompatible State and local lists and in Local Boards being sued by providers.

Response: The Local Board has the authority and the obligation, under WIA section 122(c)(6)(A) and (e)(1), to deny initial eligibility and subsequent eligibility if programs and providers fail to meet performance levels. Since, under WIA section 122(c)(6)(B), Local Boards may set higher performance standards for providers or programs to be included on their local list, it is possible that one local area may remove a program or provider while another places them on its local list. In that case, the State Agency must decide whether or not to remove the program or provider from the State list. The possibility of being sued by providers exists at both the local and the State levels, depending on which level is involved in denying or terminating eligibility. No change has been made to the Final rule.

Sections 663.570 and 663.575—The Consumer Reports System and Additional Local Information—A number of commenters asked that the regulations require consumer reports to include information about wage trends and projections, occupations that provide high wages, in addition to information on growth occupations, or those in growing sectors of the economy.

Response: We agree that such information is valuable to individuals in determining which occupations and training to pursue. Section 663.570 encourages States and Local Boards to make program specific information on wage trends and projections available in the consumer reports. Section 663.575 permits Local Boards to supplement the information on the State list with information on training linked to occupations in demand in the local areas. This kind of information is readily available since information on job vacancies, occupations in demand, and the earnings and skill requirements of such occupations is required as a core service available to the general public and to all WIA clients under § 663.240(b)(5). No change has been made to the Final rule.

Several commenters asked that ''program entrance requirements'' be added to the list of information that can be included in consumer reports in § 663.570 and further suggested that information be required to be presented ''in user-friendly format and language, taking into consideration the literacy levels, languages and developmental stages of the communities to be served.'' In addition, a few commenters asked that the regulations mention that information about nontraditional occupational training and placement of women in nontraditional jobs be specifically identified as appropriate information related to the objectives of the Act.

Response: We agree that program entrance requirements and the use of a user-friendly format and language are highly valuable to assist adults or dislocated workers to fully understand the options available in choosing a program of training services. States and Local Boards should assure that as much information as possible is accessible to anticipated users of ITA's and key populations who use such information as part of the core services available in the local One-Stop system. It is up to States and Local Boards to determine the types of information to be required; we do not believe it is appropriate to specify required information in the regulations. In making such determinations, we encourage States and Local Boards to consider whether to highlight information on specific types of programs, such as nontraditional occupational training for women. No change has been made to the Final rule.

Section 663.585—Providers Outside the Local Area and Reciprocal Agreements with Other States—One commenter asked that we add language to § 663.585 on portability of apprenticeship skill credentials, to assure that individuals registered in an apprenticeship program in one State would be deemed registered in an accredited program in other States.

Response: WIA does not address recognition of individuals' registration status by apprenticeship programs in different States. Rather, the Act permits reciprocal agreements among States so that individuals with ITA's can use providers in other States. If such an agreement had been made, the ability of individuals to participate in other States' programs would depend on whether those programs were included on the State list and the program's own policies regarding recognition of skill attainments and credentials from other programs. Questions of the portability of credentials in the apprenticeship system are the province of the Bureau of Apprenticeship and Training. No change has been made to the Final rule.

Section 663.590—Community-Based Organizations—One commenter expressed gratitude that the regulations clarify that CBO's can be determined

eligible and they and their programs included on the State and local lists.

Section 663.595—Requirements for Providers of OJT and Customized Training—One commenter recommended that the Governor solicit comments from business and labor organizations on the development of performance information for OJT and customized training while another commenter suggested that it was inadvisable to disseminate information on the performance of employers, since many employers would be unwilling to participate if their identity was to be made known to the general public.

Response: There is nothing to preclude Governors from soliciting comments from business and labor in developing these performance requirements and learning if disseminating performance information would be a deterrent to other employers and it would be consistent with both the process for developing provider and program eligibility procedures and the general intent of WIA to promote openness and consultation to do so. Governors need to consider the impact of requiring performance information in terms of employer participation, particularly since employer-provided training has, in the past, been an effective method for providing training. However, if the Governor determines that performance information must be collected and the criteria to be met, One-Stop operators must collect such information, determine if performance criteria are met, and disseminate information on employers that meet the criteria. We note that information does not have to be disseminated on employers that do *not* meet Governor's criteria under the current regulation. No change has been made to the Final rule.

One commenter noted that the Preamble to the Interim Final rule, page 18673, column three, lines 8–11, should have said that the Governor has the option to require performance information of providers of OJT and customized training.

Response: We agree that the Preamble was in error. It should have said that Governors *may* require performance information.

Subpart F—Priority and Special Populations

1. Priority Under Limited Adult Funding: This subpart contains requirements related to the statutorily-required priority for the use of adult funds, authorized under WIA section 133(b)(2)(A) or (3), when funds are limited. WIA section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate Local Board and the Governor must direct the One-Stop operators in the local area with regard to making determinations related to such priority. We assume that adult funding is generally limited because there are not enough adult funds available to provide services to all of the adults who could benefit from such services. However, we also recognize that conditions are different from one area to another and funds might not be limited in all areas. Because of this, the regulation requires that all Local Boards must consider the availability of funds in their area. In making this determination, the availability of other Federal funding, such as TANF and Welfare-to-Work funds, should be taken into consideration. Unless the Local Board determines that funds are not limited in the local area, the priority requirement will be in effect. States and Local Boards must work together to establish the criteria that must be used in making this determination. States and Local Boards also may administer their priority for adult recipients of public assistance and other low income adults so as not to preclude providing intensive and training services to other individuals.

We received a substantial number of comments on the priority issue. Many commenters voiced their support for interpretation that adult funds will generally be limited and for clarifying the State's and local areas' role in prioritizing the use of these funds for TANF recipients and other low-income individuals. Many other commenters believed that we should not write any regulations at all on this section of the statute.

Response: We believe that the interpretation of this requirement is of such importance that there must be regulations. Section 663.600 interprets the statutory language that provides States and Local Boards with the authority to determine the criteria to be applied when making the determination that there are sufficient funds available so that the priority is not in effect. No change has been made to the Final rule.

Some commenters requested further guidance and technical assistance regarding the process described at § 663.600(b), (c), and (d) that permits the priority for services to the recipients of public assistance and low income individuals to be exercised while still serving other eligible individuals. A number of these commenters supported the ''cone of service'' concept that provides universal service to the largest number of individuals and, through a process of determining individuals' employment service needs and their eligibility, leads to reduce numbers of individuals receiving services as the services become more staff intensive, longer in duration, and more costly. They asked that priority guidance be based on this concept.

Response: In general, § 663.600(d) clarifies that the process for determining whether to apply the priority established under paragraph (b) does not necessarily mean that only recipients on public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor are specifically authorized to establish a process that gives priority for services to recipients on public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

We used the ''cone of service'' concept to illustrate an estimated distribution of service needs by One-Stop customers. It was not intended to convey a scheme of priority of service. The distribution of service needs in a local area may vary from the pure ''cone'' in areas with a number of job seekers with extensive barriers to employment or in areas of highly educated, self-directed job seekers. The ''cone'' illustration is not intended to be applied as strict percentages of service provision to the pool of eligibles candidates for services. Rather each local area must assess the needs of its workforce and determine the most appropriate distribution of services against projected levels of service needs. However, recognizing the important role that the adult and dislocated worker funds play in the One-Stop system, § 662. 250(a) requires these programs to provide all of the required core services in each of the comprehensive One-Stop centers. The fact that WIA adult funds may be used to provide core services on a universal basis is one of the key reform elements of the legislation, and augments the investment traditionally provided by the Wagner-Peyser Act. No change has been made to the Final Rule.

Commenters expressed concern that the priority requirement would be implemented by establishing an arbitrary minimum standard, such as establishing a percentage of participants or funds that must be targeted to TANF and other low-income job seekers, which could become a ''check off'' rather than a thoughtful balancing of needs. Commenters also were concerned

that an arbitrary percentage not be used to satisfy the priority requirement.

Response: While the regulation requires that States and local areas consider whether funds are limited, it gives them flexibility to determine the criteria on which to base the determination, because local areas vary widely in the characteristics of their work force. We discourage States and local areas from setting an arbitrary percentage of TANF and low-income job seekers to be served could result in sufficiently skewing the distribution of services relative to the workforce's needs that differences in the severity of service needs would not necessarily be reflected in the process. We believe that the present language in the regulations permits the maximum flexibility in the design of the priority process and provides a sufficient framework to implement priority of service for public assistance recipients and low income individuals consistent with the Act. We expect that States and local areas will take seriously the responsibility to develop effective priority criteria, and believe that the public input generated through the local planning process will result in criteria that effectively serve the needs of the local area. No change has been made to the Final rule.

Other commenters requested assurance in the regulations that if local entities determine that there is not limited funding, that we would not reevaluate their determination at a later date and find the local area out of compliance.

Response: The regulations, at § 661.350(a)(11), require that the local workforce investment plan include a description of the criteria to be used by the Governor and the Local Board, under § 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA §§ 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator(s). The local plan is subject to public comment as well as review and approval by the Governor. Upon approval by the Governor and local implementation of its priority determination, it is expected that the local workforce staff will continue to monitor workforce employment and training population needs and conditions to ensure that the priority determination continues to be appropriate. Later modifications to the plan would require public comment. No change has been made to the Final rule. We recognize that this will be an area of interest to the Department and national policymakers and as such, State and local areas can expect that it will be evaluated during the implementation studies.

Commenters suggested that we add language to the regulations that would require the mix of individuals served by the local One-Stop system to reflect the demographic characteristics of the eligible population in the community and that the local plan provide an interpretation of the priority as applied to the demographics of the area.

Response: The Department has an obligation, as part of its oversight responsibilities, to determine whether a particular function, e.g., service delivery, is consistent with the intent of the Act and regulations. Non-discrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are administered and enforced by our Civil Rights Center. Regulations implementing the requirements of WIA section 188 are published at 29 CFR part 37. It should be noted that except where service to specific populations is authorized by statute (such as in WIA section 166), it is unlawful under WIA section 188(a)(2) and 29 CFR 37.6(b)(1)–(6) for One-Stop systems to use demographic characteristics to determine which individuals will receive services. However, under 29 CFR 37.42, One-Stop systems must do outreach to various populations, to ensure that members of those populations are aware of the programs and services provided by the systems. No change has been made to the Final Rule.

We received a number of comments about the definition of ''public assistance'' as it relates to individuals served under the priority provision. Commenters stated the belief that while application of the priority could result in improved access to persons with disabilities, the potential for this increased access is dependent, to some degree, on the application of a broad definition of public assistance. WIA section 101(37), defines public assistance to mean ''Federal, State or local government cash payments for which eligibility is determined by a needs or income test.'' The commenters requested a definition that specifically recognizes other forms of assistance such as Medicaid, Medicare, Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) as well as ''other funding used heavily by persons with disabilities.''

Response: A definition of the term ''public assistance'' developed by States and local areas that includes the availability of other Federal, State or local government cash payments to an individual based on a needs or income test would be consistent with WIA requirements. The statutory definition of ''public assistance'' at WIA sec. 101(37) contains a two-part test. The program must provide ''cash payments'' and eligibility for the program must be determined by a ''needs or income test.'' Under this definition, cash payments, such as SSI, state payments to individuals with a disability, and local general relief payments to homeless individuals would meet both parts of the statutory definition of public assistance.

On the other hand, the statute would not permit a state or local definition that included programs providing benefits that are not cash payments, or programs that are not needs or income-based. For example, SSDI payments are not income tested, and, therefore, cannot be considered public assistance under WIA. However, as a practical matter, SSDI beneficiaries may still qualify for priority under WIA. For example, SSDI beneficiaries might be determined to be eligible under the priority for WIA services as ''other low income individuals'' based on their income, under 20 CFR 663.640, which provides for the individual with a disability to be considered a low income individual even if the family income does not meet the income eligibility criteria when the individual's own income meets the income criteria. Similarly, Medicaid and Medicare benefits are not considered public assistance as defined under WIA. Medicare is a medical insurance for which individuals are eligible based their having attained the age of 65 and contributed to the fund during their employment. There is no needs or income test to determine an individual's receipt of Medicare benefits. Furthermore, while Medicaid eligibility is dependent upon an income test, it fails to meet the second part of the WIA definition. Under Medicaid, there is no cash payment provided to the individual, rather payments representing reimbursements of medical expenses are paid directly to the medical services provider. However, individuals receiving Medicaid or Medicare payments may still be determined appropriate for the WIA service priority as ''other low income individuals'' based on their income. No change has been made to the Final rule.

2. Welfare-to-Work and Temporary Assistance to Needy Families as Part of One-Stop: At § 663.620, the regulation discusses the relationship of the Welfare-to-Work program and the Temporary Assistance to Needy Families (TANF) program to the One-Stop delivery system. Welfare-to-Work is a required partner to which the One-

Stop partner regulations apply. The TANF agency is specifically suggested as an additional partner. Both programs can benefit from close cooperation with the One-Stop delivery system because their respective participants will have access to a much broader range of services to promote employment retention and self-sufficiency.

A commenter suggested that § 663.620(a), which provides that Welfare-to-Work participants may be referred to receive WIA training, should include a statement that such funding assistance is not available under Welfare-to-Work or should clarify that § 663.620 is an exception to § 663.310(d), if that is the intent.

Response: Section 663.310(d) provides that training services are available to adults who ''are unable to obtain grant assistance from other sources to pay the costs of such training'' and notes as an example of other grant assistance, Federal Pell Grants. It is not intended that this section limit ''other grant assistance'' to only Federal Pell Grants, rather it is expected that access to other grant funds that will maximize the availability of WIA funds so that the broadest number of individuals may be served. ''Other grant assistance'' funds would be considered as additional training resources for individuals requiring training. Such funds could include not only Federal Pell Grants, but also Welfare-to-Work grant funds (which, under recent amendments may be used to provide limited occupational training), State education grants and dislocated worker funds where such an application is appropriate. The language in § 663.310(d) has been changed to provide Welfare-to-Work and other examples in addition to the Pell Grant reference as appropriate to the eligibility of the individual involved for other training fund assistance.

Subpart G—On-the-Job Training and Customized Training

Sections 663.700 through 663.720 are the regulatory provisions for conducting on-the-job (OJT) and customized training activities. They include specific information regarding general, contract, and employer payment requirements. Unlike JTPA, WIA does not limit OJT to six months. However, as specified in WIA § 101(31)(C), it is limited in duration as appropriate for the occupation being trained for. Section 663.705 establishes requirements that permit OJT contracts for employed workers.

One commenter supported the brevity of the regulations related to OJT. A second commenter apparently construed the language in § 663.700(a) that states that, ''A contract may be developed * * *'' to mean that the use of contracts for the development and delivery of OJT is optional.

Response: The language in § 663.700(a) has been changed to clarify that OJT must be provided through a contractual arrangement as an exception to the ITA requirement under WIA section 134(d)(4)(G)(ii)(I). We believe that written agreements are necessary to ensure that the requirements of OJT are met. The regulations, in § 663.700 (b) and (c), establish minimal requirements for OJT contracts. OJT contracts must ensure that participants are provided a structured training opportunity in which to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training.

That same commenter also suggested that the regulations be amended to require that the OJT contract contain detailed information on the skills and competencies to be acquired, the time frame for acquiring them, and sufficient documentation to demonstrate that workers received bonafide training and acquired the competencies.

Response: Generally, we believe that States and local areas should have the flexibility to determine the information needed for inclusion in the required OJT contracts. Therefore, we have not mandated that the contracts contain documentation that the competencies are acquired. However, in order to ensure that workers and employers have a common understanding of the goals and purpose of the OJT assignment, we believe that certain general terms should be reduced to writing. Accordingly, we have amended § 663.700(c) to require that the OJT contract identify the occupation, the skills and competencies to be learned and the length of time the training will be provided.

We received comments which recommended that the regulations require local programs, in entering into OJT contracts or undertaking customized training, give priority to employers who: offer wages and benefits that lead to family self sufficiency; ensure long term self sufficiency for their employees; exhibit a strong pattern of union management cooperation; and after upgrading existing employees through OJT, backfill vacancies with public assistance recipients and other low income persons.

Response: We have chosen not to limit local options by specifically identifying priorities for the selection of such employers. However, Local Boards may consider these and other factors in selecting employers to provide training opportunities that will assist in their efforts to provide services that meet or exceed the performance objectives regarding employment leading to self sufficiency and job retention. No change has been made to the Final rule.

Commenters recommended that the regulations be revised to eliminate from consideration for an OJT contract or for customized training any employer which has violated: anti-discrimination statutes; labor and employment laws; environmental laws; or health and safety laws.

Response: We concur that Federal grant funds should not be used to engage employers that have violated Federal law. Such information should be available under information requirements at 29 CFR 37.38(b). We encourage States and Local Boards to require a written assurance by a potential employer, that no such violations have occurred within some reasonable period of time. It would also be appropriate to obtain written assurance from the employer that the training to be provided will be in accordance with WIA § 181(a)(1)(A) and § 667.272 for wage and labor standards, and WIA § 181(a)(2) and § 667.274(a) for health and safety standards.

29 CFR 37.20(a)(1) contains an assurance regarding nondiscrimination and equal opportunity. Under 29 CFR 37.20(a)(2), this assurance is considered incorporated by operation of law, and may be incorporated by reference, in documents that make WIA Title I financial assistance available, such as OJT contracts.

A commenter recommended that we add a requirement that employers be required to retain, or transition to new upgraded jobs with wages and benefits commensurate with their new skills, those workers who receive customized retraining.

Response: WIA § 181(b)(2) and 20 CFR 667.270 establish safeguards for workers to ensure that participants in WIA employment and training activities do not displace other employees. These protections may affect immediate opportunities for workers receiving customized training to ''transition to new upgraded jobs.'' However, Local Boards may establish policies concerning the selection and non-selection of employers for the OJT and customized training programs. We encourage the development of policies that maximize the opportunities presented by funding upgrade skill training on-site, which, upon completion of the training, will result not only in a more highly skilled workforce, but also in new entry level jobs for additional program participants.

We have made no change to the regulations.

A commenter requested that the regulations require that a system be in place to assure that customized training funds are used to supplement rather than supplant an employer's own training.

Response: We do not believe it is necessary to require such a system. With the limited funding available for training, issues of maintenance of effort or substitution of public funds for training previously funded by the employer will most likely be considered an important factor in a local or state policy for the selection of employers for customized training. We have made no change to the regulations.

A commenter suggested that the performance outcomes of employers who have OJT contracts should be considered public documents and made available for review and comment. At the same time, the commenter cautioned that the confidentiality of participant records must be preserved.

Response: Performance information on providers of OJT and customized training is collected and disseminated under the eligible provider requirements of § 663.595.

A commenter recommended that we modify the regulations to require that local programs conduct retention services with individuals placed in OJT to determine whether the OJT requirements and nondiscrimination and other employment rights are satisfied.

Response: As discussed above, all OJT contracts are subject to the worker protection requirements set forth in WIA sections 181(a)(1) (A) and (B), (b)(2), (3), (4) and (5), and 188. In addition, we believe that monitoring of OJT contractors must include review of selection patterns and other areas of potential concern regarding trainees' civil and other employment rights (consistent with the requirements of 29 CFR 37.54(d)(2)(ii)) to ensure the quality of the One-Stop operator's selection of training opportunities. No change has been made to the regulations.

A commenter suggested that to assure compliance with WIA section 181(b)(7), OJT and customized training contracts be required to include a provision guarantees that customized training funds or subsidies will not be used directly or indirectly to assist, promote or deter union organizing.

Response: We don't believe it is appropriate to mandate the inclusion of a particular provision in these contracts. However, we have specifically identified this prohibition in new § 663.730 to ensure that this information is readily available to practitioners.

Several commenters urged that we drop the requirements in §§ 663.705 and 663.720, that in order for employed workers to be determined eligible for OJT and for customized training they must not be earning a self-sufficient wage as determined by the Local Board. The commenters observed that there is no specific wage criterion on OJT and customized training eligibility in WIA, and that it would limit customized training available for skill upgrading for new technology and new job skills noted in § 663.720(c). The commenters believed that such a limitation on customized training could also affect the linkages with employers and economic development efforts.

Response: The Act, in sections 134 (d)(3)(A)(ii) and (d)(4)(A)(i), provides that one of the eligibility criteria for intensive and training services for employed individuals is that they need such services in order to obtain or retain employment that allows for self-sufficiency. These criteria enable employed adults in entry level jobs to receive those services to initiate the steps toward a career or to obtain those skills necessary to improve their earning capacity in another job to assist them in attaining self-sufficiency. Therefore, no change has been made to the Final rule. However, this eligibility requirement does not apply to training provided as part of the Statewide workforce investment activities under 20 CFR 665.210(d), which provides for establishing and implementing innovative incumbent workers training programs.

We received a comment requesting that we add language to the regulations to assure that labor organizations who operate training programs be considered eligible to operate customized training programs.

Response: The definition of customized training, at § 663.715, does not limit providers of customized training to employers, but provides that it be ''conducted with a commitment by the employer to employ an individual on successful completion of the training, and * * * for which the employer pays for not less than 50 percent of the training.'' Neither the Act nor regulations preclude any specific organization which meets the criteria established by local areas from being a provider of a customized training program. Because a wide range of programs and providers are available, we have decided not to identify any specific type of program or provider in the regulations.

Subpart H—Supportive Services

1. Flexibility in the Provision of Supportive Services: The regulations in subpart H define the scope and purpose of supportive services and needs related payments and the requirements governing their disbursement. Supportive services include transportation, child care, dependent care, housing and needs-related payments that are necessary to enable an individual to participate in activities authorized under WIA title I. We also strongly encourage Local Boards to establish linkages with programs such as child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program, which also serve as key supports for customers making the transition to self-sufficiency. A fundamental principle of WIA is to provide local areas with the authority to make policy and administrative decisions as well as the flexibility to tailor the workforce investment system to meet the needs of the local community. To ensure this flexibility, the regulations afford local areas the discretion to provide supportive services as they deem appropriate with limitations only in the areas defined in the Act. Local Boards are required to develop policies and procedures addressing coordination with other entities to ensure non-duplication of resources and services, as well as any limits on the amount and duration of such services. Attention should be given to developing policies and procedures that ensure that the supportive services provided are not available through other agencies and that they are necessary for the individual to participate in title I activities.

We received a comment suggesting that States must be encouraged to provide incentive and performance rewards to those local areas which provide substantial supportive services.

Response: States certainly may choose to spend Statewide reserve funds on this type of incentive award. However, we believe that amending the regulations to encourage States to provide incentive and performance rewards to local areas for supportive services is not consistent with the principle of granting discretion to Local Boards to determine the appropriate mix of services, including provision of supportive services, for their area based on their assessment of local needs and resources. No change has been made to the regulations.

A comment asked that the local supportive services policy be required to address service delivery and procedures for referrals.

Response: Although Local Boards are required to adopt policies that ensure coordination of any supportive services provided, we have not mandated that the policy specifically address the delivery of such services. The inclusion of such a mandate, or the substitution of ''must'' for ''should'' with respect to referral procedures in the context of this regulation would be inconsistent with the principle of granting local discretion in the provision of supportive services. No change has been made to the Final rule.

2. Needs-Related Payments: Sections 663.815 through 663.840 address requirements relating to needs-related payments. Section 663.825, in particular, deals with needs-related payments to dislocated workers. Studies show that early entry into training for dislocated workers who require it is a key factor in reducing the period of unemployment during the adjustment process. Early intervention strategies and policies are best implemented through quality rapid response assistance which includes comprehensive core services, and the provision of other reemployment assistance, including intensive and training services, as soon as the need can be identified, preferably before layoff. The statute authorizes all levels of assistance under title I of WIA to many workers six months (180 days) before layoff, or at least as soon as a layoff notice is received. Providing these workers with access to quality information regarding all adjustment assistance available in the community, including any deadlines that must be met, is critical for workers to make intelligent reemployment choices. Thus, any concerns that the enrolled in training requirement may limit the number of dislocated workers who are eligible for needs-related payments can be resolved through the use of early intervention strategies.

A commenter asked that the regulations be changed to require that Local Boards must fund supportive services, and, particularly, needs-related payments, when other resources are not available.

Response: WIA, at Section 134(e) (2) and (3) lists supportive services and needs-related payments as permissible employment and training activities. Although we agree that supportive services and needs-related payments should be provided with WIA funds when other funds are not available, we also recognize that WIA recognizes that Local Boards or One-Stop operators may have to make hard decisions about the use of limited WIA resources. To enable them to make these hard decisions, WIA makes the provision of supportive services a discretionary decision. It would be inconsistent with the Act and with our principle of maximizing flexibility to create the requirement the commenter requests. No change has been made to the regulations. However, as a matter of policy, we will follow State and local policy with respect to provision of needs-related payments to dislocated worker program participants under national emergency grants operating in a local area.

A commenter noted the different time requirements for training enrollments for TAA and NAFTA–TAA, as compared to WIA, and asked that the requirements be aligned to permit more complete assistance to dislocated workers eligible for TAA and NAFTA–TAA.

Response: The eligibility requirements for TAA benefits and needs-related payments are established by different authorizing statutes, and may not be changed by these regulations. As also noted above, early entry into training for dislocated workers needing it is a key determinant in reducing an individual's period of unemployment.

We received two other comments about the eligibility requirements for dislocated workers to receive needs-related payments found in § 663.825. One comment indicated that references to TAA seemed to be intended for TRA. A second comment noted a missing reference to training as an eligibility requirement for needs-related payments by those dislocated workers who are unemployed and who did not qualify for unemployment compensation or trade readjustment allowances.

Response: Section 663.825 has been revised to change the incorrect reference to ''trade readjustment assistance'' to ''trade readjustment allowances.'' However, difference in eligibility criteria for individuals who did not qualify for unemployment insurance or trade readjustment allowances is required by WIA section 134(e)(3).

One comment was received in regard to § 663.840 asking that all needs-related payments and support services ''packages'' be required to be comparable to the applicable weekly level of the unemployment compensation benefit.

Response: WIA sets a maximum level for needs-related payments, but does not specify a minimum level. As noted previously, we do not think it is appropriate to limit the flexibility granted to States and local areas by statute.

Part 664—Youth Activities Under Title I

Introduction

The regulations for youth activities reflect the intent of the legislation by moving away from one-time, short-term interventions and toward a systematic approach that offers youth a broad range of coordinated services. This includes opportunities for assistance in academic and occupational learning; development of leadership skills; and preparation for further education, additional training, and eventual employment. Rather than supporting separate, categorical programs, the regulations for youth activities are written to facilitate the provision of a menu of varied services that may be provided in combination or alone at different times during a youth's development.

The youth council, (the local entity responsible for recommending and coordinating youth policies and programs), a new entity created in WIA, serves as a catalyst for this broad change. The regulations support that legislative intent.

Flexibility for local program operators to conduct youth programs is key to WIA and these regulations. We encourage local decision-making in developing policy, youth program design within the statutory framework, and determining appropriate program offerings for each individual youth. We expect that these programs and activities will provide needed guidance for youth that is balanced with appropriate consideration of each youth's involvement in his or her training and educational plan. Further, the regulations support strong connections between youth program activities and the One-Stop service delivery system, so that youth learn early in their development how to access the services of the One-Stop system and continue to use those services throughout their working lives.

Subpart A—Youth Councils

Subpart A explains the purpose of youth councils which are created at section 117(h) of the Act and discussed in 20 CFR 661.335 and 661.340 of the local governance regulations in part 661. The youth council is a new feature of the workforce investment system that helps develop youth employment and training policy, brings a youth development perspective to the establishment of that policy, establishes linkages with other local youth services organizations, and takes into account a range of issues that can have an impact on the success of youth in the labor market.

There were several comments about the youth councils. One commenter suggested requiring that the youth council include representatives from organized labor, particularly from recognized apprenticeship programs and teachers' unions.

Response: As stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected officials(s) (CEO) in the local area. Among other categories of youth council representatives, paragraph (2) of WIA section 117(h) states that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, union members (including those who may be from recognized apprenticeship programs or teachers' unions) who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, clause (B) of WIA section 117(h)(2) provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other ''appropriate'' individuals to the youth council. In short, the Act already provides avenues through which representatives of organized labor may be appointed to the youth council. Because we believe that local areas should have as much discretion as possible in selecting members of the youth council to best serve their communities, we do not feel it is appropriate to prescribe requirements in addition to those in the Act. No change has been made to the regulation.

Other commenters asked that we require that youth be included as full members of these councils at all levels. A number of other commenters encouraged us to require that youth with disabilities are members of the youth councils

Response: While there is no specific requirement for the appointment of youth, including youth with disabilities, to the youth council, there is also no prohibition to naming them to the youth council. In fact, 20 CFR 661.335(a) requires representation by individuals with experience relating to youth activities and 20 CFR 661.335(c) authorizes the Local Board Chair and CEO to appoint such other individuals as they determine appropriate. Either of these provisions could support the appointment of youth, including participants and youth with disabilities, to the youth council. Furthermore, WIA section 129(c)(3)(C) and § 664.400(f) provide that Local Boards must ensure that youth participants are among the individuals who are involved in both the design and the implementation of its youth program. Youth with disabilities may, of course, be included among the youth participants who are designated to be involved in this process. We agree with the commenters that Local Boards should seek to involve a diverse cross-section of its youth population in the planning and design of activities, however, we feel that adding additional youth council requirements beyond those already in the Act and the regulations, is neither necessary nor appropriate. As discussed above, we believe that local areas should have as much discretion as possible, in selecting members of the youth council to best serve their communities. The issue of youth council membership is also discussed in 20 CFR 661.335, as well as the preamble discussion of that section. No change has been made to the regulations.

Section 664.110 discusses oversight responsibilities for youth programs and activities. Working with the youth council, the Local Board has responsibility for oversight of youth programs. As required by WIA section 117(d)(4), § 664.110(b) requires local program oversight to be conducted in consultation with the CEO. In order to make § 664.110(c) consistent with § 664.110(b), a commenter recommended revising § 664.110(c) to add that the Local Board should consult with the CEO about delegating its responsibility for oversight of youth programs to the youth council.

Response: We agree that it may be advantageous for Local Boards, in consultation with local area CEO, to delegate the responsibility for oversight of youth programs to youth councils which have expertise in youth issues, as is permitted by § 664.110. Section 664.110(c) has been revised to reflect this comment.

A commenter requested that we provide guidance to youth councils on identifying and certifying eligible non-traditional training providers to ensure that youth are able to pursue non-traditional employment. The commenter feels that more information is needed on non-traditional training, specifically guidance on non-traditional employment for women.

Response: We support the idea that local youth programs can benefit by making non-traditional training opportunities available to participants, and encourage States to consider non-traditional service providers among the lists of service providers designated in local areas. In addition, should the need arise, we will consider addressing the issue of non-traditional training providers and eligible providers list through subsequent guidance and technical assistance. At this time, however, we do not see a need for additional guidance.

Subpart B—Eligibility for Youth Services

Subpart B provides regulations under which youth are determined eligible for WIA youth services. A commenter requested that we amend the criteria in § 664.200 so that a low-income youth, regardless of any other barriers may participate in the youth employment programs funded through WIA. The commenter feels that youth served by their agency do not meet the barrier to employment eligibility criteria to allow them to participate in WIA youth activities.

Response: We cannot accommodate the commenter's concerns. The Act specifically requires that, to be determined eligible, a low income youth must have at least one of the barriers listed in section 101(13)(C) of the Act and § 664.200(c) of the regulations.

We received a comment suggesting that we make the definition of basic literacy skills at § 664.205 consistent with the definition of basic skills deficient in section 101(4) the Act, in order to eliminate confusion.

Response: Section 664.205 is revised to better align the definition of these two terms by using the same grade level criterion for both terms. While we made changes to better align the definitions, the two terms are not identical. Section 101(4) of the Act refers to a definition of basic skills deficient for use as one of the categories of youth not meeting the income eligibility test who may be served with up to 5% of youth funds, as well as one of the standards for determining ''out-of-school-youth.'' Section 664.205 addresses the criterion for documenting general eligibility when determining whether youth are deficient in basic literacy skills. The regulatory definition of ''deficient in basic literacy skills'' is based on the statutory definition of the term ''literacy'' found in WIA section 203 and cross-referenced in WIA section 101(19). Therefore, the terms and their definitions are not identical. However, § 664.205(a) provides authority for States and local areas to define the term ''deficient in basic literacy skills,'' so long as certain minimum criteria are met. The flexibility provided at § 664.205(a) as revised, would allow States and/or local areas which choose to do so to define the term in a way in which an individual who is determined to be ''deficient in basic literacy skills'' on the basis of the grade level criteria,

will also be considered to be ''basic skills deficient'' for purposes of determining whether the out-of-school youth or 5% youth standards are met.

Under section 101(13)(C)(vi) of the Act, a low income youth is eligible for services if he or she requires additional assistance to complete an educational program, or to secure and hold employment. We envision that Local Boards will define this term, however, under § 664.210, if the State sets policy regarding this provision, the policy must be described in the State Plan.

Section 664.215 requires that all youth participants be registered by collecting information for supporting eligibility determinations, as well as Equal Opportunity (EO) data. We received a number of comments asking that we make the policy that all youth must be registered to participate in youth programs consistent with the adult policy, allowing the same exceptions to the registration requirement.

Response: While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy for youth should not be changed because the basic approach for serving youth differs from adults. The difference in the registration criteria for youth and adults arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult program. An adult may enter the One-Stop and receive only informational or self-help services, for which registration is not required. The more individually-focused youth program does not envision these kinds of activities as part of entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.) Therefore, no change has been made to this section of the regulations.

EO data must be collected for every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. See 29 CFR 37.4 (definition of ''applicant'') and 29 CFR 37.37. This includes all youth participants. We will issue further guidance regarding this data collection requirement.

Section 129(c)(5) of the Act provides that up to five percent of youth participants served in a local area may be individuals who do not meet the income criterion for eligible youth, if they meet one or more of the criteria specified in section 129(c)(5)(A) through (H) of the Act, restated in the regulations at § 664.220. Local Boards may define the term ''serious barriers to employment'' and describe it in the Local Plan. One commenter also supported WIA's requirements that allow individuals with one or more disabilities, including learning disabilities, to be eligible under the exception to permit five percent of youth participants to be individuals who do not meet the income criteria.

Section 664.240 explains that eligibility for free school lunches is not a substitute for income eligibility under the Act. When drafting the Interim Final Regulations, we received suggestions that program operators be allowed to use eligibility for free lunch as a substitute for determining eligibility under the Act, and encouraging us to seek a technical amendment to include such a provision in the legislation. Several commenters again made requests that we pursue a technical amendment on the free lunch and reduced lunch eligibility issue and suggested that eligibility for these programs be used to determine eligibility for WIA youth services.

Response: We recognize the importance of this issue, yet lack statutory authority to change the Act's income eligibility requirements. Should such a change be made to the statute, § 664.240 would be revised. We support a technical amendment in this area, and have discussed the issue with Congressional staff.

Section 664.250 provides that a youth with a disability whose family income exceeds maximum income levels under the Act may qualify for services if the individual's own income meets the income criteria established in WIA section 101(25)(F), or the eligibility criteria for cash payments under any Federal, State or Local public assistance program. (WIA section 101(25)(B).) One commenter strongly supported WIA's recognition, in the Act and the regulations, of the need for youth with disabilities to receive youth services.

Subpart C—Out of School Youth

Sections 664.300, 664.310, and 664.320 address issues related to out-of-school youth. Section 101(33) of the Act defines ''out-of-school youth'' as: eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed, or underemployed. ''School dropout'' is defined in WIA section 101(39) and § 664.310. Youth enrolled in alternative schools are not school dropouts.

We received a number of comments requesting that we seek a technical amendment to WIA that would allow youth attending alternative schools to be included in the definition of ''school dropout.'' The commenters felt that this would permit Local Boards to provide services to more youth in alternative educational environments and to design programs that take advantage of local resources and best meet the needs of local youth.

Response: While we recognize the importance of local flexibility and of serving youth in alternative school settings, we lack statutory authority to change definitions established under the Act. However, we have revised § 664.310 to clarify that a youth's dropout status is determined at the time of registration. Therefore, an individual who is out-of-school at the time of registration and subsequently placed in an alternative school, may be considered an out-of-school youth for the purposes of the 30 percent expenditure requirement for out-of-school youth.

We also received comments suggesting that § 664.310 should make it clear that, for the purposes of determining whether a youth in an alternative school can be considered out-of-school, their dropout status should be determined at the point of intake.

Response: We agree. Section 664.310 is revised to clarify that dropout status is determined at the time of registration.

At least thirty percent of the total youth allocation (except for local area expenditures for administrative purposes) must be spent on services for out-of-school youth. This 30 percent, like the remaining 70 percent, need not be spent proportionally between summer and year-round activities. The Local Board, in consultation with the chief elected official, determines the distribution of funds. There is no separate summer program under WIA. Therefore, there is no exemption from the 30 percent requirement for funds spent on summer employment opportunities. A single allocation of youth funds, at least 30 percent of which must be spent on out-of-school youth, is available to local areas for year-round and summer employment opportunities.

Subpart D—Youth Program Design, Elements, and Parameters

The features of the youth program design are outlined in section 129(c) of the Act. While the Act specifies three program design categories and ten

program elements, it permits individual program design flexibility in determining the definition, scope, and characteristics of the elements.

A commenter suggested that, to avoid confusion, we should clarify the number of youth elements that are required and the entity responsible for providing the ten elements. The commenter also suggested replacing the term ''local program'' in § 664.410 with either ''local workforce investment board'' or ''local workforce investment area'' to identify the entity responsible for making the ten elements available.

Response: WIA requires that Local Boards must ensure that all ten elements are available for youth in their local area. To provide further guidance to assist Local Boards, we added a new § 664.400 to define the composition of a local youth program and to address the difference between local programs and local program operators. This definition clarifies that a local youth program must include all the youth activities in a local area, irrespective of the number of operators or alternative services. In addition, we redesignated § 664.400 of the Interim Final Rule as § 664.405 and have added a provision which we discuss below.

Redesignated § 664.405 discusses the three categories required under WIA section 129(c)(1) which provide the framework for youth program design. They are: (1) An objective assessment of each participant; (2) individual service strategies; and (3) services that prepare youth for postsecondary educational opportunities, link academic and occupational learning, prepare youth for employment, and provide connections to intermediary organizations linked to the job market and employers.

A commenter asked us to clarify that the requirement, in WIA section 123, that eligible providers of only the ten required program elements be identified by awarding grants or contracts on a competitive basis, does not apply to the design framework component of the program.

Response: Eligible providers of the ten program elements must be identified as required by WIA section 123; however, we have added a new paragraph (a)(4) to the redesignated § 664.405 to clarify that this requirement does not apply to the design framework of local youth programs when the grant recipient/fiscal agent is the provider of the design framework activity. A similar exception in § 664.610 also applies to the grant recipient/fiscal agent's provision of summer employment activities.

A commenter requested that we clarify that developing a career goal for each youth could be part of the individual's service strategy rather than an immediate requirement to identify a career goal because many young people 14 years and above do not know what they want to do.

Response: We agree that developing a career goal may be part of an individual service strategy rather than an immediate requirement for younger youth. However, setting goals for younger youth may reflect a career interest. Goals may change as a youth ages and interests broaden as a result of participation in workforce development activities. Therefore, we believe local program operators should encourage younger youth to identify career interests which may serve as a career goal. We have added the phrase ''age-appropriate'' to redesignated § 664.405(a)(2) to clarify that the career goals selected should appropriate for the age of the youth participant.

Redesignated § 664.405(c) requires Local Boards to establish linkages to entities that will foster the participation of eligible youth. We received several comments stating that youth programs should be designed to address the needs of teen parents (such as child care, flexibility in schedule), to combat the occupational segregation which contributes to low wages of women and that training should be evaluated for access to non-traditional jobs and career paths for women and girls. The commenters also suggested that we add language to this section to provide for linking youth programs with educational institutions, child care facilities, and other entities to meet women-specific needs.

Response: The final regulations, in redesignated § 664.405(a)(3), provide for linking youth programs with other entities to assist youth. Examples of linkages are listed in § 644.405(c), but the list is not exhaustive. Local Boards must ensure that there are appropriate links to entities that will foster the participation of eligible local area youth. Program operators may link their programs to entities such as local high schools, alternative schools, childcare agencies, vocational programs, and two- and four-year postsecondary institutions that provide services to address the specific needs of the targeted population, including teen parents, for eligible youth services. We agree with the commenters about the importance of these linkages in fostering the participation of eligible youth, however, we do not want to be overly prescriptive, decreasing the discretion of local areas in making such decisions. No change has been made in the final regulations.

Section 129(c)(3) of the Act requires that Local Boards ensure that eligible youth receive information and referrals, including information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Youth program providers must ensure that eligible applicants who do not meet the enrollment requirements of their program or who cannot be served by their program are referred for additional assessment and program placement. This language is included in redesignated § 664.405(d) to emphasize the importance of referrals as a part of overall youth program design. To further promote the concept of seamless One-Stop service delivery, One-Stop operators are encouraged to send those youth assessments that are completed at the One-Stop center to other training and educational programs to which the youth is referred.

Section 129(c)(2) of the Act lists 10 program elements that must be generally available to youth through local programs. A commenter asked for clarification on the number of youth elements required and whether these elements must be provided to every youth participant.

Response: Section 664.410(a) makes it clear that the Local Board must ensure that all ten elements are available for youth in their local area. However, § 664.410(b) provides that a local program is not required to provide all ten program elements to every participant. Local program operators must determine what program elements will be provided to each youth participant based on the participant's objective assessment and service strategy. We envision that each youth will participate in more than one of the ten program elements required as part of any local youth program and all youth must receive follow-up services. For example, even if it is determined appropriate that a youth participate in only summer employment activities, he or she would still receive at least 12 months of followup services. Followup service requirements are fully described in § 664.450. Since the regulations address this issue, no change is necessary.

Sections 664.420 through 664.470 further define and discuss five program elements: leadership development, positive social behaviors, supportive services, followup services, and work experiences.

Under WIA section 129(c)(2)(F) and § 664.410, youth programs must make leadership development opportunities available. The Act gives the following examples of leadership activities:

community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours. Some additional examples of leadership development activities are listed in § 664.420 which elaborates on the definition of leadership development opportunities. The development of leadership abilities might address team work, decision making, personal responsibility, and citizenship training, as well as positive social behavior training in areas such as positive attitudinal development, self-esteem building, cultural diversity training, and other skills and attributes that would help youth to lead effectively, responsibly, and by example.

One commenter suggested that the examples of leadership development opportunities should include actual opportunities for youth to assume leadership roles, such as: involving participants in program governance and decision making, entrepreneurship training and peer leadership opportunities.

Response: The examples of leadership development and positive social behaviors in § 664.420 are not intended to be all inclusive, they are merely examples. Other kinds of leadership development opportunities may be provided at the discretion of the Local Board. The commenter provides good examples of the types of leadership development opportunities Local Boards may want to consider when designing their local youth programs. No change has been made in the final regulations.

A commenter suggested that the rules define ''positive social behaviors'' and make it clear that positive social behaviors are outcomes of leadership opportunities. The commenter recommended a new definition of positive social behavior which includes some of the following activities: maintaining healthy lifestyles, including being drug and alcohol free; maintaining positive relationships with responsible adults and peers; contributing to the well-being of one's community; voting; being committed to learning and academic success; remaining non-delinquent; and postponed and responsible parenting.

Response: We have added these suggestions to the list of positive social behaviors in § 664.430 because we think that the original list of examples was too narrow to reflect the full range of positive social behaviors. As a technical correction, we have removed the phrase ''but not limited to'' from this section. This does not change the meaning of this provision. Here, as throughout the regulations, the term ''include'' is used to indicate an illustrative, but not exhaustive list of examples.

Another of the ten required program elements is supportive services. Section 101(46) of the Act defines supportive services to include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to participate in activities authorized under title I of the Act. Section 664.440 elaborates on the definition of supportive services as it applies to youth. Such services may include: linkages to community services; referrals to medical services; and assistance with work attire and work-related tool costs, including such items as eye glasses and protective eye gear. Child support, EITC, Food Stamps, Medicaid, and the Children's Health Insurance Program are among the programs with which Local Boards are encouraged to coordinate. We have made a slight modification to this section which previously referred to assistance with transportation, dependent care and housing ''costs''. We have removed the reference to ''costs'' for the services since WIA title I funds may be used to provide services such as on-site child care as well as to directly provide or reimburse the costs of these services.

Section 664.450 requires that followup services be provided to all youth participants for not less than 12 months after the completion of participation, as appropriate. The appropriate scope of followup services must be based on the needs of the individual participant. Followup services have proved to be effective. Evaluation studies such as Abt Associates' Final Report on the National JTPA Study, have shown disappointing results for short-term job training programs for youth. In contrast, programs such as STRIVE and the Children's Village have shown much success with longer-term followup strategies. A 1993 study by MDRC showed that the programs of the Center for Employment Training, which feature close ties to the private sector and a strong job placement component with followup with employers, increased the earnings of enrollees by $3,000 a year over a control group during the last two years of a four-year evaluation.

Section 664.450(a)(1) provides that followup may include leadership development or supportive service activities, as well as other allowable activities, and provides additional examples of permissible followup services. The list is intended to present examples of followup services; other types of followup services may be determined at the local level.

Section 664.450(b) clarifies that all youth participants must receive some form of followup services. Such services must be for a minimum of 12 months. Followup services for youth who participate in only summer employment activities may, however, be less intensive than for those youth who participate in other types of activities. Program operators are encouraged to consider the intensity of the services provided and the needs of the individual youth in determining the appropriate level of followup services.

A commenter suggested revising the sentence referring to less intensive followup services for youth who have only participated in summer employment opportunities, to say that the scope and intensity of these followup services should be consistent with each participant's individual service strategy.

Response: Section 664.450(b) already states that the types of services provided and the duration of services must be determined based on the needs of the individual. Therefore, we do not feel that further clarification is required. Local programs will make the determination on the intensity of followup services. However, we will provide additional guidance on other aspects of this subject through our regular system of communication to States and local areas for States that may need technical assistance.

Sections 664.460 and 664.470 address work experiences for youth. Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. The regulations do not specify a particular time limit for work experiences. A commenter requested that we place a maximum time limit on work experiences (no more than 30 days), and require that all work experiences be paid, with priority given to employers who have evidenced a commitment to training for their own workers and union management approaches to training.

Response: We agree that Local Boards should make a point of establishing work experiences opportunities for youth with employers who have demonstrated quality approaches to training and labor management, but do not think it is necessary to mandate this approach. We believe, however, that establishing a regulatory time limit, requiring that all work experiences be paid and giving priority to select employers is inconsistent with principle of local flexibility in designing

programs. No change has been made in the final regulations.

As provided in Section 129(c)(2)(D) of the Act, work experiences may be paid or unpaid, as appropriate. A commenter suggested that we clarify that work experiences are appropriate and desirable activities for many youth throughout the year.

Response: We agree and have added the suggested language to § 664.460(c).

Section 664.460 provides that work experiences may be in the private for-profit sector, the nonprofit sector, or the public sector, and gives examples of the types of activities that work experiences may include, such as internships and job shadowing. A few commenters recommended adding other examples to § 664.600 to expand the types of acceptable work experiences. They suggested that the definition of work experiences should make it clear that paid or unpaid community service programs, such as youth services or conservation corps, are valid examples of work experiences, and suggested that language be added to encourage Local Boards to maximize the use of paid work experiences in summer conservation corps programs managed by qualified State, local, non-profit or Federal agencies, as key element or strategy. In addition, a commenter proposed that the regulations encourage Local Boards to maximize collaboration with federal agencies that operate summer youth conservation corps program.

Response: We agree that paid and unpaid community service programs may be appropriate types of work experiences for youth, and have amended the list of examples in § 664.460(c) to include them. However, while we agree that youth conservation corps may be one of the programs in which WIA youth participants gain work experiences, we have refrained from identifying particular types of program providers throughout the regulations. Therefore, consistent with the principle of maximizing State and local discretion, we have not specified this program in the regulations.

A few commenters also endorsed the principle that decisions regarding OJT for youth participants should be left to Local Boards.

Response: We agree that the decision about when to provide OJT to youth under age 18 should remain a decision left to Local Boards. While OJT is not an appropriate activity for most youth under age 18, local programs may choose to use this service strategy for such youth based on the needs identified in an individual youth's objective assessment. Since § 664.460(d) provides for local discretion in deciding when to use OJT, based on a youth's service strategy, no change is made to the regulations.

Section 664.470 provides that youth funds may be used to pay the wages of youth in work experiences, including in the private, for-profit sector, under conditions designed to protect youth and incumbent workers when the purpose of the work experiences is to provide youth with opportunities for career exploration and skill development and not to benefit the employer. If an unpaid work experience creates an employer/employee relationship, federal wage standards may apply. This relationship is determined under the Fair Labor Standards Act.

One commenter asked that we clarify the statement that the purpose of work experiences is not to benefit the employer although the employers may, in fact, benefit from activities performed by the youth, stating that § 664.460 (c) is ambiguous.

Response: The intent of work experiences is to provide youth with opportunities for career exploration and skill development and to enhance their work readiness skills in preparation for employment. While this is the primary objective of work experiences, we recognize that the employer may also receive some benefit in the form of work being done or of recruiting a potential new employee. We believe that the regulations adequately explain this; therefore, no change has been made to the regulations.

Subpart E—Concurrent Enrollment

Under the criteria of section 101(13) of the Act, an eligible youth is an individual 14 through 21 years of age. Adults are defined in section 101(1) of the Act as individuals age 18 and older. Section 664.500(b) clarifies that eligible youth who are 18 through 21 years old may participate in youth and adult programs concurrently, as appropriate for the individual. Such individuals must meet the eligibility requirements under the applicable youth or adult criteria for the services received. Local program operators must identify and track the funding streams for services provided to individuals who participate in youth and adult programs concurrently, ensuring non-duplication of services.

A commenter asked that we make it clear that out-of-school youth may enroll in adult programs under Titles I and Title II of the Act.

Response: We have revised paragraph (b) of § 664.500 to clarify that concurrent enrollment is allowable for youth served in the adult program, dislocated worker program, adult education programs under title II of WIA, and other programs, in order to broaden options for serving youth.

A commenter suggested that youth co-enrolled in both youth and adult programs should also be offered the complete services available to youth.

Response: We think the regulations already cover this suggestion since youth enrolled in youth programs must receive an individual assessment and service strategy based on their need, regardless of whether they are co-enrolled in an adult program. The service strategy should consider all the service options available under both the youth and adult programs.

Section 664.510 provides that ITA's are not an authorized use of youth funds. One commenter stated that WIA is silent on the use of ITA's for youth and this should be a State or local decision. This commenter felt that since it is allowable to enroll 18 year old youth in both youth and adult programs, the use of ITA's should be allowed as an activity for 18–21 year old youth enrolled only in youth funded activities. Another commenter asked that we reverse the rule disallowing ITA's for youth participants not eligible for training services under the adult and dislocated worker programs.

Response: The ITA is the currency of a market-based system that enables adults and dislocated workers to select the service providers most suited to their needs based on information about the past performance of such providers. While the Act does not mention ITA's in its youth provisions, it does require that providers of the ten required youth program elements be competitively selected. The competitive selection requirement effectively precludes the use of ITA's since providers are selected by the Local Board, rather than by the participant. Thus, because the supply of providers may be limited, we interpret the Act to preclude ITA's for youth below age 18. Youth aged 18 through 21 can access ITA's under the adult or dislocated worker program, if appropriate. Accordingly, we have not changed this section.

Subpart F—Summer Employment Opportunities

Subpart F provides clarification about summer employment opportunities for youth. Commenters expressed concern that WIA does not have a separate funding authorization for summer youth employment and training programs. A commenter also felt that without a separate authorization, the summer youth employment program could find

itself in some peril in the future and suggested that regulatory language be added to preclude any diminution in this highly important activity.

Response: The commenters are correct that the summer youth employment and training program is no longer a separately funded activity. Rather, summer employment opportunities are intended to be part of a comprehensive array of services available to youth in a local area. Although all Local Boards must offer summer employment opportunities for eligible youth as one of the ten required program elements listed in WIA section 129(c)(2) and § 664.420, the proportion of youth funds used for summer employment is determined by the Local Board in consultation with the chief elected official. Section 664.600 elaborates on the activities that must be included in all summer employment opportunities, including direct linkages to academic and occupational learning, as well as followup services for at least 12 months. Accordingly, we believe it would be contrary to the intent of the Act and inconsistent with local flexibility to regulate the level of activity required for any of the ten program elements, including the summer youth employment opportunities. We will, however, work with States and local areas to assist them with making the transition to providing summer employment activities as part of a comprehensive system of youth services. For example, we issued Training and Employment Guidance Letter (TEGL) 3–99 in January 2000, to provide guidance to States and local areas on implementing comprehensive youth services under title I of WIA during the summer of 2000. This guidance is available on the Internet at *www.usworkforce.org.* Therefore, a change in the regulations is not necessary.

A commenter also asked that a new paragraph (e) be added to § 664.600 to require each local area to report yearly on the number of youth participants who are provided summer employment opportunities.

Response: Section 183 of the Act authorizes the Secretary to monitor all recipients of financial assistance, which would include grant recipients that operate summer employment activities. We are in the process of developing a reporting system to collect information on WIA participants, youth participants will be included in the reporting system. This reporting system will include information on how many youth participants participated in summer employment opportunities, as well as the characteristics of those participants. Since this issue is being addressed in the reporting arena, no change is made to these regulations. In addition, Training and Employment Guidance Letter (TEGL) 14–99, transmitting instructions for the WIA Transition Summer Report addresses these issues. The TEGL was issued on June 12, 2000 and can be found on the Internet at www.usworkforce.org.

We received numerous inquiries about whether the Act would allow cities and counties to continue to operate their summer employment opportunity activities.

Response: Section 664.610 provides that this practice is still allowed when the local chief elected official is the grant recipient/fiscal agent. It clarifies that if summer employment opportunities are provided by entities other than the grant recipient/fiscal agent, then, under WIA section 123, the providers must be selected by awarding a grant or contract on a competitive basis, based on recommendations of the youth council and on criteria contained in the State Plan. Thus, a city or county may continue to operate the summer employment opportunities component of the youth program, and is not required to engage in a competitive selection process for that component, if it acts as the grant recipient/fiscal agent for the Local Area. However, under WIA section 123, providers must be selected on a competitive basis if providers other than the grant recipient/fiscal agent provide the summer employment opportunities component of the local youth program.

A commenter also suggested that we clarify that local government units operating summer youth employment opportunities as a consortium may provide summer youth opportunities without competitive bidding.

Response: We agree and have revised § 664.610 to specifically recognize consortia of local governments.

One commenter requested that we allow the selection of private sector unsubsidized employment opportunities to be excluded from the competitive process.

Response: We agree and § 664.610 has been revised accordingly.

Some commenters suggested that the description of summer youth employment should make it clear that youth service and conservation corps constitute valid summer employment opportunities. They also recommended that we encourage Local Boards to maximize collaboration with Federal agencies that operate summer youth conservation corps programs.

Response: In our discussion of § 664.460, we have identified youth conservation corps and youth service corps as available work experiences opportunities for youth. As such, placement with these programs as part of summer employment opportunities may also be appropriate. However, we do not believe it is necessary to specifically identify these programs in the regulations.

The core indicators specified in section 136 of the Act apply to the youth program as a whole, including all youth program activities. This is consistent with the intent of the Act to move from a focus on separate, categorical programs to a more systematic approach to workforce investment and serving the needs of youth. Summer employment opportunities, then, are to be viewed as one element among many available to youth as a part of a menu of activities offered by the Local Board. Section 664.620 indicates that participants in summer activities, as part of the overall youth program, are required to be included in the same core indicators of performance as the other youth activities.

A commenter thought that performance measures in Title I and Title II should be the same for youth because youth can be simultaneously enrolled in both programs.

Response: We agree that performance measures for federal education and training programs should be coordinated to the extent possible. We have held discussions with the Department of Education to identify similar performance measures which would apply to both Title I and Title II programs and will continue our joint efforts to harmonize performance measures across programs.

Subpart G—One-Stop Services to Youth

Subpart G explains that the chief elected official (as the local grant recipient for the youth program), is a required One-Stop partner, is subject to the One-Stop provisions related to required partners, described in 20 CFR part 662, and is responsible for connecting the youth program and its activities to the One-Stop system. In addition to the provisions of 20 CFR part 662, links between the youth program and the One-Stop system may include those that facilitate:

- The coordination of youth activities;
- Connections to the job market and employers;
- Access for eligible youth to information and services; and
- Other activities designed to achieve the purposes of the youth program.

Under section 134(d)(2) of the Act, adults have access to core services in One-Stop centers without regard to eligibility. Adults are defined under the Act as persons aged 18 and above. Section 664.710 of the regulations clarifies that local area youth, including youth under age 18 who are not eligible under the title I youth program, may receive services through the One-Stop centers; however, services for such youth must be funded from sources that do not restrict eligibility for services, such as the Wagner-Peyser Act. We believe that WIA's intent is to introduce youth, particularly out-of-school youth, to the services of the One-Stop system early in their development and to encourage the use of the One-Stop system as an entry point to obtaining education, training, and job search services.

Commenters suggested that One-Stop Centers should make significant efforts to make their programs and services accessible to youth and work with local school systems to reach eligible youth. One of the commenters also suggested amending § 664.700(b)(2) to add the local school systems to the linkage requirement, and to require One-Stops to provide materials at low literacy and developmentally diverse levels. To better serve participants of all ages, staff should be trained on the developmental stages of youth and adulthood. A commenter also stated that it is important that, in all cases, written material and/or electronically accessed information available at one-stop centers and throughout the system be written at no more than a fifth grade reading level and, where appropriate, also available in languages other than English spoken by a majority of potential customers.

Response: While neither WIA nor its implementing regulations require any sort of reading level analysis for EO purposes, local areas may consider providing written materials at low literacy and developmentally diverse levels. The WIA nondiscrimination regulations, at 29 CFR 37.35, set forth the specific obligations to provide services and information in languages other than English. The level that triggers the obligation to prepare non-English materials and services in advance is ''a significant number or proportion of the population eligible to be served or likely affected.'' Since One-Stop centers must adhere to the 29 CFR part 37 Civil Rights regulations when adopting such policies, no changes to § 664.700 are necessary.

Subpart I —Youth Opportunity Grant Programs

This subpart explains that competitive procedures for awarding Youth Opportunity Grants will be established by the Secretary. It also restates statutory language about the eligibility of Local Boards and other entities in high poverty areas to apply for Youth Opportunity Grants. Provisions of the Act regarding eligibility for services under Youth Opportunity Grants and the process for establishing performance measures are clarified in §§ 664.800 to 664.830. We view these grants as a distinct opportunity to provide a variety of needed services to youth in high poverty areas, building on the current successful activities and innovations already at work in many communities.

Part 665—Statewide Activities Under Title I of the Workforce Investment Act

Introduction

This part addresses the funds reserved at the State level for statewide workforce investment activities under WIA sections 128(a) and 133(a)(2).

Subpart A—General Description

Subpart A provides a general description of Statewide activities conducted with the up to 15 percent of the funds which the Governor may reserve from the youth, adult and dislocated worker funding streams (''15 percent funds''), and the up to an additional 25 percent of dislocated worker funds which the Governor may reserve for Statewide activities.

Section 665.110(b) explains that the 15 percent reserved funds may be pooled and expended on workforce investment activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out Statewide youth activities and vice versa. We believe that the use of these funds can provide critical leadership in the development and continuous improvement of a comprehensive workforce investment system for each State and, as a result, create a national system to which job seekers and workers can look to for expert assistance, and employers can look to for a qualified workforce. This issue is also addressed in 20 CFR 667.130(b).

We did not receive any comments on this subpart and no changes have been made in the final regulations.

Subpart B—Required and Allowable Statewide Workforce Investment Activities

Subpart B discusses required and optional activities conducted with funds reserved from the three title I funding streams (youth, adults, and dislocated workers).

1. Required Activities: Section 665.200 identifies the eight activities each State is required to carry out with its reserved funds from the three funding streams. The Governor must reserve funding for these activities, but has discretion to determine the amount reserved, up to the maximum 15 percent of each funding stream. One authorized use of these funds is administration, subject to the five percent administrative cost limitation at 20 CFR 667.210(a)(1). This paragraph clarifies that while there is no specific amount that must be spent for each of the seven activities that are required to be carried out with the 15 percent funds, it is expected that the State will expend a sufficient amount to ensure effective implementation of those activities.

States are also required to provide additional assistance to local areas that have high concentrations of eligible youth. This activity is one way States can help local areas maximize the number of youth served under title I of WIA. Another required activity, rapid response, is discussed in subpart C of part 665.

Section 665.200(b) discusses the States' responsibility for disseminating information about eligible providers of training services for adults, dislocated workers and youth, including the statewide list of eligible providers and information on performance and program cost. One commenter stated that, when discussing statewide dissemination strategies, the regulation should encourage States to disseminate information in different languages, for different reading levels, and to use radio and television public service announcements to reach as wide and diverse an audience as possible.

Response: We agree with the commenter and encourage States to develop dissemination strategies using multiple means, including those suggested by the commenter, to provide information in such a way as to reach the widest population. The Interim Final Regulation implementing WIA's section 188 nondiscrimination provisions contains requirements for the effective communication of information to individuals with disabilities, including dissemination of information in different languages and to various population groups. 29 CFR 37.9; 37.35;

37.42, (published at 64 FR 61692) (Nov. 12, 1999)). We will work with the Department of Labor's Civil Rights Center to issue guidance on compliance with 29 CFR 37.35 to assist providers in meeting their obligations to provide materials and services in languages other than English. To permit maximum State and local flexibility, we have chosen not to specify particular methods by which information on eligible providers must be disseminated. However, we have added a new paragraph (5) to § 665.200(b) which requires that States assure that the information listed in paragraphs (1) through (4) is widely available.

Section 665.200(c) discusses conducting evaluations (WIA section 136(e)) of workforce investment activities for adults, dislocated workers and youth as one of the eight required Statewide activities. One commenter suggested that ''high wages'' be specified as part of ''high-level outcomes'' which result from the improvements identified in the evaluations.

Response: Section 665.200(c) discusses broad Statewide program goals leading to high-level performance and outcomes and is not intended to require specific measures to be used in achieving them, nor to address individual participant outcomes. We believe that high wages may be better addressed by the core performance indicators required by WIA section 136 and discussed in 20 CFR 666.100, especially by the 6-month post employment earnings measure, which, by definition, addresses wages. Also, it is expected that the Governors will use additional indicators of performance on a Statewide and local basis that may more fully address the commenter's concern (see 20 CFR 666.110 and 666.300(b)). Finally, ''high wages'' is a relative term and, as such, is difficult to define in a useful way, except on an individual basis because it is a function of a particular occupation, local labor market conditions, an individual worker's skills, experience, education level, and other factors. What are high wages for one person may be low wages for another. For these reasons, the final regulation is unchanged.

Another commenter expressed concern that, under a universal access system and uniform performance standards, special populations with significant barriers to employment will experience difficulties in learning about, accessing and receiving appropriate services. The commenter suggested that the final regulations encourage evaluations of the delivery of workforce investment activities to economically disadvantaged and other special populations.

Response: While we agree that the evaluation of activities, including outreach, for these populations is important and should be encouraged, we do not wish to limit the Governors' flexibility in allocating and administering the funds reserved for these required activities. 29 CFR 37.42, in the regulations implementing the WIA nondiscrimination and equal opportunity provisions, contains further obligations regarding outreach and universal access. Under WIA, the Governors have been given the discretion to determine funding levels for outreach and evaluation activities and whether the activities will be targeted to specific organizations, populations or programs. However, WIA section 136(e)(2) and § 665.200(c) require Governors to design the evaluations in conjunction with the State and Local Workforce Investment Boards and to coordinate with Local Boards in conducting the evaluation studies. Community-based organizations, advocacy groups, and other stakeholders have a variety of opportunities for participation in the workforce investment system decision-making process. They are among the groups represented on State and Local Boards. They may attend Local Board meetings, provide comments on workforce investment plans, become eligible training providers, and demonstrate effectiveness in the delivery of training programs. We believe that the commenter's concerns should be, and will be, addressed through this broad consultation process. However, § 665.200(c) of the final regulations is revised to include a reference to the requirements of WIA section 136(e)(2), which was not included in the Interim Final Rule.

Other commenters suggested that, for the purposes of awarding incentive grants, the final regulations should define the term ''exemplary performance,'' used at § 665.200(d)(3), in a way that will reward local areas that assist a significant percentage of individuals to meet their self-sufficiency standard (i.e., to earn wages needed to cover costs for various family sizes and types, without governmental assistance).

Response: We agree that consideration of the extent to which programs lead to self-sufficiency is an important factor in measuring program effectiveness and encourage States to look at this factor in determining incentive grants. Under WIA, however, the Governor has the discretion to develop additional indicators of performance by further defining exemplary performance beyond the core performance measures specified in the Act and regulations. As stated in 20 CFR 666.300, WIA section 136(c)(1) authorizes the Governor, and not the Department, to apply additional indicators of performance, such as self-sufficiency, to local areas and to use them along with the core performance measures as the basis for awarding Incentive Grants for exemplary performance. As stated in 20 CFR 666.400(b), WIA section 134(a)(2)(B)(iii) further provides that the authority to determine the criteria for exemplary local performance that qualifies for incentive grants, as well as the amount of funds used for these grants, lies with the Governor. To limit the Governors' discretion in this area by requiring additional indicators would not be in keeping with the letter and intent of WIA to provide increased State and local flexibility. Consequently, this provision remains unchanged in the final regulations and the States retain the authority to exercise discretion in these matters.

Section 665.200(e) provides for technical assistance to local areas that fail to meet local performance measures. A commenter indicated that such technical assistance must include capacity building for Local Board members to help improve services and performance.

Response: The State has the flexibility to develop technical assistance strategies and, therefore, a State may decide to include capacity building activities as part of its overall technical assistance strategy. WIA section 134(a)(3)(A)(ii) and § 665.210(b) list capacity building activities as an allowable statewide activity. Consistent with the WIA principle of maximizing State and local flexibility, we believe that it would not be appropriate to limit flexibility by specifying a particular type of technical assistance activity that must be provided. While we agree that capacity building for Board members is often a useful technical assistance strategy, we are not prepared to require it in all cases. This provision remains unchanged in the final regulation.

2. Optional Activities: Section 665.210 identifies activities which each State is allowed to carry out with the 15 percent funds. For the first time, States have the discretion to conduct research and demonstration projects, and incumbent worker projects, including the establishment and implementation of an employer loan program. We encourage States to establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker projects. We have added the phrase ''or groups of

workers'' to § 665.220 to clarify that groups of workers, in addition to individual workers, may be determined eligible for incumbent worker training, and that the eligibility determination for the ''group'' does not have to be done on an individual basis. Section 665.220 makes clear that incumbent workers served under projects funded with these reserve funds do not necessarily have to meet the requirement that training leads to a self-sufficient wage. However, because of different WIA requirements, employed adult or dislocated workers served with local formula funds must meet the self-sufficiency requirement.

Under their capacity-building function (one of the allowable Statewide workforce investment activities), states may also conduct activities and implement programs designed to promote access to and coordination among supportive services and work supports administered by other state agencies. Because supportive service and work support programs are vital for low-income families making the transition to self-sufficiency, efforts to integrate and coordinate such programs at the state level will greatly enhance the capacity of One-Stop providers to serve their participants successfully.

One commenter suggested that States consult and coordinate allowable Statewide workforce investment activities with State labor federations and appropriate labor organizations, especially in the case of incumbent worker training. The same commenter also suggested that States be required to provide assurances that capacity building and technical assistance funds are used to enhance participation of all stakeholders, including organized labor.

Response: We agree that State labor federations and other appropriate labor organizations at the State and local level should be involved in consulting and coordinating on allowable Statewide workforce investment activities, including capacity building (which is one of the allowable activities), and technical assistance (a required activity for local areas that fail to meet performance levels). Representatives of labor organizations have the opportunity for consultation and coordination through their membership on State and Local Boards, the opportunity for public comment during State and local planning processes, as well as other opportunities provided under the sunshine provisions of WIA (WIA sections 111(g) and 117(e), and 20 CFR 661.220(d) and 661.305(d)). We believe the commenter's concerns on consultation and coordination will be addressed by these broad consultation processes. This provision remains unchanged in the final regulations.

One commenter suggested that States must consult on policies governing incumbent worker training with organized labor representatives, especially those whose members have the skills in which training is proposed. In addition, the commenter suggested that written concurrence on the training programs must be provided by the unions whose members are being affected by these programs.

Response: We agree that written union concurrence is required, under WIA section 181(b)(2)(B) and 20 CFR 667.270(b), where a training program would impair or be inconsistent with an existing collective bargaining agreement. We believe that general consultation on incumbent worker training initiative policies will occur with organized labor representatives through the processes described above. We strongly encourage State and Local Boards to also consult with the specific organized labor organizations whose members have the skills in which incumbent worker training programs are being planned, as well as with organized labor organizations whose members are affected by such programs even where the is no question of impairment of collective bargaining agreements. No changes have been made to the final regulations.

Several commenters suggested that we add illustrative language to the list of optional Statewide activities specified in § 665.210 to identify and encourage the selection of particular programs or types of providers that may be funded with the State's 15 percent reserve funds.

Response: These suggestions are discussed in more detail below. As a matter of policy, we agree that the commenters' suggestions would be permissible uses of the 15 percent funds. However, we are not prepared to single out any particular type of program or provider, consistent with our overarching policy of providing State and local flexibility in program design and implementation.

One commenter asked that the following language be added to § 665.210(b)(1) regarding staff development and training: ''particularly for non-profit community-based organizations that serve disadvantaged populations to assist them in being certified as eligible providers and to comply with data collection requirements.'' The commenter also suggested that language in § 665.210(e) should specifically mention that the support provided to local areas for identifying eligible training providers should include outreach efforts to community-based organizations that serve disadvantaged (minority, immigrant, low-income, disabled) populations.

Response: While we are not prepared to limit State and local flexibility by imposing this requirement, we are committed to assisting disadvantaged populations, such as low-income individuals or individuals with disabilities, and agree that community-based organizations are an important part of the workforce investment system with their focus on serving these populations. Outreach to groups serving disadvantaged population groups is an important part of the Local Board's responsibility to provide universal access to WIA funded activities. See 29 CFR 37.42. Therefore, we encourage Local Boards to engage in outreach activities to community-based organizations. In addition, community-based organizations will be represented on Local Boards, will have the opportunity to attend Local Board meetings, and provide comments on the eligible provider process and to demonstrate effectiveness in the delivery of training programs. We expect States to provide training activities for all organizations that have traditionally been partners of the system. No change has been made in the regulations.

Another commenter suggested that § 665.210(b)(2) should specifically list programs provided by State and local youth service and conservation corps as examples of exemplary program activities.

Response: We believe that when a State is developing exemplary program activities, it should include programs, such as those suggested, that have proven successful in delivering employment and training activities for youth, adults and dislocated workers. However, we also recognize that the Governor has the authority to determine what allowable activities will be conducted and how the 15 percent funds will be used to conduct those activities. Since we do not believe it is appropriate to prescribe how the States should spend those funds, no change has been made in the final regulations.

A commenter noted that §§ 665.200(b)(1) and 665.210(f) provide for nontraditional training and employment in both required and allowable Statewide workforce investment activities. The commenter suggested that we should provide more specific guidance on how States should provide opportunities for training for non-traditional employment at the State and local levels.

Response: We agree that training for non-traditional employment is an important component of the workforce investment system. While the rule remains unchanged in the final regulations, we expect to issue guidance to States and local areas on the provision of training for non-traditional employment. In addition to implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employments, we also encourage states to implement programs to promote increase employment of low-income fathers so they can support their children more adequately.

One commenter indicated that § 665.210(f) should list entrepreneurship and asset-building initiatives as examples of innovative programs for displaced homemakers.

Response: We encourage States to develop innovative programs, which may include those specified by the commenter, when designing innovative programs for displaced homemakers. However, we believe that the States should have the flexibility to design programs which meet their specific needs. The rule, therefore, remains unchanged in the final regulations.

The same commenter suggested that § 665.210(f) should specify that when a State is implementing programs to increase the number of individuals trained for and placed in non-traditional employment, special attention should be given to low-income individuals and recipients of public assistance.

Response: Although we agree that States should take steps to assure that all training activities are available to low-income individuals and public assistance recipients, we believe that States must have the flexibility to design programs which increase the participation of all individuals. We do not think it is appropriate to narrowly limit this flexibility. Therefore, the regulation remains unchanged.

Another commenter suggested that the listing of required and allowable Statewide workforce investment activities should specify that the needs of older workers can be addressed with these resources.

Response: We agree that the Governor has the discretion to fund activities for older workers and other specific groups. However, as stated above, we believe the States should have the flexibility to design programs which meet their needs. Consequently, we have not specified this permissive use of funds in the final regulations.

One commenter suggested adding language to § 665.210(b)(2) that encourages States to continue exemplary programs funded through targeted JTPA funds as they transition to WIA so that individuals currently participating in such exemplary programs may continue to receive services and avoid abrupt termination.

Response: While one of the reforms contained in WIA was the elimination of the mandatory set-asides (such as the 5 percent set-aside for older worker programs) in order to increase State flexibility, we expect that programs under WIA will benefit from the experience and expertise gained under JTPA. Further, WIA policy guidance (in WIA Questions and Answers dated April 1999, Section I., Transition Issues, Number 1 at *www.usworkforce.org*) expresses our intent that individuals who are receiving JTPA services continue to receive services under WIA when a local area transitions to WIA so that they may complete their JTPA service strategy without interruption. These participant transition provisions have been added to subpart I of part 667 of these regulations.

One commenter suggests that § 665.210(d) either provide more information on the reference to Empowerment Zones and Enterprise Communities in relation to innovative incumbent worker initiatives, or delete the reference entirely, because this reference could not be located in the WIA legislation.

Response: WIA, at section 134(a)(3)(A)(iv)(II), specifically authorizes programs targeted to Empowerment Zones and Enterprise Communities. This is separate from the authority to operate innovative incumbent worker initiatives. The Empowerment Zone and Enterprise Community initiative is a joint effort of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture. The initiative is designed to provide Federal tax incentives and flexible grant assistance to distressed urban and rural areas, and is framed around four key principles: economic opportunity; sustainable community development; community-based partnerships; and a strategic vision for change. Over 100 communities around the country have been named Empowerment Zones or Enterprise Communities. More information on this initiative can be found at *www.hud.gov.*

In order to clarify the statutory provisions in WIA section 134(a)(3)(A)(iv)(I) and (II), which separates the establishment and implementation of programs targeted to Empowerment Zones and Enterprise Communities from the implementation of innovative incumbent worker training programs, we are breaking paragraph (d) of § 665.210 into two paragraphs to clarify that these are two separate allowable activities.

One commenter suggested that § 665.210(g) should specify entrepreneurship and asset-building training as types of employment and training activities which the State can use its reserve funds to provide to adult and dislocated workers.

Response: WIA section 134(d)(4)(D) lists the types of training services that may be provided to adult and dislocated workers, including entrepreneurship training. (WIA section 134(d)(4)(D)(vi).) However, as 20 CFR 663.300 makes clear, the list is not all-inclusive and other training services may be provided. Therefore, the State, with local input, has the flexibility to determine what types of training programs will be made available to adult and dislocated workers. We encourage States to consider various types of training programs, including asset-building training, as long as it meets the training program requirements in § 663.508. We have structured § 665.210(g) broadly to provide States with maximum discretion about the kinds of training activities they will assist with Statewide activity funds. This provision remains unchanged in the final regulations.

Section 665.220 sets standards for determining the eligibility of incumbent workers served with Statewide funds. Commenters pointed out that § 665.220 contains no income requirements in the definition of incumbent worker for Statewide workforce activities, but imposes a ''self-sufficient'' wage level in customized training for an eligible employed individual at the local level under § 663.720. They suggested that the same requirements should hold at the State and local levels.

Response: Section 665.220 reflects Congress' intent that States may choose to treat incumbent workers served with Statewide reserve funds differently from employed workers served with formula funds at the local level, for whom specific eligibility requirements are imposed. While WIA section 134(a) sets no eligibility requirements on State-funded incumbent worker training, at the local level, WIA section 134(d)(3)(A)(ii) requires that employed workers be trained for jobs which will provide them self-sufficiency. Thus, since the statutory provisions are not the same, we have not made the regulatory provisions the same, although the State has the option to define the two terms in the same way. Consequently, this provision remains unchanged in the final regulations.

Subpart C—Rapid Response Activities

Subpart C addresses the use of funds that must be reserved (up to 25 percent of dislocated worker funds allotted to States under section 132(b)(2)(B) of WIA) to provide rapid response assistance.

Section 665.300 describes what rapid response activities are and who is responsible for providing them. Rapid response assistance begins at the dislocation site as soon as a State has received a WARN notice, a public announcement or other information that a mass dislocation or plant closure is scheduled to take place. We believe that this early intervention feature for dislocated workers, if provided in a comprehensive and systematic manner through collaboration between the State and Local Boards, One-Stop partners and other applicable entities, is critical to enabling workers to minimize the duration of unemployment following layoff. We strongly urge States and Local Boards to implement processes that allow for core services to be an integral part of rapid response assistance, preferably on-site, if the size of the dislocation or other factors warrant it. Further, WIA defines ''dislocated worker'' at section 101(9) in a way that permits funds to be used for intensive and training services for workers: (1) as soon as they have layoff notices; or (2) six months (180 days) before layoff if employed at a facility that has made a general announcement that it will close within 180 days.

We believe that this is a critical period for workers, States, Local Boards, One-Stop operators and partners to begin to make important decisions. One important decision is whether there are enough formula funds in the State (at the State or local levels) to adequately serve the workers being dislocated, or whether national emergency grant funds, authorized under WIA section 173 and discussed in 20 CFR part 671, must be requested in a timely manner so that all services are available to the workers when they need them.

Section 665.320 provides details on rapid response activities that may be provided in addition to the required activities described in § 665.310.

One commenter indicated that the current regulations do not include language about the for-profit business sector participation in planning and implementing Rapid Response activities. The commenter would like the regulations to emphasize that there is an important role for private for-profit businesses in this effort. A commenter thought the Job Service Employer Committee (JSEC) employers can provide assistance in designing rapid response services to help affected workers and employers. Another commenter suggested that the regulations specify a similar role for labor organizations. The commenter went on to state that we should consider providing a portion of our incentive grant funds for comprehensive rapid response services, including the participation of the State labor federation in Statewide rapid response.

Response: We agree that the Act provides many opportunities for stakeholders and we encourage States to be as inclusive as possible in planning and implementing their rapid response activities. Just as the Act recognizes the important role of business and labor in the makeup of State and Local Boards, the inclusion of both interests in the design and operation of rapid response activities is equally important. The State, however, is responsible, under WIA section 134(a)(2)(A)(i), for providing rapid response activities and it is up to the State to determine how it will plan for and implement those activities. Consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the Final Rule.

On the issue of using incentive grant funds to encourage States to include labor (or business) participation, we believe that the commenter's suggestion has merit. However, we have chosen not to define innovative programs in the regulations so that we can provide the States the opportunity to experiment with a wide variety of programs. We will develop guidelines (under 20 CFR 666.220) for incentive grants. We may decide to provide examples of innovative programs, such as the establishment of State labor liaisons with State rapid response activities, in the application guidelines. This provision remains unchanged in the final regulation.

Section 665.300(c) requires a State to establish a rapid response dislocated worker unit to carry out Statewide rapid response activities. One commenter suggested requiring the State to maintain an identifiable dislocated worker unit or a State entity that has the responsibility for carrying out rapid response activities and that such responsibilities should not be devolved to other entities.

Response: States are required to establish a dislocated worker unit and have ultimate responsibility for providing rapid response activities under § 665.300(b). However, WIA section 134(a)(2)(A)(i) authorizes States, working in conjunction with the Local Boards and the chief elected officials in the local areas, to designate an entity to provide rapid response activities. The provision remains unchanged in the final regulations.

A commenter wanted on-site contact, which is required by section 101(38)(A) of the Act and § 665.310(a), to require contact with the bargaining agent when an affected employer has a collective bargaining agreement and that such on-site contact must take place within 48 hours of the State receiving the notice/announcement of layoff. The commenter also asserted that the bargaining agent must be contacted at the outset and involved as a full partner in the development of programs and services that affect its members.

Response: Section 665.310(a) does require that on-site contact be made with the employer, representatives of the affected workers and representatives of the local community. When employees are represented by a labor organization, this provision requires contact with the bargaining agent. WIA section 101(38)(A) also requires that on-site contact be made with employers and employee representatives, and provides that the contact must be made immediately after the State is notified of a current or projected permanent closure or layoff, or in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of the disaster. We have added the phrase ''immediate and'' to paragraph (a) of § 665.310 to reiterate this requirement in WIA section 101(38)(A). In addition, we believe that the purpose of these requirements is to ensure the involvement of both the employer and the workers or their representatives in planning and implementing the entire range of services to the affected workers. We encourage the State to coordinate with all interested parties, including employee representatives, when developing programs and services for the affected workers.

This same commenter suggested that the dislocated worker unit be required to provide information to all workers and companies about the opportunities available under the Trade Adjustment Assistance (TAA) and the NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) programs as part of rapid response (19 U.S.C. § 2271, *et seq.*).

Response: Section 665.310(b) requires that information and access to unemployment compensation benefits, comprehensive One-Stop system services, including information on TAA and NAFTA–TAA, be provided to affected workers. Therefore, because the

regulations already address the commenter's concerns, no change has been made.

A commenter noted that § 665.310(a)(5) provides that required rapid response activities include ''available resources to meet the short and long-term assistance needs of affected workers.'' The commenter asked whether this means that rapid response funds must be used to provide needs-related payments and, if so, asked that the regulations be revised to reflect this. Another commenter argued that States must not be allowed to use rapid response funds for core, intensive or training services, but should maximize the integration of these services with its rapid response activities at the local level.

Response: The requirement that § 665.310(a)(5) imposes on States is to assess available resources as part of the assessment of the other factors specified in § 665.310(a). This refers to the review of funds and services available in the area to help the affected workers. In addition, WIA sections 101(38) and 134(a)(2)(A)(i) describe the uses of the funds set aside for rapid response, which is amplified in § 665.320. Under WIA section 134(a)(2)(A)(ii), the State may use some of the rapid response funds to assist affected workers with direct services, which could include intensive services, training, or needs-related payments, if local resources cannot meet the needs of these workers. These funds can be provided as ''State'' funds or as additional local funding assistance beyond the initial formula allocation for the area. In order to clarify this distinction, a new section, § 665.340, has been added to the final regulations. The new § 665.340 discusses the use of reserve funds to provide additional assistance to local areas and makes it clear that a State must reserve enough funds from its 25 percent funds to adequately fund its rapid response unit.

A commenter indicated that the items listed in § 665.320 are positive and pro-active approaches to rapid response, however, the commenter would like us to add an additional provision to § 665.320 to require that labor organizations whose members are affected by a layoff be consulted in the development and design of all rapid response and dislocated worker programs.

Response: Section 665.320 provides a list of additional rapid response activities that a State or designated entity may provide in addition to the required rapid response activities in § 665.310. To the extent that a State or designated entity conducts any of the activities listed in paragraphs (a)(1) through (3) of § 665.320, those activities must be conducted in conjunction with the groups listed in paragraph (a) of § 665.320, which includes labor organizations. We encourage States to continue working in collaboration with all interested parties when providing all rapid response activities. This provision remains unchanged in the final regulations.

Section 665.330 addresses the linkage of rapid response assistance and WIA title I assistance to NAFTA–TAA. This linkage is a requirement under NAFTA–TAA and is an important feature of the One-Stop service delivery system. One commenter indicated that unions whose members have been affected by NAFTA must be consulted in the design and implementation of programs to assist their members and that this same provision must also apply to TAA participants as well.

Response: We believe that in providing rapid response, a State should coordinate such efforts with all interested parties including representatives of the affected workers. As discussed above, consistent with our principle of providing States with maximum discretion in the design of their programs, this provision remains unchanged in the final regulations.

Section 665.330 requires rapid response to be available when the Governor makes a preliminary finding that NAFTA–TAA certification criteria have been met. A commenter suggested that the final rule clearly state that the Secretary makes the final determination on NAFTA–TAA eligibility for a group of workers covered by a petition.

Response: We agree that the clarification is appropriate. In order to clarify the rule, we have revised this provision to indicate that the requirement that rapid response be made available occurs when the Governor makes a ''preliminary finding'' that the NAFTA–TAA certification criteria have been met. (More information on preliminary findings can be found at 19 U.S.C. § 2331(b).) It is important to restate our policy that rapid response should occur as soon as possible after information on an actual or probable layoff has been received. If a preliminary affirmative finding occurs after the rapid response, the State may wish to provide additional information and assistance to the workers. If rapid response has not occurred before a preliminary affirmative finding by the Governor, the Governor must ensure that rapid response is provided to the workers at that point.

Part 666—Performance Accountability Under Title I of the Workforce Investment Act

Introduction

This part presents the performance accountability requirements under title I of the Act. It largely summarizes the statutory language in the Act, and establishes the framework for definitions, guidelines and instructions that we will issue later to implement and carry out the requirements of the Act. WIA's purpose is to provide workforce investment activities that improve the quality of the workforce. We are strongly committed to a system-wide continuous improvement approach, grounded upon proven quality principles and practices.

The development and establishment of a performance accountability system that reflects this commitment requires collaboration with representatives of appropriate Federal agencies, and representatives of States and political subdivisions, business and industry, labor organizations, employees, eligible providers of employment and training activities, including those serving hard to serve and non-traditional participants, educators, and participants, with expertise regarding workforce investment policies and workforce investment activities. During the period since the passage of the Workforce Investment Act, we have published a series of consultation papers to engage the system in a dialogue and to seek input into the establishment of a performance accountability system. On March 24, 1999, two consultation papers, ''Performance Accountability Measurement for the Workforce Investment System'' and ''Reaching Agreement on State Adjusted Levels of Performance,'' were published in the **Federal Register** Volume 64, No. 56 on March 24, 1999. On April 24, 1999, a third consultation paper, ''Incentives and Sanctions Under WIA,'' was published in the **Federal Register**, Volume 64, No. 80. And, on August 5, 1999, the fourth and fifth consultation papers, ''Continuous Improvement Under Title I of the Workforce Investment Act of 1998'' and ''Customer Satisfaction Under Title I of the Workforce Investment Act of 1998,'' were published in the **Federal Register**, Volume 64, Number 150. In addition, we held Town Hall meetings in 11 cities across the country in August of 1999 to invite and listen to suggestions and concerns of the partners and stakeholders on a range of issues including performance accountability.

The comments received in response to the publication of the five consultation papers, plus the comments received in response to the publication of the Interim Final Rule and the input from the Town Hall meetings have been instrumental in the development and dissemination of guidance to the system on performance accountability. The substance of comments received in response to the publication of the Interim Final Regulations are discussed in this preamble, and reflected in the final regulations. We continue discussions with our other federal partner agencies to expand agreement on common definitions and measures, and further guidance will be made continually available, reflecting on-going consultation with our partners and stakeholders.

Subpart A—State Measures of Performance

1. Indicators: Section 666.100 identifies the core indicators of performance and the customer satisfaction indicators that States are required to address in title I State Plans. The core indicators represent four basic measures that will be applied to each of the three programs serving adults, dislocated workers and eligible youth age 19 through 21, and three measures specifically for younger youth (age 14 through 18). There is one customer satisfaction measure for participants and one for employers.

Several comments suggested changes to the core indicators of performance to include part time employment, or to focus on non-traditional employment. Other comments requested the addition of new measures, for example for placement in non-traditional jobs, provision of services to low income people, and the inclusion of part-time employment as a placement measure. There were comments about the addition of a youth measure relating to placement in employment that creates a career path leading to long term self-sufficiency.

Response: The interest in more measures, or in measures for specific target populations is anticipated in the Act and the regulations, and States may develop those measures, as provided for in the Act, at section 136((b)(2)(C), and in the regulations, at § 666.110, and as described in their State Plan. We believe that the Act commits the development of additional measures to the Governor's discretion and that we lack the authority to impose additional performance standards. Those interested in State adoption of additional performance standards have a variety of opportunities to have their views heard through opportunities to comment on the State Plan and through the Act's sunshine provisions. Therefore, no change to the regulations was needed.

Some comments requested greater specificity and clarity for the definitions of the measures.

Response: The language in § 666.100(a) reflects the language in section 136(b)(2) of the Act. In general, we feel that the statutory language provides the basis for on-going consultation with partners and stakeholders. Then, as appropriate, additional guidance can be provided, such as the recent guidance on the measures provided in Training and Employment Guidance Letters (TEGL), number 7–99 and 8–99.

However, in response to a specific comment that attainment of basic skills was too general and not necessarily related to program services, we clarified the measure for younger youth, at § 666.100(a)(3)(i), to reflect the basic program design for youth that establishes one or more goals for participants each year. Attainment of basic skills goals, and, as appropriate, work readiness or occupational skills goals, is, therefore, a more accurate way to describe the measure, but it is limited to no more than three goals per year. Use of the term ''goals'' in reference to these difference skills acknowledges that obtaining skills, especially for younger youth, is an incremental process. This concept is described in more detail in TEGL 7–99.

A number of comments noted that the core performance indicators are not all directly related to the Vocational Rehabilitation program of services under title IV of WIA, taking the position that Vocational Rehabilitation performance indicators must remain separate from title I WIA performance indicators.

Response: We feel that the language in § 666.100(a) is sufficiently clear that the core indicators of performance apply only to adult, dislocated worker and youth programs under WIA title I subtitle B. Nothing in this language suggests that these core measurements replace or supercede measurements required by other partner programs.

Three comments described the 15 core indicators of performance and 2 customer satisfaction indicators required in § 666.100 as excessive and too complex.

Response: The Act specifically identifies four core measures for employment and training activities, including activities for youth 19–21, with three additional measures for younger youth. It is clear that States will be accountable for measuring performance for the Adult, Youth and Dislocated Worker programs separately, just as there will be separate measures of performance for the other partner programs. Our intention in the regulations is to set out what the Act already requires, but to do so in a way that makes clear how the Act's performance indicators apply to the different population groups which WIA serves.

The decision to measure customer satisfaction for job seekers and workers separately from employers was made after considerable consultation with the system. The two customer satisfaction measures are intended to provide more meaningful feedback to the States and the workforce investment system as a whole by acknowledging the different expectations held by the two very different customer groups. We believe that this is a reasonable and practical interpretation of the statutory requirement to have customer satisfaction measures for employers and participants.

Thus, the regulations were drafted to track the provisions in the Act by applying the core measures to the different programs, and to clarify that the application of the core measures, along with satisfaction measures for each of the key customer groups, requires the separate measurements identified in § 666.100(a).

2. Additional indicators: Section 666.110 provides that Governors may develop additional performance indicators and that these additional indicators must be included in the State Plan.

One comment questioned whether the requirement that additional indicators ''must'' be included in the State Plan was consistent with the language in the Act, citing section 136(b)(2)(C) of WIA which provides that ''A state may identify in the state plan additional indicators for workforce investment activities authorized under this subtitle.''

Response: We interpret this provision of WIA to authorize States to establish additional indicators, without requiring that States do so. However, if optional measures are established, they must be identified in the State Plan. This is confirmed by the use of similar language in WIA section 112(b)(3). Therefore, if a State wishes to establish additional indicators, the State must identify them in the State Plan.

A number of comments suggested that there should be a performance indicator for the self-service and informational activities so important to the system and the customers.

Response: WIA section 136(b)(2)(A)(i) specifically excludes these activities from the core measures. States and Local areas, however, are dedicating considerable and growing resources to self-service and informational activities in the One-Stop centers, and more and more of the customers of the workforce investment system are taking advantage of the information they can access on their own. Many will be doing so by using the Internet from home or work or some other location, without ever entering the One-Stop office. Efforts to identify and track the users of these services, even at a modest cost per individual, can become significant when we consider the huge numbers of customers who access these services on their own. Further, the cost of information and self-service activities for the individual served is generally very low when compared to the cost of staff-assisted services. Thus, the cost of identifying and tracking these customers could easily exceed the actual cost of the service they received.

However, we realize that some assessment of the value of these services is important for determining what resources are devoted to these types of activities. We will convene a workgroup of Federal, State and local representatives to discuss the issue of self-service measures in the Fall of 2000. We anticipate that this workgroup will develop a menu of optional self-service measures that States and local areas can utilize.

3. Negotiations: Section 666.120(b) addresses the requirement that States must submit expected or proposed levels of performance for the core indicators and customer satisfaction indicators in their State Plans. We received comments requesting clarification of the process for negotiating levels of performance, especially with regard to the factors that may be considered during the negotiations. Further comments suggested the reestablishment of State baselines after one year of WIA activity.

Response: The negotiation of performance levels for programs under title I B will be part of the process of reviewing and approving State Plans. To help clarify and reflect the goal of the process, we have replaced the term ''adjusted level'' with the term ''negotiated level'' throughout the regulations to refer to the outcome of the process and the resulting numerical levels of performance for each indicator that will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

In consultation with the system, and using the experience of early implementing States, we developed a list of possible factors that may be considered when negotiating levels of performance. The list, which was published in TEGL 8–99, is not intended to be prescriptive or exhaustive, but to suggest the kinds of information that might be considered.

Thus, ''differences in economic conditions'' might include:

- the unemployment rate;
- the rate of job creation or loss; and/or
- the rate of new business start-ups.

The negotiations can take into account ''differences in participant characteristics,'' which might include:

- indicators of welfare dependency;
- indicators of educational level;
- indicators of poor work history;
- indicators of basic skills deficiency;
- indicators of disability;
- indicators of age; and/or
- creation of a ''hardest-to-serve'' index.

The kinds of factors related to ''proposed service mix and strategies'' might include:

- percentage of WIA Title I B funds to be used for core, intensive, and training services;
- extent of follow-up services planned;
- extent and type of experimental or pilot programs planned; and/or
- extent to which non-WIA Title I B funds are available for training or other services.

Other factors that might be considered when proposing and negotiating performance levels could include:

- community factors such as the availability of transportation and daycare;
- policy objectives such as application of Malcolm Baldrige criteria, pursuit of new or enhanced partnerships, or piloting of new programs or activities.

ETA Regional Offices will work with the individual States to identify baseline data, using experience under the Job Training Partnership Act. The establishment of baselines, and the process for proposing and negotiating levels of performance is addressed in Training and Employment Guidance Letter No. 8–99. Those negotiated levels of performance may be revised, as provided for in § 666.130.

Some commenters suggested that incremental increases in negotiated levels of performance not be the only way to consider and demonstrate continuous improvement. Other comments observed that the continuous improvement requirements were not well defined and did not encourage the State and local partners and stakeholders to take a larger role in defining system accountability.

Response: We agree that continuous improvement is desirable even in areas not directly measurable by performance measures, like increasing administrative efficiency. We have added language to § 666.120(g) to more clearly provide States with the opportunity to define areas targeted for continuous improvement that may be in addition to the indicators of performance required under § 666.100.

4. Participants Included in Measures: Section 666.140 explains that all individuals, except for those adults and dislocated workers who receive services that are self-service or informational, must be registered and included in the core indicators of performance. In addition, § 666.140(b) implements the requirement that a standardized record must be completed for registered participants.

A number of comments took exception to the provision that all youth must be registered and included in the measures of performance, but that adults and dislocated workers who participate exclusively in self-service or informational activities are excluded from registration and are, therefore, not included in the performance accountability system.

Response: While these commenters feel that the registration policy for youth and adults should be the same, we believe that the policy should not be changed because of basic approach for serving youth differs from adults. The difference in the registration criteria for the Youth program and the Adult and Dislocated Worker programs arises from the way in which an applicant enters each program. WIA section 129(c)(1) makes it clear that each youth participant is to have an assessment and a service strategy, activities which would also require registration under the Adult or Dislocated Worker programs. The Act specifically excludes individuals who receive only self-service and informational activities under the Adult and Dislocated Worker Programs under WIA section 134 from the core measures of performance, and, therefore, keeping records on the individuals taking advantage of the services is not an issue. The more individually-focused youth program does not envision these kinds of activities as part of the entry. (Of course, a youth may avail him/herself of informational or self-help services through the One-Stop.)

To help clarify the issue of registration, we have added a new paragraph (a)(2) to § 666.140 to explain that ''self-service and informational

activities'' are core services consisting of widely available information that does not require significant staff involvement with the individual in terms of resources or time. Many customers of the workforce investment system do not require staff assistance to access employment statistics or job listings, for example, that are increasingly available on the Internet or in handouts or brochures designed to be widely distributed to the general public. We are, however, aware of the commenters' concerns that the system's performance in serving these self-service customers also needs to be measured. As discussed above, we will work with our partners to develop optional self-service measures.

Other comments suggested a need to provide a system-wide measurement for participants who received services under programs operated by the partners, and a need to clarify when to measure performance that could be applied across the system by all States.

Response: The comments about when an individual's participation is considered to begin for purposes of the measurement of performance, including the measurement for individuals served by partner programs, were widely discussed during the consultations with partners and stakeholders. WIA promotes the partnership of programs and activities in local One-Stop systems, and the performance accountability system must be able to reflect that desire for partnership without interfering with it. The standardized record, referred to in § 666.140(b), can be used to document services and activities provided by any of the partners in the local One-Stop system. Performance will be measured by looking at outcomes and results achieved by each registered participant following receipt of services under Title I B and any other services provided by a partner in the local One-Stop system. This clarification has been included in a new paragraph (c) to § 666.140. The performance measurement system in these regulations, including the standardized record, has been developed in consultation with Federal partners so it can be used (or modified for use) by other system partners. Other partner programs, however, are not required to use or conform to this performance measurement system, and multiple reports may track and display the outcomes achieved by a single individual who receives services under separate programs.

We have provided additional guidance in the instructions for the standardized record, including guidance to clarify when to begin measuring results achieved for those performance indicators that are to be measured following the receipt of service in Training and Employment Guidance Letter No. 7–99. This guidance was repeated in a document published in the April 3, 2000, **Federal Register**, entitled, ''Workforce Investment Act (WIA) Standardized Record Data (WIASRD), Quarterly Summary Report, and Annual Report''.

5. Wage Record Data: Section 136(f)(2) requires States to use quarterly wage records, consistent with State law, to measure progress on the core indicators of performance, and authorizes the Secretary to make arrangements to ensure that the wage records of any State are available to other States. In order for States to meet this requirement, § 666.150(a) has been amended to authorize the collection and other use of social security numbers from registered participants and such other information as is necessary to accurately track the results of the participants through wage records. The use of quarterly wage records is essential to achieving full accountability under the WIA performance accountability system, by ensuring high quality, comparable data upon which to identify and reward high performing States and localities, and, if necessary, to sanction low performing States and localities. Matching participant social security numbers against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system. For this reason, we interpret WIA section 136(f)(2)'s express requirements that States use quarterly wage records and that the Secretary arrange for State to State disclosure of quarterly wage records for WIA performance purposes as indicating Congress' intent to supersede the limitation on disclosure of social security numbers in Social Security Act section 205(c)(2)(C)(viii)(I). Section 666.150(b) clarifies that each State must describe its strategy for using quarterly wage record data, including appropriate safeguards for disclosure, in the State Plan.

We received comments that reliance on the UI wage data will be plagued by problems of uncovered employment, out-of-state employment, incomplete reporting, and other issues that may make comparisons difficult.

Response: The requirement to use wage records is quite clear, but, in consultation with partners and stakeholders, we have provided guidance on when additional information may be used to supplement the wage records in Training and Employment Guidance Letter No. 7–99.

Other comments urged specific regulatory language regarding the confidentiality of wage records, both from commenters who wished to access the data, as well as from commenters who wanted to ensure protection for the employers and workers.

Response: UI wage records are owned and managed by the States, and are subject to the rules and protections established by the States, within general provisions of Federal law and guidance. We are working with the State Agencies that have responsibility for these records to ensure that information will be available as necessary, and that protections will be provided in accordance with State law, without attempting to mandate procedures. Therefore, no changes were made to these regulations.

Subpart B—Incentives and Sanctions for State Performance

1. Incentive Process: Section 666.200 restates the eligibility criteria for States to apply for an incentive grant. The process for applying for incentive grants is described in § 666.205, which explains the timing of the applications, and § 666.220, which defines what must be included in an application. The process for determining the amount of the incentive grant awards is discussed in § 666.230. These grants will be provided to States in recognition of performance that exceeds negotiated levels, and the incentive grant award process will be administered by the Secretary of Labor in consultation with the Secretary of Education.

We received several comments about the implementation of the performance requirements during the first year following implementation of WIA. The comments suggested that incentives and sanctions be delayed for a year.

Response: WIA establishes new requirements and expectations for the workforce investment system that went into effect on July 1, 2000, but that will not be the end of the process to reform and improve the system. We are committed to working with the system to effectively implement the Workforce Investment Act, including the principle of increased accountability, and continue to seek input from the partners and stakeholders about the best way to measure and acknowledge performance. We do not see any programmatic advantage to delaying implementation of the incentives and sanctions process. The Adult, Youth and Dislocated Worker programs under WIA Title I B are replacing programs under the Job Training Partnership Act that have

measured and reported performance for over 15 years. States that are able to achieve good performance and satisfy their customers should be recognized and should be able to apply for the incentives and rewards Congress has authorized. Conversely, States that experience problems in achieving positive outcomes for their customers deserve the assistance authorized under the Act so that they may be able to modify and improve. Thus, we see no reason to postpone awarding Incentive Grants. We will provide technical assistance to the system and to the States throughout the first year to help achieve the highest possible levels of performance from the very beginning.

Some comments pointed out that the States are very different, and that the principle of State and local flexibility means that not only will performance vary from State to State, but the quality of the data and the methods for capturing the data used to measure performance will vary as well. For these reasons, the commenters took exception to comparing a State's relative performance to other States' performance when determining the amount that would be available under an incentive grant award.

Response: The incentive grant awards will be made to those States that exceed levels negotiated specifically for that State. The incentive grant will not be awarded or denied on the basis of relative performance; but the concept of comparing the performance of the States is firmly and clearly rooted in the Act, which requires the Secretary to disseminate State-by-State comparisons of the information. Also, as described in § 666.120(c)(4), one of the required factors in developing the negotiated levels of performance for the State is a comparison with other States. However, we believe that relative performance is a legitimate factor to be considered in apportioning a limited pool of incentive funds. Thus, the regulation explains that the Secretary ''may consider'' a list of 6 possible factors, including relative performance. We will be working with the States to make sure that the data collection process is as consistent as possible, and will consider this as a possible factor for establishing the amount of awards when it is appropriate. No change has been made in the regulation.

2. Sanctions: Section 666.240 explains that States failing to meet for any program adjusted levels of performance for core indicators and the customer satisfaction indicators for any program, in any year, will receive technical assistance, if requested. If a State fails to meet the required indicators for the same program for a second consecutive year, the State may receive a reduction of as much as five percent of the succeeding year's grant allocation.

We received several comments suggesting that the limited experience in using wage records to measure performance, plus the energy and resources being focused on the creation of new partnerships and the establishment of new customer-focused, streamlined service designs, may have a negative impact on performance, possibly exposing States to sanctions. The comments proposed delaying the application of sanctions until baseline data could be developed, and States would be better prepared to negotiate realistic levels of performance against which they would be measured.

Response: We recognize that the changes being undertaken with the implementation of WIA should ultimately lead to higher performance and a more sophisticated and accurate performance measurement system. Nonetheless, as a result of consultation with partners and stakeholders, we have clarified the process for determining acceptable and unacceptable performance by establishing a range so that a State's performance will be deemed to be acceptable if the actual performance falls within 20 percent of the negotiated level. Therefore, sanctions will not be considered unless actual performance is more than 20 percent below the negotiated level. This rule has been included as a new provision at § 666.240(d).

Subpart C—Local Measures of Performance

Section 666.300 explains that each local workforce investment area will be subject to the same 15 core performance indicators and two customer satisfaction indicators that States are required to address. Governors may elect to apply additional performance indicators to local areas. Section 666.310 states that local performance levels will be based on the State adjusted levels of performance and negotiated by the Local Board and chief elected official and the Governor to account for variations in local conditions.

Some commenters were concerned that local programs and partners were going to be faced with performance levels imposed as a result of negotiations between the State and the Department, and suggested that establishment of performance standards should be negotiated at the local Workforce Board level first.

Response: The Governor's authority to identify and require additional measures of performance is clearly spelled out in WIA section 136(c)(1). The local levels of performance may be an important factor the State takes into account when negotiating or re-negotiating levels of performance with the Department. While we continue to support collaboration and partnership between the State and local partners, how that process occurs within the state is not a matter on which we can limit the Governor's authority by regulation.

Subpart D—Incentives and Sanctions for Local Performance

Section 666.400(a) restates local area eligibility for State incentive grants. Under section 666.400(b) the amount of funds available for incentive grants and specific criteria to be used are determined by the Governor. Section 666.420 also explains that local areas failing to meet agreed-upon levels of performance will receive technical assistance for any program year. Governors must take corrective actions for local areas failing to meet the required indicators for two consecutive years.

We received one comment on incentive grants being available to only States or local Workforce Investment Areas. The commenter requested that Indian and Native American grantees who meet or exceed their performance standards during a program year be eligible to receive incentive grants.

Response: The reasons why we do not provide incentive grants for the WIA Indian and Native American program are addressed in the Preamble discussion of comments on part 668, covering Indian and Native American programs under the Workforce Investment Act.

Part 667—Administration Provisions

Introduction

This part establishes the administrative provisions that apply to all WIA title I programs conducted at the Federal, State and local levels, and to continued service to Job Training Partnership Act enrollees.

Subpart A—Funding

Subpart A addresses fund availability. One commenter expressed concern about the appeals processes associated with the selection of grantees under the Indian and Native American (INA) and National Farmworker Jobs Program (NFJP) (formerly known as the Migrant and Seasonal Farmworker program).

Response: Section 667.105, which covers grant instruments and grant award processes, is being modified in response to this comment. The only

remedy which may be provided to successful appellants from designation actions is designation for the remainder of the grant period. However, under § 667.825(b), this remedy cannot be provided if less than six months remains in the grant period. Due to the average length of appeals, few appellants qualify for relief during the two-year grant period. In order to improve the fairness and effectiveness of the appeals process, we are modifying § 667.105(c) to permit INA grants to be awarded to a particular grantee without competition only once during a four year period. Similar procedures are already included in § 667.105(d) for the MSFW program. It is DOL's position that the successful appellant does have the right to compete for a grant award for the second two years of a four year designation period, and we have revised section 667.825 to provide that we will not give a waiver of competition for the second two-year grant period in these situations.

Several commenters asked for information about the treatment of summer youth funds for the years 1999 and 2000.

Response: JTPA funds for the 1999 summer youth employment program were distributed in the same manner as in previous years and were unaffected by WIA. Year 2000 WIA youth funds were available beginning in April 2000 to States with approved WIA plans or approved Youth transition plans addressing youth activities for PY 2000. Since this issue is addressed in § 667.100(b), no change has been made to the regulations.

One commenter thought that WIA Youth funds should be distributed in July instead of April because the summer youth employment program is not authorized for the Summer of 2000.

Response: It is true that there is no longer a separate summer youth employment program, but WIA summer employment opportunities are an important component of local areas' comprehensive youth programs. We wish to enable States and local areas that want to plan for and offer WIA Youth services on the JTPA time schedule to do so under the conditions indicated in Field Memorandum (FM) 52–99, dated September 9, 1999, which is accessible on the Internet at www.usworkforce.org. FM 52–99 permits a State to plan for and operate WIA youth programs before we have approved the State's full five year strategic plan, which covers all WIA activities. However, the State's WIA Youth Plan must satisfy WIA criteria, which are more extensive than the criteria were for the JTPA summer youth employment program. For example, 30% of the youth funds in each local area must be used to serve out-of-school youth.

We received many comments about expected reductions in State allotments and within-State allocations due to the application of the allotment and allocation factors prescribed by sections 128 and 133 of WIA—the relative number of unemployed individuals, the relative excess number of unemployed individuals, and the relative number of disadvantaged individuals. Beginning with the third year of WIA, workforce investment areas will be allocated at least 90 percent of the average of the two preceding years' allocations of Adult funds and Youth funds as a ''hold harmless''. (WIA sections 128(b)(2)(A)(ii) and 133(b)(2)(A)(ii)). However, many grantees expect to experience severe funding reductions and possible service interruptions in their workforce programs in the first two years of WIA.

Response: Consistent with the new hold-harmless policy we announced in October 1999, we are addressing this problem by adding a new section, § 667.135, which permits States to apply Job Training Partnership Act hold harmless provisions during the first two years of WIA, and sets forth the WIA hold harmless procedures, which take effect in subsequent years. We are making the JTPA hold harmless procedures available for the first two years of WIA as a transition measure under the authority of WIA section 506. States may elect to use JTPA hold harmless procedures in allocating PY 2000 and PY 2001 funds to local areas. A State that elects to use JTPA hold harmless procedures for PY 2000 and/or PY 2001 must allocate at least 90% of the average allocation to each workforce investment area that received an allocation under either JTPA or WIA for the two preceding fiscal years. (JTPA sections 202(b)(2)(A) and 262(b)(2)(A)). States may use JTPA hold harmless procedures even where the geographical boundaries of some or all JTPA service delivery areas are different from those of the State's WIA Workforce Investment Areas. This can be done for the PY 2000 WIA allotment by (1) taking the amount allocated to WIA local areas, (2) calculating the amount each local area would have received using the PY 1998 and PY 1999 JTPA allocations (JTPA proxy amounts), and (3) calculating 90 percent of the average JTPA proxy amounts for each local area. Under either the permitted JTPA hold harmless or the WIA hold harmless provision, the amount needed to provide the increased allocation(s) to the affected local areas is to be obtained by ratably reducing the allocations to the other local areas.

Section 667.140 describes the authority of Local Boards to transfer funds between programs. We received several comments suggesting that the regulation authorize local areas to transfer funds between the Youth funding stream and either Adult funds or Dislocated worker funds.

Response: The Act does not authorize transfers involving Youth program funds. The regulation has not been changed.

Section 667.150, which covers allotments, recapture of unobligated balances of allotments, and reallotments is being modified to exclude certain amounts from coverage by the recapture provision, namely: (1) amounts allocated to a single State local area or to a balance of State local area administered by a unit of the State government; and (2) inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities. The reasons for this modification are discussed earlier in this preamble in the discussion on the addition of a definition of ''obligation'' to § 660.300.

Section 667.170 sets forth our authority to perform a responsibility review of potential grant applicants. We may review any information that has come to our attention as part of an assessment of applicant's responsibility to administer Federal funds. The responsibility tests include the items set forth in paragraphs (a)(1) through (a)(14). In this section, the term ''include'' is used as it is throughout the Interim Final Rule, to indicate an illustrative, but not exhaustive list of examples. One commenter requested clarification of § 667.170(a) about the identity of the party(ies) subject to the responsibility review requirements, particularly with regard to the taking of ''final agency action.''

Response: Section 667.170(a) refers to the organization that is the direct recipient of a grant from the Department. The agency referred to in the phrase ''final agency action'' in § 667.170(a)(1) is the awarding agency which awarded the funds in question in the debt recovery action. No change has been made to the regulations.

Subpart B—Administrative Rules, Costs and Limitations

1. *Fiscal and Administrative Rules:* Subpart B specifies the rules applicable to WIA grants in the areas of fiscal and administrative requirements, audit

requirements, allowable cost/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, and nondiscrimination. This subpart also addresses State and Local Board conflict of interest and program income requirements, procurement contracts and fee-for-service use by employers, nepotism, responsibility review for grant applicants, and the Governor's prior approval authority in subtitle B programs.

We have updated references to the nondiscrimination regulations at 29 CFR part 37 in paragraph 667.200(f) and made three other changes to § 667.200 to correct inadvertent errors in the Interim Final Rule. The first is to include commercial organizations among the types of organizations listed in § 667.200(a)(2), which specifies the covered organizations identified at 29 CFR 95.1. The second change is to insert a new paragraph (a)(7) in § 667.200, to indicate that interest income earned on funds received under this title is to be treated as program income, as required by WIA section 195(7)(B)(iii) and to renumber the existing paragraph (a)(7) as (a)(8).

The third change is to insert a new paragraph (c)(6) in § 667.200, which provides that the costs of claims against the Government, including appeals to the Administrative Law Judges, are unallowable costs. This provision clarifies our long-standing application of the cost principles of OMB Circulars A–87 and A–122, and A–21, which was inadvertently left out of the Interim Final Rule. The provision distinguishes the allowable costs of informally resolving findings from audits and monitoring reviews from the unallowable costs of making formal claims against the Government at a later point in the process.

Several comments suggested including specific requirements in § 667.200(a) about the use and contents of particular types of agreements between particular types of organizations for providing goods and services for WIA purposes. Section 667.200 incorporates the uniform administrative requirements at 29 CFR Parts 95 and 97 into these regulations by reference, including requirements covering procurement actions by grantees and subrecipients. Most of these comments want us to require grantees and subrecipients to increase the opportunities for potential providers to compete to provide services to grantees, subrecipients, and participants, including the operation of One-Stop centers. One commenter wanted us to clarify whether the uniform procurement requirements apply to the selection of one-stop operators and service providers. Other commenters wanted us to require DOL direct grantees to require their subgrantees to make all awards to one-stop operators and service providers in accordance with the Department's uniform procurement procedures. Another commenter wanted us to say as little as possible on the subject due to the complexity of local procurement rules and the inevitable conflicts which would result from issuance of additional Federal requirements.

Response: We have, for many years, aggressively sought to maximize competition throughout the JTPA system so that JTPA grantees and subgrantees obtain the best possible workforce development and related services (employment and training services) at the lowest possible cost. Under WIA, vigorous competition to provide workforce services is embedded in the design of the program through the use of ITA's. In addition, use of generally applicable cost principles and administrative requirements under § 667.200 should assist grantees and subrecipients to obtain the goods and services needed for operation of the program with less administrative effort than was the case under JTPA. Consequently, it is premature to begin regulating the details of how grantees and subrecipients obtain goods and services for their own WIA activities, as well as how they conduct the administrative activities necessary to obtain and pay for training and supportive services for participants. We have, therefore, decided that we will not impose procedural requirements on awards of WIA-funded procurement contracts and financial assistance on grantees and subrecipients, beyond those generally applicable requirements which apply to all Federal and non-Federal activities of the grantee or subrecipient. This issue is also discussed in the preamble discussion of part 660. It should be noted that the Act specifies a few circumstances in which a competitive process is not needed, such as the designation or certification of a One-Stop operator by a consortium of One-Stop partners under WIA section 121(d)(2)(A)(ii). No change has been made to the regulations.

We received a number of comments on cost allocation issues particular to WIA and One-Stop organizations. One comment suggested that we should seek the issuance of special cost principles for One-Stops using cost allocation basis other than benefits received, or other widely used basis.

Response: Our policy on WIA cost determination is to let the parties involved negotiate appropriate cost allocation methodologies which reflect local factors and local needs, and to refrain from imposing program-wide regulations unless a general need exists. However, we are working with the other WIA federal partner agencies, such as the Department of Education, to develop joint guidance on this issue.

One commenter thought it was inconsistent to require in § 667.200(a)(3) that procurement and other relationships between governments be conducted on a cost-reimbursement basis, while also requiring in § 667.200(a)(6) that any excess of revenue over costs earned by governmental or non-profit organizations be treated as program income.

Response: Both the cost-reimbursement and program income provisions are statutory in origin. The cost reimbursement provision in WIA section 184(a)(3)(B) is similar to the Uniform Administrative Standards provision in 29 CFR 97.22, allowable costs, which prohibits the use of grant funds for any fee, or other increment over cost sought, by governmental grantees and subgrantees. The program income provision in WIA section 195(7)(A) ensures that any amount remaining on hand after all receipts and expenditures have been accounted, regardless of the source of the receipts, will be treated as program income and added to available program resources, (see change to § 667.200 noted above). Both provisions seek to maximize grant resources by assuring that governmental grantees only charge the grant for their actual costs and return any excess funds to the program. Thus, there is no necessary conflict between the two provisions.

One commenter proposed that we establish audit requirements for contractors which are commercial organizations. Section 667.200(b)(2) makes commercial organizations which are subrecipients subject to audit requirements like those applicable to governmental and non-profit recipients and subrecipients.

Response: Under 29 CFR part 96 (subpart B), the Department is responsible for the audit of commercial organizations which are direct recipients. There is no Federal requirement for audits of commercial organizations which are vendors. If a grantee or subgrantee chooses to require audits of such vendor organizations, they can do so by contract if the parties agree that such requirements are necessary. No change has been made to the regulations.

2. *Administrative Costs:* Section 667.210 restates the provisions in section 128(b)(4) of the Act which set a State level administrative cost limit of five percent of total funds allotted to the State by the Department and a local administrative cost limit of 10% of funds allocated by the State to the local area. It also provides that the cost limitation applicable to awards under subtitle D will be specified in the grant agreement. We received many comments on the administrative cost limits. Almost all of the comments said that the limits were too low and that they would jeopardize the program's prospects for success. Comments addressed how particular groups would be especially burdened by the cost limitations. Many INA and NFJP grantees, as well as individuals and groups concerned about INA and NFJP programs, appeared to believe that the Subtitle B cost limitations also applied to Subtitle D INA and NFJP grants.

Response: Section 667.210(b) provides that the applicable cost limitations for subtitle D programs will be identified in the award document. The administrative cost limitation for INA and MSFW grants under subtitle D of Title I may exceed the 10 percent limitation applicable to Subtitle B activities. However, no such flexibility is available for Subtitle B activities, since the Subtitle B cost limitations are established by law. Accordingly, no changes were made to paragraphs (a) and (b) of this section.

Paragraph (c), which excepts hardware and software costs of participant tracking and monitoring systems from the administrative cost limitation, has been removed from the final regulation. This provision became unnecessary after administrative costs were redefined in response to public comments and our own re-examination of how administrative costs were defined in other DOL-funded programs and the programs of other partner agencies whose programs were represented in One-Stop centers.

Definition of Administrative Costs—Section 667.220 provides our definition of Administrative Costs. To comply with the statutory requirement for consultation with the Governors in developing this definition, we have continuously consulted with representatives of the Governors, and State and local stakeholders. In addition to the input received through the consultation, we received suggestions about the definition of administrative costs in various forums and by direct communications from a number of different sources including comments on the Interim Final Rule. The key theme which emerged from this public consultation is that the function and intended purpose of an activity should be used to determine whether the costs associated with it should be charged to the program or administrative cost category. We received a number of comments on this subject and on the WIA cost limitations, to which it is closely related. In addition, we did some sampling studies of how modifications of the definition of administrative costs would affect WIA program administration generally and the ability of the States and of Local Boards to comply with the cost limitations.

A common criticism of the administrative cost definition in the Interim Final Rule was that redefining administrative costs and, in particular, treating the cost of first tier supervision of direct program staff as program costs would have little impact on total administrative costs or compliance with the administrative cost limitation. The same criticism was directed at the treatment of computer hardware/software costs incurred for participant tracking and monitoring as excepted from the administrative cost limitation. One comment recommended saying that all staff costs associated with the tracking and monitoring of participants should be classified as program (non-administrative) costs; another commenter suggested that all tracking and monitoring system development and utilization costs be charged to program costs.

We received numerous suggestions on how particular categories of costs should be defined. Many, but not all of these suggestions were based on the effect such changes would have on compliance with the administrative cost limitation. For example, one comment suggested either treating all One-Stop or contractor costs as programmatic, or retaining the 15 percent cost limitation under JTPA title III; several comments recommended treating all costs incurred by One-Stop operators and service providers as program costs regardless of the functions they were performing. Several comments were directed to obtaining clarification of the phrase ''direct provision of workforce investment activities'' in § 667.220(c)(1), and to associate the term with the activities of One-Stop operators and service providers. Several commenters suggested that the ''intended purpose'' language in § 667.220(c)(5) should be clarified so that administrative costs would not have to be broken out from contracts with for-profit organizations. One comment requested that a clear distinction be made between tracking and monitoring costs on the one hand and program monitoring costs on the other.

Several commenters suggested that other Federal agencies' criteria for administrative costs in grants to other One-Stop partners are more liberal than DOL's criteria, especially their criteria for costs incurred by service providers and other contractors. A few commenters suggested that no costs incurred by for-profit contractors should be treated as administrative. One comment suggested that all continuous improvement costs be charged to training (program) based on language in § 666.120(a) relating improvement to program participation rather than systemic changes. Finally, one commenter suggested that all reasonable administrative costs be funded, or that we reduce our level of expectations with regard to oversight, procurement, and fiscal requirements.

Response: Section 667.220 has been extensively revised as a result of these comments, and of our own review of the effect of various administrative cost definition proposals on efficiency and ease of administration, as well as compliance with the cost limitations. As part of the review process, a sample of subrecipients' costs were compared under three different formulations of the administrative costs definition. The revised definition provides that administrative costs are only those costs incurred for overall program management purposes by State and local workforce boards, direct WIA grant recipients, local grant subrecipients, local fiscal agents, and One-Stop operators. The only One-Stop operators' costs which are to be classified as administrative costs are those for one or more of the functions enumerated in § 667.220(b) and discussed in the following paragraph. All costs of vendors and subrecipients, other than local grant subrecipients, are program costs with the single exception of awards to such vendors and subrecipients which are *solely* for the purpose of performing functions enumerated in the following paragraph. Thus, incidental administrative costs incurred by a contractor whose contract's intended purpose is to provide identifiable program services do not have to be identified, broken out from other costs incurred under the contract, and tracked against the administrative cost limitation. Costs incurred under contracts whose intended purpose *is* administrative have to be charged to the administrative cost category.

The enumerated administrative functions performed by the identified

administrative entities are the following: accounting and budgeting; financial and cash management; procurement and purchasing; property management; payroll and personnel management; general oversight, audit and coordinating the resolution of findings from audits, reviews, investigations, and incident reports; general legal services; developing and operating systems and procedures, including information systems, required for administrative functions; and oversight and monitoring of administrative functions. Only these enumerated administrative functions are to be charged as administrative costs. The costs of first line supervisors of staff providing direct services to participants are program costs. The discussion of this cost item has been removed from this new definition because it is no longer needed.

Two types of costs that were specifically previously classified as administrative costs, preparing program-level budgets and program plans, and negotiating MOU's and other program-level agreements, are now classified as program costs, even though they are often associated with general organizational management. Costs of such activities as information systems development and operation, travel, and continuous improvement are charged to program costs or administration, according to whether the underlying functions which they support are classified as programmatic or administrative. For example, the costs of developing an information system which serves both administrative functions and the tracking and monitoring of participants would be allocated between program costs and administrative costs in proportion to the utilization of the system for each intended purpose.

We believe that these changes in the definition of administrative costs not only address the varying concerns and perspectives expressed in the comments, but also take advantage of the opportunities for simplifying program administration offered by the changes in the way program services will be delivered under WIA. Under WIA, the role of the One-Stop center operator is broader than just that of provider of programmatic services; it is also responsible for the operation of the One-Stop center and the coordination of all activities within the center. The definition of administrative costs in this Final Rule was tested using a sample drawn from a group of JTPA subrecipients whose administrative costs had previously been reviewed to test the Interim Final Rule definition of administrative costs. The results showed a significant reduction in the level of administrative costs at all but one of the sampled sites. That site was one in which all JTPA activities were provided by the subrecipient, which is quite unlike the service delivery methodology envisioned by WIA. These results indicate that local areas should be able to operate within the WIA cost limitations, using the revised definition of administrative costs at § 667.220.

3. Eligibility Determinations: Our partners in the Veterans Employment and Training Service indicated that workforce investment programs may not be fully aware of special rules applying to veterans when income is a factor in eligibility determination. Therefore, we have added a new § 667.255 which refers programs to 38 U.S.C. 4213, which exempts military pay and certain other benefits from past income for eligibility purposes.

4. Prohibited Activities: Sections 667.260 through 667.270 address a number of prohibited activities that are located in various sections of the Act. We have revised § 667.266 to provide the appropriate cross-reference to the nondiscrimination regulations at 29 CFR 37.6(f), which implement the WIA limitations on the use of financial assistance for sectarian activities. Section 667.269 specifies where the procedures for resolution of violations of these prohibitions, as well as the sanctions and remedies, may be found.

Section 667.260 prohibits the use of WIA funds for the purchase or construction of facilities or buildings with certain exceptions. This is an exception to the generally applicable cost principles, incorporated by reference in § 667.200(c), under which such costs are allowable with prior grantor approval as direct costs, provided they are not specifically prohibited, as they are here. We received several comments asking that we clarify or expand the exception to the purchase and construction ban under which the costs of repairs, alterations, and renovations are allowable for grantee-owned buildings acquired with JTPA, Wagner-Peyser, or UI grant funds to also cover leased buildings. Several comments suggested permitting the use of WIA funds for capital costs and current operating costs of leased and ''loaned'' buildings.

Response: WIA funds may be used for renovations and other capital expenditures on grantee/subrecipient-owned or leased buildings in order to provide reasonable accommodation under section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, section 188 of WIA, and the regulations implementing these statutory provisions. WIA funds may also be used for repairs, alterations, and other current operating costs incurred for this purpose.

In general, repairs and alterations are current operating costs; use of WIA funds for such costs is not restricted in the statute or in these regulations. Renovation costs are usually capital expenditures. Capital expenditures, that is expenditures of $5,000 or more which increase the value or a useful life of property, are subject to the restrictions of § 667.260(b), which apply to grantee/subrecipient-owned real property. In response to the comments, this paragraph has been clarified to explicitly cover renovations to grantee/subrecipient-owned real property acquired with JTPA, Wagner-Peyser, or UI grant funds. Neither the Act nor the regulation restricts the use of WIA funds for capital expenditures or current operating costs of leased and loaned properties. Consequently, these expenditures are allowable if consistent with generally applicable grantee/subrecipient policy relating to leased premises and lease cost adjustments for tenant expenditures for improvements to the landlord's property, and if consistent with the other provisions of § 667.260(b).

One comment suggested that ETA consider an additional exception to the prohibition of building or buying real property in the case of capital leases.

Response: Consistent with the OMB allowable cost circulars, we consider capital leases, for example, rental-purchase agreements and leases with an option to purchase, to be purchases of property with borrowed funds. They are leases in form only. Consequently, WIA funds cannot be used for the costs of such an arrangement. Allocable depreciation and interest costs would however, be allowable. No change has been made to the regulations.

One comment suggested changing § 667.262, which covers employment generating activities (EGA), to include contacts with labor organizations and resource centers, and contacts with joint labor-management committees under permissible employer outreach and job development activities.

Response: The regulation has been modified accordingly. We have not acceded to a related suggestion that grantees specifically account for EGA costs because we think this is not necessary in view of the fact that the financial management standards included in 29 CFR Parts 95 and 97 already require recipients to be able to account for the source and application of grant funds.

One comment suggested making an exception to the prohibition in § 667.264 against foreign travel in the case of cross-border official business conducted by border State staff.

Response: We have not changed the regulation because the statute explicitly prohibits foreign travel for programs under Title I, subpart B.

Section 667.268 which prohibits the use of WIA funds to encourage business relocation, provided several comments asking if there is a national site where interested parties can obtain information relative to the relocating establishment requirements of § 667.268.

Response: No such site exists at present and we have no current plans for establishing such a site.

A commenter suggested adding consultation with labor organizations and councils to the pre-award review of new and expanded establishments in § 667.268.

Response: We have added a new paragraph(b)(2) to § 667.268 to provide for permissive consultation with labor organizations in the affected area.

A comment, which concerned the applicability of the Davis-Bacon Act to training activities, is not dealt with here because it is a subject which is considered in connection with training program requirements rather than general administrative requirements.

5. Impairment of Collective Bargaining Agreements: Section 667.270 lists the safeguards that ensure that participants in WIA activities do not displace other employees. These include the prohibition on impairment of existing contracts for services or collective bargaining agreements that is contained in WIA section 181(b)(2). When an employment and training activity described in WIA section 134 would be inconsistent with a collective bargaining agreement, the Rule requires that the appropriate labor organization and employer provide written concurrence before the activity begins.

6. Nondiscrimination: Section 188 of the Act prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain noncitizens. It also requires the Secretary to issue regulations ''necessary to implement this section not later than one year after the date on enactment'' of the Act. Interim Final Regulations implementing this section were published at 29 CFR part 37 and are available at 64 FR 61692 (Nov. 12, 1999). We have revised references to the section 188 regulations throughout this Final Rule to specifically refer to 29 CFR part 37.

Section 667.275(a) provides that recipients must comply with the section 188 nondiscrimination and equal opportunity provisions of the Act and its implementing regulations at 29 CFR part 37. This provision is substantially similar to that found in § 627.210, the companion section of the regulations implementing the JTPA. Slight modifications have been made to the language to eliminate any possible confusion about who is covered by section 188 and 29 CFR part 37. In the context of those provisions, a recipient is any entity that receives financial assistance, as defined in 29 CFR 37.4, under title I of the Act (except for the ultimate beneficiary), whether the assistance comes directly from the Department, through the Governor, or through another recipient. A variety of terms not specifically listed in the definition at 29 CFR 37.4, such as vendors or subrecipients, may be used to identify such entities. However, any entity that receives financial assistance under title I of WIA is a recipient and is, therefore, subject to section 188 of WIA and its implementing regulations at 29 CFR part 37, and to § 667.275 of this part, to the extent that those entities participate in the One-Stop delivery system.

Several comments on §§ 667.270 and 667.275 suggested enhancing the protections afforded incumbent workers against displacement, and the non-discrimination and equal opportunity protections afforded participants through such means as the Department notifying employees about these protections or requiring the States to do so, requiring One-Stops to provide information on the availability of non-traditional opportunities for women in order to reduce the incidence of gender-tracking, specifying coverage of OJT or other employer-provider services to individuals in these provisions, and banning the use of WIA funds to subsidize new employees that an employer would have hired without WIA support.

Response: We are not modifying the non-discrimination provisions here because this subject is covered in much greater detail in the WIA section 188 nondiscrimination regulations at 29 CFR part 37. We are not modifying the incumbent workers protections provision of § 667.270 because the maintenance of effort requirement which the commenter seeks to impose on employers receiving WIA funds exceeds the protections authorized by WIA section 181. Several of the commenters' requests are discussed in more detail in other parts of this preamble.

Subpart C—Reporting Requirements

Section 667.300 indicates that we will issue instructions and formats for financial, participant and performance reporting. A request for public comment on the Department's WIA Standardized Record Data, Quarterly Summary Report, and Annual Report was published in the **Federal Register** on April 3, 2000. A copy of the notice can be found on the Internet at *www.usworkforce.org.* We anticipate that DOL reporting will be done electronically. We will issue reporting guidance which discusses such specific matters as the anticipated lag-time in using UI wage records at follow-up. Section 667.300 also provides that a grantee may impose different reporting requirements on its subrecipients including different forms, shorter due dates, etc. When a State is the grantee and plans to impose different reporting requirements, it must describe them in its State Plan. Some comments suggested that flexibility be provided in imposing additional reporting requirements on subrecipients.

Response: We have not changed the regulation since it already permits grantees to impose different requirements on subrecipients, provided they are consistent with the State WIA plan and produce the information required for grantee reports.

Section 667.300(e), concerning the Annual Performance Progress Report, specifies the situations under which a sanction, including a possible reduction in the subsequent year's grant amount, may be imposed. Two comments expressed concern that unspecified verification procedures would be used for imposing sanctions and that there needed to be flexibility in the imposition of sanctions.

Response: Specifications regarding sanctions have been issued in ETA Training and Employment Guidance Letter 8–99, *Negotiating Performance Goals and Incentives and Sanctions Process under Title I of WIA.*

Other comments suggested the due date for financial reports be extended past the 45 days stated in the regulation, but no specific reason for an extended time period was given.

Response: We are unaware of any reason why additional time is required for submitting reports. No change has been made to the regulations.

Subpart D—Oversight and Monitoring

We have modified § 667.410(b) to include a reference to 29 CFR part 37 relating to the State's monitoring system. Subpart C of 29 CFR part 37 contains additional provisions regarding

the Governor's nondiscrimination-related oversight responsibilities.

Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

1. Resolution of Findings and Grant Officer Resolution Process: This subpart addresses the resolution of findings that arise from audits, investigations, monitoring reviews, and the Grant Officer resolution process. The processes are essentially the same as they were under JTPA. One comment raised the question of what findings resolution process should be used where more than one process is available to, and could be used by, the grantee to resolve findings relating to WIA activities.

Response: Our position is that such matters are State matters; what procedures to use is left to the States to determine. The exception is that resolution of findings related to discrimination issues arising under section 188 of WIA or 29 CFR part 37 must be conducted in accordance with the procedures set forth in that part.

A commenter suggested allowing 90 days instead of 60 for commenting on and taking appropriate corrective action on findings from monitoring and investigative reports.

Response: We believe that 60 days is sufficient for taking the required actions, based on our experience with other work and training programs operated by governmental grantees.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Section 667.600 describes the grievance and complaints procedures required by WIA. We have revised § 667.600(g)(1) to clarify that complaints alleging discrimination must be handled in accordance with procedures that meet the requirements of 29 CFR part 37. Paragraph 667.600(g)(2) gives the address of the Department of Labor's Civil Rights Center, where individuals can send questions or complaints alleging violation of WIA section 188. The address is: U.S. Department of Labor, Civil Rights Center, 200 Constitution Avenue, NW, Room N4123, Washington, DC 20210. Individuals may also contact the Civil Rights Center by telephone at 202–219–6118 (voice) or 1–800–326–2577 (TTY/TDD).

We received numerous comments on grievance procedure requirements for States, local areas, and other direct recipients. Most concerned assuring that participants and other potential greivants receive sufficient notice of their rights in a format understandable to youth or to persons with limited English proficiency. Some comments asked that we impose a requirement on grantees and subrecipients that they require One-Stops and other providers to notify participants of their appeal rights. Other comments urged us to establish particular requirements governing procedures to be used for assuring procedural due process, conducting investigations, adjudicating complaints, conducting discovery, providing for informal hearings, enforcement, review by United States courts, protection against retaliation, and the use of mediators. Some commenters sought clarification or greater specificity in particular areas, such as coverage of employers of participants, and particular sanctions available against non-compliant employers. One comment objected to using the denial of procedural rights as a ground for appeals of local area designations to the Secretary under section 116(a)(5) of the Act.

Response: We are quite interested in assuring that all persons affected by WIA are aware of their rights under the Act. We also want to assure persons who believe their rights have been negatively affected by WIA-related actions of non-Federal parties, as well as by the Department of Labor and its Federal partners, have access to appropriate remedies. In response to the comments on informing participants who are youth or persons with limited English proficiency, we are modifying the regulation by inserting a new paragraph § 667.600(b) to require States and local areas to assure that all participants and other interested parties are notified of their appeal rights in language which can be understood by youth and persons of limited English proficiency. Such efforts must comply with the requirements of 29 CFR 37.35 about the provision of services and information in languages other than English. We cannot authorize appeals to United States District courts by regulation because it exceeds the authority Congress has given us. WIA section 187 specifies that appeals of Administrative Law Judge (AJL) decisions be taken to the appropriate United States Court of Appeals, (as provided in § 667.850). With regard to the other issues raised by commenters, we have not modified the regulation. While we agree that State and local grievance procedures should contain full due process protections, we have not modified the regulations to include the specific protections requested by commenters in the interest of affording States and local areas flexibility to design effective grievance procedures that work in their particular circumstances.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

This subpart addresses sanctions and corrective actions, waiver of liability, advance approval of contemplated corrective actions, as well as the offset and State deduction provision. We have modified § 667.700(a) and (b) to clarify that the processes outlined in 29 CFR part 37 must be followed in matters involving claims of discrimination. The only comments received on this subpart were on § 667.705(c), which requires CEO's of local governments comprising a WIA local area to specify the joint liability of such local governments in a written agreement. Two of the comments took opposing positions on whether there should be any joint liability at all. The third comment said the regulation should ''clarify'' the local governments' liability for misuse of funds.

Response: Section 117(d)(3)(B)(i) of WIA designates local CEO's as grant recipients and makes them liable for misuse of funds unless they obtain the Governor's agreement to serve as recipient for their area and assume their liability. The regulation interprets this provision to mean that the local jurisdictions are liable for misuse of funds and where multiple jurisdictions receive funding under a single grant, the liability assumed by each local government must be clearly stated in a written agreement between the parties. It is our intention in this provision that the liability of the local governments in a multiple jurisdiction local area be determined by those governments. We did not to imply that governments in multiple jurisdiction local areas must be ''jointly and severally'' liable, although they may choose to share liability in that manner. Therefore, we have dropped reference to the phrase ''joint liability'' in § 667.705(c) and replaced it with ''liability''.

Sections 667.700 and 667.710 have been revised to more accurately specify the Grant Officer's and the Secretary's authority to impose corrective actions, including plan revocations and reorganizations, directly against local areas, and to terminate or suspend financial assistance. As revised, § 667.700(d) provides that if the Governor does not promptly take corrective actions against a local area for substantial violations of WIA and its regulations, the Grant Officer, under WIA section 184(b)(3), may impose corrective actions directly against the local area. Sections 667.700(c) and 667.710(c) provide that if the Governor

has failed to promptly take corrective actions against a local area for not complying with the uniform administrative requirements, or if the Governor has not monitored and certified local area compliance with those requirements, the Grant Officer, under WIA section 184(a)(7), may require the Governor to take the necessary actions. If the Governor fails to take the corrective actions required by the Grant Officer, the Secretary may immediately suspend or terminate financial assistance under WIA section 184(e).

Subpart H—Administrative Adjudication and Judicial Review

This subpart specifies those actions which may be appealed to the Department's Office of Administrative Law Judge (OALJ), and the rules of procedure and timing of decisions for OALJ hearings. Section 667.825 sets forth special requirements that apply to reviews of NFJP and INA grant selections. A change has been made to § 667.105 (discussed above, in subpart A), which relates to this provision. We have corrected an error in § 667.830(b), to provide that any appeal accepted by the Administrative Review Board must be decided within 180 days of acceptance, as required by WIA section 186(c). Section 667.840 also provides for an alternate dispute resolution process. In addition, § 667.850 describes the authority for judicial review of a final order of the Secretary.

One commenter recommended increasing DOL's burden of production in OALJ appeals to require presentation of a prima facie case.

Response: We have not changed these procedural rules, which have worked well over the years and have provided appellants procedural due process.

Subpart I—Transition

Section 667.900 indicates that a Governor may reserve up to two percent of Program Years 1998 and 1999 JTPA formula funds, of which not less than 50% must be made available to local entities, for expenditure on WIA transition planning activities. It specifies that the source of funds may be any one or more of JTPA's titles or subtitles. It includes a provision that expressly excludes funds so reserved from any calculation of compliance with JTPA cost limitations. The Governor must decide to make the funds available to one or more local entities. These might include a local JTPA entity, a local entity established for the purpose of operating WIA programs, or any other local entity.

One commenter suggested replacing the references to program years 1998 and 1999 with fiscal year references.

Response: We have replaced the reference to program years in § 667.900 with fiscal years.

Another comment suggested clarifying which local entities were to receive transition funding from the State.

Response: This matter was not addressed in the statute and we not aware of any reason for reducing State flexibility in this area. Accordingly, we will not prescribe how transition funds are to be allocated to local entities.

We have received a number of questions about how JTPA enrollees are to be transitioned over to WIA. We have responded to several situations in a Question and Answer format which can be found through our website at http://usworkforce.org/q&a-transition.htm. In order to emphasize the importance of ensuring a smooth transition from JTPA to WIA for participants, we have added a new § 667.910 clarifying that all JTPA participants who are enrolled in JTPA must be grandfathered into WIA. These participants can complete the JTPA services specified in their individual service strategy, even if that service strategy is not allowable under WIA, or if the participant is not eligible to receive these services under WIA.

Part 668—Indian and Native American Programs under Title I of the Workforce Investment Act

Introduction

This part establishes the operation of employment and training programs for Indians and Native Americans under the authority of section 166 of the Act. This part is broken into subparts dealing with: purposes and policies; service delivery systems; customer services; youth services; services to communities; grantee accountability; planning and funding; administration; and miscellaneous provisions such as waivers. In crafting these regulations, we have attempted to organize part 668 in a way which is relatively easy to follow and as comprehensive as possible without repeating major sections of the general WIA administrative regulations contained in part 667. Cross-references to that part are provided in the body of these regulations, when appropriate.

During the comment period on the WIA Interim Final Rule, we received written comments submitted by more than one hundred current JTPA Indian and Native American grantees. In addition, we held several ''town hall'' meetings in ''Indian Country'' which produced additional comments submitted in writing or presented orally in the course of discussion of relevant issues. We also received input from the Native American Employment and Training Council (the Advisory Council) and its regulations work group. We will discuss the most frequently raised issues first and then discuss the other comments.

We have condensed the remaining comments into several major areas of general concern to most commenters. Issues involving administrative cost limitations and representation on State and Local Workforce Investment Boards are primary concerns of some section 166 grantees. They are concerned with regulations outside of part 668, and so are covered as part of the general discussion.

Administrative Cost Limitation

The issue which concerned commenters most was the administrative cost rate, and its application to section 166 grantees under WIA. Commenters expressed the concern that section 166 grantees would be held to a 10% administrative cost limitation. They viewed this limitation as providing inadequate funding for the administrative work they have to do to administer their grants. They pointed out that the WIA requirements for active partnership in local Workforce Investment Areas and for negotiating One-Stop MOU's, place new administrative burdens on section 166 grantees. Some commenters suggested that the regulations adopt a 20% limitation on administrative costs.

Response: The provision on administrative cost limitations, at 20 CFR 667.210(b), does not specify a given administrative cost rate for section 166 programs; rather it provides that each grantee's limit on administrative costs will be identified in the grant document. The regulations reflect our intent to provide section 166 grantees adequate administrative funding through the grant negotiation process. Thus, suggestions that we exempt amounts spent on indirect costs from the administrative costs definition (and thus from any cost limits), or that we fund indirect costs from a separate funding source which would not be subject to any cost limits are not necessary to accomplish the commenters' goals. We consider both suggestions to be either contrary to Departmental practices or contrary to the funding formula(s) contained in this Rule. However, to provide additional clarification, we have added a new section to part 668 (§ 668.825) stating that limits on administrative costs for section 166

grants will be negotiated with the grantee and identified in the grant award document.

General Issues of Representation and Workforce Investment System Governance

The rules relating to the participation of INA grantees in the state and local workforce investment system generated many comments. Below, we discuss issues relating to alternative entities and representation on State Boards, Local Boards and Youth Councils. Similar issues are discussed in relation to the National Farmworker Jobs Program in the preamble to part 669, and for the workforce investment system in general in the preamble to part 661.

Alternative Entities

Indian and Native American grantees expressed concern over the effects of the designation of alternative entities under WIA on their ability to play a partnership role in the local workforce investment system. Although alternative entities are permitted by section 117(i) of WIA, commenters feel that alternative entities violate WIA section 117(b)(2)(A)(vi) which mandates that each Local Board contain ''a representative of each of the one-stop partners''. Since section 121(b)(1)(B)(i) of the Act identifies section 166 grantees as mandatory (''required'') partners in the One-Stop System, most grantees feel this requires that they be given a seat on their Local Board.

Response: We recognize that lack of representation on Local Boards is a legitimate and serious concern. WIA section 117(i) does, however, permit the use of alternative entities. We certainly encourage as broad a representation as possible on all WIA boards or councils, especially representation of those entities identified as ''required partners'' in the Act. The Interim Final Rule, at 20 CFR 661.330(b)(2), addresses this problem by requiring that, if an alternative entity is used, ''the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for any such group in the local workforce investment system'' if that entity is not represented on the board of an alternative entity. To clarify that the required partners must be included among ''any such group'' ensured of an ongoing role, we amended this provision, by replacing that phrase with the phrase ''the unrepresented membership group,'' and by inserting the phrase ''including all the partners'' following ''each of the categories of required Local Board membership under WIA section 117(b).'' 20 CFR 661.330(b)(3) provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program. It also provides that, as part of its ''ongoing role'' responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding (MOU) with the unrepresented partner.

We expect that local workforce investment areas will follow the regulations and that the States will ensure that all partners have appropriate and effective representation on Local Boards or alternate entities. We encourage local parties to resolve issues of representation to their mutual satisfaction, in accordance with the Act and regulations.

Representation on State Boards

Several grantees expressed a belief that there is no requirement for Native American representation on the State Workforce Investment Boards. Others were concerned that Governors were appointing individuals to represent INA grantees who did not have INA program expertise. Although not specifically required in the statute, our grantees have expressed the desire that the Final Rule include at least the encouragement (if not the requirement) that all types of WIA grantees (Indians, farmworkers, etc.) at least be represented on the State Board by a member of that class of service provider.

Response: While the Act does not require that the interests of section 166 grantees be represented by a representative appointed by the grantee, section 111(b)(1)(C)(vi)(II) of the Act clearly requires that those interests, and the interests of all One-Stop partner programs, be represented on State Boards by either the lead State agency officials with responsibility for the program or, if there is no such official, by a representative with expertise in the program.

In many cases, there will not be a lead State agency with responsibility for Indian and Native American programs, so the interests of section 166 grantees will be represented by a person having expertise in Indian and Native American programs. While we encourage Governors to appoint a representative nominated by Indian and Native American programs and Migrant and Seasonal Farmworker programs to represent those programs on State Boards, we cannot require them to do so. We have, however, revised the regulations in 20 CFR part 661 to clarify the requirements for representation of One-Stop partner programs on the State Board. Under new 20 CFR 661.203(b), the representation of a One-stop partner program may be fulfilled by an official from the program partner, such as the section 166 grantee, or the Governor may appoint a representative in the State having ''documented expertise relating to'' the required partner program in the State. An agency official or other individual representing a One-stop partner program also must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.203(a), a representative with ''optimum policy making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. We think that these new definitions will provide grantees with significant assurance of appropriate and effective representation on the State Boards.

Representation on State and Local Boards as Employers

Several grantees have expressed the desire that the regulations be revised to suggest that, where appropriate, tribal entities be included on State and Local Boards as employers, which would be especially appropriate for some tribes with significant economic development activities which may make them a significant employer in their portion of the State.

Response: While we see the merit in this approach and encourage Governors and chief elected officials to consider it as an option, we think the Act gives Governors and chief elected officials broad discretion in selecting business members of State or Local Boards from among those nominated. We do not think we can limit that discretion as the grantees request. Thus, we have not made the suggested regulatory change. However, we have revised 20 CFR 661.200 and 661.315 to expressly authorize multiple representation by an individual appointed to a State or Local Board. Therefore, where the Governor or CEO selects an individual who meets the representation requirements for the 166 partner program and for business representation, the regulations authorize that person to represent both groups.

Grantee Representation on Local Boards

Many grantees have commented that States and local areas are not clear on the WIA representation requirements even where Local Boards are newly created and must meet the representation requirements of the Act. Questions have arisen about whether Local Boards must include all section 166 grantees in their area, or just ''a

representative'' of Native American grantees. Commenting Native American grantees urged that the regulations at 20 CFR 661.315(a) be strengthened to specify that each individual section 166 grantee in a local WIA is entitled to a seat on the local board. Some commenters have suggested that the grantee should have the authority to select the individual who is to represent them on the Board.

Response: While we agree that section 166 grantees must be represented on the Local Board, we also recognize the problem, raised by a number of other commenters, of the potentially large size of Local Boards. We strongly encourage local elected officials to give representation to all partner programs within their local area, but we do not interpret WIA as requiring that each local grantee be individually represented on the Local Board, in cases where there is more than one grantee of a particular One-Stop partner program operating in a local area. As discussed below, the part 661 regulations now clarify that CEO's may appoint one individual to represent multiple entities, but also clarify that CEO's may solicit nominations for appointments from the grantees.

Nor are we able to change the regulations to permit a One-stop partner program to choose who it wishes to represent it. While we cannot require that the CEO select a representative nominated by the grantee to represent it/them on the Local Board, there are significant protections in the Act and regulations to assure that grantees are properly represented. The CEO has discretion in determining who to appoint to a Local Board. That discretion is, however, constrained by the requirement in WIA section 117(b)(3) and in 20 CFR 661.315 that the representative of a partner have ''optimum policymaking authority within'' the partner entity. In cases where there is a single section 166 grantee in a local area, the CEO's discretion is quite limited. In cases where there are more than one grantee in the local area, the CEO's discretion is a little broader since, as provided in 20 CFR 661.317, the CEO is only required to appoint one representative of the partner program. In either case, however, the interests of section 166 grantees must be represented by an individual who has optimum policymaking authority and, therefore, can knowledgeably and effectively represent the partners' interests.

Youth Councils

Commenters asked for clarification of the role of the youth councils in the WIA process, and especially the role of section 166 grantees in the youth councils. For example, to what degree will the youth council ''coordinate'' youth activities in a local area? Will section 166 grantees who sit on the local board be entitled to sit on the youth council if they provide services to youth, but don't get supplemental youth services funding (such as an urban grantee)? To what degree will a section 166 grantee which receives supplemental youth services funding be required to ''coordinate'' its youth program with or through the youth council?

Response: Neither the regulations in part 668, subpart D, nor the regulations in 20 CFR part 664 currently address these issues. Commenters basically asked for further definition of the whole area of youth services, either in regulations or other administrative guidance. Unlike the requirements for Local Board membership in WIA section 117(b), section 117(h) contains no entitlement for specific organizational representation on a local youth council. However, as stated in WIA section 117(h)(1), members of the youth council are appointed by the Local Board in cooperation with the chief elected official(s) in the local area. Among the categories of youth council representatives, paragraph (2) of WIA section 117(h) provides that the youth council must include Local Board members described in paragraph (A) or (B) of section 117(b)(2) with special interest or expertise in youth policy. Therefore, section 166 grantees who are members of the Local Board and have an interest or expertise in youth issues may be appointed to the youth council under this provision. Additionally, WIA section 117(h)(2) requires that youth councils contain representatives of youth service agencies and provides that the chairperson of the Local Board, in cooperation with the CEO's, may appoint other ''appropriate'' individuals to the youth council. While we encourage Local Boards and CEO's to create broadly representative youth councils, including representatives of section 166 grantees which operate youth programs, we do not read the Act to authorize us to require that specific organizations be represented on the Youth Council. This is another ''representation and implementation issue'' which involves the operation of WIA at the local level. We prefer to allow local people to resolve local issues on their own, in a mutually satisfactory manner.

Those section 166 grantees which serve reservation areas will have to include a section on the provision of supplemental youth services in their comprehensive services plan, as required by §§ 668.420, 668.710, and 668.720. While the section 166 youth program is separate from the WIA title I youth program, and is not subject to any mandatory authority of the youth council, we encourage section 166 grantees to coordinate their provision of supplemental youth services with other providers of youth services in the local area.

Following is a discussion of a variety of other comments on the Interim Final Rule. The comments are organized by the subparts of the Interim Final regulations to which they pertain.

Subpart A—Purposes and Policies

Technical Corrections: The regulations work group pointed out that the language in the second part of the definition of ''underemployed'' at § 668.150 would seem to be limited to instances where the individual is working below his or her education level, without regard to the attainment or establishment of other work skills, knowledges, or abilities. We agree with this observation and have modified the definition to include reference to ''skill achievement''. We have also made a grammatical modification to the question in § 668.140, and have added a new paragraph (d) to § 668.140 to clarify that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to INA programs and activities.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Clarification of Designation Requirements for Potential Pub. L. 102–477 Participants: Section 668.200(b)(3) of the Interim Final Rule provided that a new entity applying for a section 166 grant must have a service area resulting in formula funding of at least $100,000, including any amounts received for supplemental youth services, except in the case where the entity is a tribe submitting a plan for participation under Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 *et seq.*). In those cases, the total resources in the ''477 plan'' must add up to at least $100,000 for the entity to be designated under section 166 of WIA.

When the regulations were drafted, we did not anticipate that any extremely small entities (*i.e.,* with service populations under a hundred people) would submit ''477 plans'' and, as a result, apply for WIA designation. However, during the first WIA

designation cycle, this possibility occurred. We have determined that designating an entity which would receive only a few hundred or a few thousand dollars in total WIA funds would not be cost effective, and would serve to unduly fragment already scarce program resources. In consultation with the designation work group of the Native American Employment and Training Council, we have revised this requirement by placing a minimum funding threshold of $20,000 in WIA formula funding on entities applying for section 166 designation for the purpose of ''going 477'' (this minimum corresponds to the allotment of our smallest current JTPA grantee). We applied this limit in the WIA section 166 designation cycle for Program Years 2000–2001. We have, however, provided for the possibility of an exception for those entities which are close to the limit and which have demonstrated the capability to operate an employment and training program successfully under such related programs as Native Employment Works or the Indian set-aside under the Welfare-to-Work Program.

Accordingly, § 668.200(b)(3) is revised to provide that the exception will apply to grantees wishing to participate in the demonstration program if all resources to be consolidated total at least $100,000, with at least $20,000 derived from section 166 funds as determined by the most recent Census data. The revised regulation also provides that exceptions to this $20,000 limit may be made for those entities which are close to the limit and which have demonstrated the capacity to administer Federal funds and operate a successful employment and training program.

Clarification of Requirements for Designation

The issue of State-recognized tribes is a point of contention in ''Indian Country,'' because of the inconsistent nature of the process of State recognition between different States. There are great differences between State-recognized tribes which exercise certain quasi-governmental authority and provide their members with services, and those entities designated as State-recognized for purely political or social/cultural purposes. The majority of commenters favored the elimination of any priority for State-recognized tribes as such, reasoning that they could still qualify as Indian-controlled organizations.

Response: Section 166 does not include State-recognized tribes in its definition of ''Indian, Indian Tribe and Tribal Organization.'' We decided that the inclusion of State-recognized tribes as an independent basis for qualifying for designation in § 668.200(d)(5) is not supported by section 166(b) of the Act, which refers to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) for the definitions of Indians and Indian tribes. It also appears to be in conflict with the underlying principles of section 166, as expressed in the Indian Self-Determination and Education Assistance Act. However, there is also the need to comply with the ''grandfathering'' provision of Section 166(d)(2)(B), which addresses the continued WIA eligibility of individuals who were eligible under JTPA. We addressed the grandfathering issue in a provision of the recently-issued SGA for designation of section 166 grantees for Program Years 2000–2001, which reads as follows: ''It should be noted that, pursuant to WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, shall be eligible to participate under WIA. Organizations serving such individuals shall be considered 'Indian controlled' for WIA section 166 purposes.'' We have rewritten § 668.200 to eliminate the mention of State-recognized tribes as specifically eligible for designation based solely upon such status, but have adapted the above-quoted language, as new paragraph 668.200(e), to permit existing State-recognized tribal grantees to continue to serve their members. These changes continue the eligibility of individuals who were eligible under JTPA as a result of being members of State-recognized tribes, as well as establishing the status of those State-recognized tribal grantees as ''Indian-controlled organizations''.

Clarification of Designation Priority

The regulations work group pointed out that the designation priorities in § 668.210(a) do not specifically mention situations, which occur primarily in Oklahoma, where grantees are designated to serve only their own tribal members in a given county or counties.

Response: We agree and have revised that paragraph to indicate that ''populations'' (over which the grantee has jurisdiction) are also included in addition to geographic areas.

Technical Correction to § 668.240

Section 668.240 describes the process for applying for designation as an INA grantee. We have added a new paragraph to this section specifying that the assurance contained in the WIA nondiscrimination regulations at 29 CFR 37.20 must be contained in the application for financial assistance.

Funding Formula

A comment on the funding formula, found at § 668.296, is discussed below in subpart G, under the heading Cost of Living Factor.

Mandatory Quotas Based on Race and Population

In the implementation discussions held around the country, several grantees recommended that we require that States with significant Native American populations expend a percentage of their total State WIA budgets on Native American clients which would correspond to their percentage of State population, and that Local Workforce Investment Boards not be allowed to refer all Native American applicants to the local section 166 grantee for services.

Response: While we realize there is a shortage of resources in ''Indian Country,'' there is no legal authority in WIA which would allow us to establish and enforce ''service quotas'' on any State or Local Area. In addition, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services. We certainly agree that the section 166 program is intended to provide additional services for Native Americans and is not to be used as a substitute for Local Board services to eligible Native Americans or as an excuse for not serving that population. The concept of One-Stop and core services is based on the provision of universal service, without regard to race or ethnicity. A fair and effective way to address these concerns, while ensuring that these nondiscrimination provisions are complied with, may be to describe the provision of other services, in addition to WIA core services, in the MOU. The regulations at 29 CFR part 37 provide specific requirements on the issue of nondiscrimination.

Subpart C—Services to Customers

Clarification of Allowable Activities

The regulations work group suggested that the Interim Final Rule, at § 668.340(d)(8), appears to allow the attainment of a GED only in conjunction with other training services, and not as a stand-alone objective.

Response: To eliminate possible confusion or misinterpretation, we have modified § 668.340(d)(8) to indicate that the listed services (including GED attainment) may be provided alone or in

combination with any other training or intensive service(s).

Technical Change to § 668.350(e)

We have inserted the term ''WIA'' before ''funds'' to more clearly indicate that the requirement that funds be used for activities in addition to those otherwise available applies to WIA funds.

Clarification of Grantees' Role(s) in the One-Stop System

The requirements for negotiation of MOU's have been a source of confusion to some grantees, especially the provision in § 668.360 concerning the ''field office'' requirement. Grantees have asked for further definition of this term, and have asked about the status of grantees which have no ''field offices'' as such, but whose service area includes all or part of several local workforce investment areas. Grantees also raised questions about the provision of services, the design of the One-Stop system, and the nature of the MOU within States with only one local area.

Response: We agree that this is an issue requiring clarification, and have changed the regulatory language in § 668.360. We have dropped the term ''field office'' and rewritten § 668.360 to indicate that an INA grantee is a required partner when the grantee ''provides substantial services,'' either by having a permanent, year-round presence or by being present on a seasonal or part-time basis (*e.g.,* one day of the week or daily for four months of the year). The regulation has been revised to refer to 20 CFR 661.330(b)(2), to assure that in the cases where the INA grantee provides substantial services in a local area that uses an alternate entities which does not include a representative of the grantee, the INA grantee will have an ongoing role in the workforce investment system. The revised regulation also addresses the situation in which there is a significant Native American presence in a local area in which the INA grantee does not provide substantial services, but which is within the INA grantee's service area. Language has been added encouraging the INA grantee to encourage eligible individuals to use the services of the One-Stop. Issues of MOU negotiation and/or representation will be addressed on an individual basis. Here again, we hesitate to dictate specific representation requirements for any given local area, preferring that all required partners reach mutually satisfactory arrangements which implement the inclusive spirit of the Act. We suggest that grantees, and other partners, refer to the discussion of MOU issues in the preamble to part 662. The same MOU requirements apply to single local area States as apply to States composed of multiple local areas.

Status of Community Service Employment

Commenters questioned the reason for elimination of Community Service Employment (CSE) and lamented its demise, questioning what would become of CSE participants when the transition to WIA occurred.

Response: WIA, at section 195(10), prohibits ''public service employment,'' except as specifically authorized under title I of WIA. This differs from JTPA which prohibited public service employment only in the adult and youth programs. Although section 166 states that its purpose is to ''promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities * * *,'' this does not provide specific authorization of Community Service Employment. Grantees who are concerned about transitioning current CSE participants should refer to 20 CFR 667.910 which provides that JTPA participants who transition into WIA programs must be allowed to finish their JTPA activity, in accordance with the terms of their Individual Employment Plan, even if it is not authorized under WIA.

Subpart D—Supplemental Youth Services

Flexibility in the Supplemental Youth Services Funding Formula

Grantees raised questions about the supplemental youth services funding formula, specifically about the formula's relation to participant eligibility for program services. The grantees argued that, since services are to be limited to ''(economically) disadvantaged youth,'' the funding formula should be based on the number of economically disadvantaged youth residing ''on or near'' the reservation, rather than on the total number of youth, as is currently the case.

Response: This suggestion appears logical, and we are looking into the possibility of extracting (and the impact of implementing) such information from the 1990 Census file we use to calculate the funding formulas for the section 401 program. Section 668.440(a) has been changed to reflect the possibility of altering the supplemental youth services funding formula at a future date.

Lower Level of Supplemental Youth Services Funding Under WIA

One commenter was concerned that the projected funding for the supplemental youth services program will be slightly less than what is currently available for the JTPA title II–B program, which will make it impossible to operate a year-round youth effort (since the current allotment is not sufficient to finance the tribe's Summer Youth Program under JTPA).

Response: While we recognize that reductions in available funding may lead to reductions in service levels, the matter of allocations is one of budget and not regulations. Also, there is no requirement in the section 166 program that grantees operate a year-round youth effort, or that they continue to operate a summer youth component. Section 668.450(a) provides that grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks in the school year at the grantees discretion. The parameters of each supplemental youth services grantee's youth program must be described in its Comprehensive Services Plan which is applicable to each local area.

Expanded Availability of Supplemental Youth Services Funds

Several commenters noted that supplemental youth services funding is only being made available to grantees who serve reservations, and urged that we broaden the definition of ''on or near'' to include urban/suburban/rural areas within a specified distance of a reservation, and make non-tribal grantees serving these areas eligible to receive supplemental youth services funds and to provide youth services in those areas.

Response: When this issue was raised with the regulations work group of the Advisory Council, it was the general consensus that no changes be made to the way INA grantees are currently provided youth services funding. The members of the work group did not feel that the ''on or near'' reference in the Act was intended to divert funds away from reservations or from the tribes/grantees serving those reservations. We agree with the regulations work group, and have made no change in the final regulations.

Subpart E—Services to Communities

Technical Corrections

We have made a technical correction to move a misplaced phrase in § 668.500(b). In addition, we have moved § 668.630(i) to § 668.350 as new paragraph (g), where a cross reference to 20 CFR 667.266, about limitations on sectarian activities set forth in 29 CFR 37.6(f), has been added.

Subpart G—Section 166 Planning/Funding Process

Clarification of Budget Justification Requirements for Administrative Costs

Members of the Native American Employment and Training Council suggested that § 668.720(c) seems to require that a detailed administrative budget must be submitted as part of the Comprehensive Services Plan. This could present grantees with an extra planning burden which had never been required under JTPA and is not in keeping with other recent planning decisions which require that the grantee justify the need for administrative costs based on actual costs.

Response: We agree that the regulation was drafted at an earlier time, when the entire issue of administrative costs was viewed in a different light by all parties involved. Accordingly, we have modified § 668.720(c) to remove the requirement that grantees submit a detailed budget of proposed administrative costs and to indicate that the grantees need to be prepared to justify the amount of proposed administrative costs.

Cost of Living Factor

A commenter recommended that we build a cost-of-living factor into the funding formula (which is described at § 668.296) so that grantees serving areas which are more costly could receive additional funds to offset the high cost of living (primarily in urban areas).

Response: While we sympathize with those grantees trying to operate programs in high cost areas, the Census data used in the formula and the current regulatory funding formula(s) for adult and youth programs do not provide for such cost-of-living adjustments. We see no fair way to balance the higher cost of goods and services in an urban area against the higher costs for transportation and other services incurred by reservation and/or rural grantees serving areas which lack the infrastructure of cities and suburban areas. No change has been made in the final regulations.

Availability of Incentive Grants to Section 166 Grantees

Commenters questioned why ''incentive grants'' are not being made available to section 166 grantees who exceed their planned performance levels.

Response: The statutory language in WIA section 503, which authorizes the Department to provide incentive grants, only applies to States which exceed their State adjusted levels of performance. There are no statutory provisions authorizing incentive grants for section 166 grantees, nor is there specific authorization to build such a factor into the current funding formula(s). At this time, we have not determined a fair way to account for the myriad of differences between our grantees in a way that ensures an equal opportunity for any type of performance incentive. We note that WIA section 166(c)(2)'s waiver of competition is one form of recognizing successful performance.

Mandatory Cost Sharing Among Section 166 Grantees

One commenter suggested that costs associated with enrolled tribal members be charged back to their tribes, or that tribes be required to pay employment and training costs for their tribal members participating in programs operated by urban grantees.

Response: Although we have never opposed individual grantees working out funding reciprocity agreements on a voluntary basis, the service area concept currently in place through the designation process mandates that grantees serve those eligible clients residing in their service areas, regardless of tribal affiliation. While other entities have, from time to time suggested that we provide funds to tribes to serve their own members only, regardless of where they may reside, we feel that to operate the section 166 program in this manner would be chaotic and ultimately unworkable, and would not be in the best interests of Native American employment and training programs authorized under the Workforce Investment Act. Moreover, as described in WIA section 188(a)(2), it is unlawful for recipients of WIA financial assistance to use race, color or national origin, including tribal affilitation, to determine which individuals will receive services.

Information To Be Contained in Plans

We have revised § 668.740(a)(1) to clarify that plans must include information specified in these regulations as well as Departmental planning guidance.

Technical Correction To Remove Requirements Applicable Only to PY 1999

Finally, we have removed § 668.200(a) which refers to designation criteria for PY 1999. We have also removed from §§ 668.720(e) and 668.730(b) references to planning requirements applicable only to PY 1999.

We received many other comments as part of this process. However, they involved such topics as reporting requirements, including frequency and specific data elements, section 166 performance measures and standards, and the closeout of JTPA section 401 grants. While important to the overall scope of program transition and implementation, these issues are not covered in these regulations. These and other programmatic details will be handled administratively through DINAP Bulletins or other policy guidance, issued after consultation with the grantee community.

Part 669—National Farmworker Jobs Program Under Section 167

New Name of the MSFW (WIA Sec. 167 & JTPA Sec. 402) Training Program

On August 27, 1999, the Secretary's Migrant and Seasonal Farmworker Advisory Committee voted to name the job training portion of the workforce investment program for farmworkers, ''The National Farmworker Jobs Program (NFJP)''. We have incorporated the name in the definitions section, § 660.300, to establish the NFJP as the farmworker training and assistance program that is a required One-Stop partner, and to distinguish the NFJP from the other workforce investment grants and activities funded under WIA section 167, such as the farmworker housing assistance grants. We have adopted the NFJP name in the portions of the 20 CFR Part 669 regulations that apply exclusively to the NFJP, and the NFJP name is used to identify the program in this preamble.

Introduction

The comments we received about the regulations governing the operation of the National Farmworker Jobs Program under WIA section 167 primarily came from the current NFJP grantee community. The grantees submitted written comments during the formal comment period. Additionally, we consulted with the migrant and seasonal farmworker grantee community during ETA's Seasonal Farmworker Program National Conference and through the Secretary's Migrant and Seasonal Farmworker Program Advisory Committee. The comments reflect a substantial level of interest in how the regulations will impact the program as it implements under the Workforce Investment Act. The commenters seek to make the WIA regulations' impact on their ability to serve their farmworker customers under WIA as positive for the farmworkers as possible.

During these consultations, the NFJP grantees reported on their initial experiences in seeking partnership participation on Workforce Investment

Boards in a number of states and local areas. The conditions these NFJP grantees encountered in a significant number of locations, as their state and local systems prepare for WIA implementation, are not conducive to their successful participation in the local One-Stop systems. As reported, the specific approach being taken by the representatives from some State and Local Boards fails to recognize the independent standing of the NFJP program partner as a party with which the Local Board must negotiate a Memorandum of Understanding. A required objective of the negotiations is to develop the arrangements, including costs or cost sharing, for making the services of the Local One-Stop Center available to the farmworker community the grantee serves. We expect the terms for participating in a local One-Stop service delivery system to develop rationally from the negotiations when the task is approached in good faith by both parties.

The grantees reported that they most often encountered an adverse negotiating climate in those States and local workforce investment areas where the States have exercised their authority under the alternative entity provisions of WIA sections 111(e) and 117(i) (20 CFR 661.210 and 661.330, respectively) by approving existing boards to serve as the State and/or Local Workforce Investment Boards under WIA. The grantees reported that some States and Boards exercise the alternative entity option in a manner that seriously impairs the NFJP grantee's ability to participate as a One-Stop partner by failing to provide an opportunity for good faith negotiation over the terms of the MOU. Consequently, the necessary arrangements for making the services of the local One-Stop Centers available to the farmworker customers served by the NFJP program grantee may be inadequately developed.

Through a motion unanimously passed by the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, MSFW grantees communicated their concerns in a letter to Secretary Alexis Herman, dated September 27, 1999. In their letter, the grantees made specific recommendations for changes to the Interim Final Rule that may be summarized as follows: (1) To clarify that the composition of State Workforce Investment Boards must include representation from the required partner; (2) where the State Board is established under the alternative entity authority of WIA section 111(e), the States be advised through policy guidance that representation of farmworker and other subtitle D operators is the ''preferred response to the spirit of the Act''; and (3) that where a Local Workforce Board is an approved alternative entity, there must be a way to ensure that an ongoing role is actually provided to the required partners that are not members of the alternative entity, or provision for regulatory relief from the required partner obligations should be available for the national grantees. These issues and other comments are discussed below.

The NFJP and Workforce Investment System Governance

As discussed above, the rules relating to the participation of NFJP grantees in the state and local workforce investment system generated many comments from the NFJP community. Below, we discuss issues relating to alternative entities and representation on State Boards and Local Boards. Similar issues are discussed in relation to the WIA section 168 Indian and Native American Program in the preamble to part 668, and for the workforce investment system in general in the preamble to part 661.

General Representational Question Regarding the NFJP and Appointments to State and Local Workforce Investment Boards

The answer to the representational issue raised by the Farmworker Advisory Committee is found within the design of the One-Stop system and in the requirement that it be operated through the collaboration of the required partners. In order for a partner's participation to be viable, the regulations provide that the partner must have representation in the One-Stop system, either through Local Board representation or, when the partner is not represented on an alternative entity, through an on-going role in the workforce investment system.

We are not able to change the regulations to permit One-stop partner programs to choose whom they wish to represent them. Under WIA, the authority to select State and local board members lies with the Governor and local chief elected official, respectively. However, there are objective standards to ensure that all parties have a voice in the workforce investment system through *bona fide* representation. We expect that Local Workforce Investment Areas will follow the regulations and that States will ensure that all required partners have appropriate and effective representation on Local Boards. The final regulations attempt to facilitate this process by providing local areas with flexibility to find the right mix of representatives on the Local Board, while ensuring that the Board is an effective policy-making body by protecting the rights of all participants in the system and by stressing the requirement that members be individuals with optimum policy-making authority. We believe that the party who may most authoritatively speak for any partner program is an official of the partner in the State or local area or a representative acceptable to the partner. Consequently, for effective governance, official representation of the partner program on the State and Local Workforce Investment Boards will usually be by such a person.

As discussed in the preamble to 20 CFR part 661, above, changes have been made to the regulations governing board membership to clarify the role of One-stop partner representatives. For example, when there is more than one partner program grantee in a local area, 20 CFR 661.317 permits the appointment of one member to represent the group of grantees. This section also authorizes the chief elected official to solicit nominations from One-Stop partner program entities to facilitate the selection of such representatives. Of course, the chief elected official can opt to appoint more than one member to represent this program, if he or she so chooses and the selection criteria permit it. Also, as discussed below, we have added new regulations defining the terms ''optimal policy-making authority'' and ''expertise relating to [a] program, service or activity.''

State Board Representation for Required National Program Partners

The Farmworker Advisory Committee commenters indicated that the Interim Final Rule is unclear as to whether representation on the State Boards is mandatory for all required partners such as the national program partners. As a result, the commenters reported that many States are claiming to represent the NFJP on the State's Workforce Investment Board through a non-partner surrogate, possibly a State agency representative having familiarity with farmworker or related agricultural issues, such as the State Monitor Advocate or a representative from the State's Farm Bureau.

Response: WIA section 111(b)(1)(C)(vi)(II) requires representation of the Title I partner on the State Board by its provision for ''the lead State agency officials with responsibility for the programs'' or ''a representative in the State with expertise relating to such [section

121(b)] program.'' WIA section 111(b)(2) requires that Board members who represent organizations, agencies or other entities be individuals with ''optimum policy-making authority'' within the program they represent. We believe WIA section 111(b)(1)(C)(vi)(II) is clear that a State agency official may only be appointed to represent those One-stop partner programs over which the official has ''responsibility.'' Where there is no such state agency official, an individual with expertise relating to the One-stop partner program must be appointed to represent the program. We have revised the regulations in part 661 to clarify this. Under new 20 CFR 661.203(b), the representation of a One-Stop partner program may be fulfilled by an official from the program partner, such as the NFJP grantee, or the Governor may appoint a representative in the State having ''documented expertise relating to'' the required partner program in the State. For purposes of the NFJP, we believe that documented expertise in the NFJP is shown by a minimum of two years combined managerial level experience in the operation of the NFJP or with an NFJP grantee association, and suggest that Governors adopt this standard when selecting representatives for the NFJP program.

Without the clarification that representation must be specific to the required partner program, appointments made to represent the interests of a required partner could include a person who may have no vested interest to represent the partner. This condition, which leaves the required national partners vulnerable to the consequences of unqualified representation, is what the NFJP grantees reported has been occurring initially in some States. An agency official or other individual representing a One-stop partner program must be an official with optimum policy-making authority in the organization he or she represents. As defined in 20 CFR 661.205(a), a representative with ''optimum policy making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

Local Boards Authorized by Governors Under the Alternative Entity Provisions

Commenters reported that the national programs, possibly without exception, are not included on a Local Workforce Investment Board where the Local Board is an alternative entity approved by the Governor under WIA section 117(i) (and under 20 CFR 661.330). This is to be expected because the composition of Local Boards approved under the alternative entity provision is derived from arrangements developed under JTPA, and the JTPA did not provide for the participation of the national programs in local workforce systems as now required by WIA. However, where the membership of the approved alternative entity does not provide for the representation required by WIA section 117(b), the Interim Final Rule at § 661.330(b)(2) required Local Boards to ''ensure an ongoing role for any such group in the local workforce investment system'' which is not represented on the alternative entity Local Board.

The commenters found that the use of the word ''group'' in the Interim Final Rule, to be too generalized to make a clear requirement that the local workforce investment plan must provide an ongoing role for each unrepresented partner category whenever the membership requirement of WIA section 117(b)(2) is not matched by the incumbent membership of the alternative entity Local Board. At the National Conference, the commenters described instances of alternative entity boards refusing to negotiate MOU's with their NFJP program representatives. They pointed out that in the instance of a required partner, a Local Board cannot have established a working relationship or demonstrated that it has provided for an ongoing role for the unrepresented partner until it has attempted good faith negotiations of an MOU with that partner.

Response: To clarify that the required partners must be included among ''any such group,'' we have amended the local governance provision at 20 CFR 661.330(b)(2), by replacing that phrase with the phrase ''the unrepresented membership group,'' and by inserting the phrase ''including all the partners'' following ''each of the categories of required Local Board membership under WIA sec. 117(b).'' We have added a new paragraph (b)(3) to 20 CFR 661.330 which provides that the ongoing role requirement may be met by providing for ongoing consultations with an unrepresented One-stop partner program, such as the NFJP grantee operating in the State of local area. It also provides that, as part of its ''ongoing role'' responsibility, the alternative entity must undertake good faith negotiations with each unrepresented partner on the terms of its Memorandum of Understanding with the unrepresented partner. We have added a corollary requirement to the NFJP regulations by adding a new third sentence to § 669.220(a) requiring the NFJP grantee to negotiate with the Local Board on the terms of its ongoing role in the workforce investment system.

Ensuring Fair Treatment When Negotiations Between a Partner and an Alternative Entity Board Fail

In connection with the reports from NFJP grantees of the instances where they had been approached by State and Local Boards with non-negotiable terms or they were not offered an ongoing role, the grantee commenters expressed their concern over how such practices might influence the outcome of the next NFJP competition in the State. The commenters explained that where the State does not foster an environment supporting good faith negotiations between its State and Local Boards and the non-governmental NFJP grantee, the consequent nonparticipation by the NFJP grantee in the State's local workforce investment systems could be viewed unfavorably. The commenters were concerned that such a condition could result in an unfair rating of the incumbent non-State agency grantee.

Response: To promote competitions that are perceived as fair and merit-based in their treatment of all the eligible applicants, we have revised § 669.200 by adding to the eligible applicant criteria in paragraph (a), the capacity to work effectively as a One-Stop system partner. The manner by which applicants may demonstrate this capacity is explained in a new paragraph (c). Where an incumbent grantee cannot demonstrate its capacity to work as a One-Stop partner, it will be found to lack the capacity to work as a One-Stop partner under § 669.200(a)(4) unless the policies or actions of a Local Board that is established under the alternative entity provisions of WIA section 117(i) precluded such participation or contributed to the failure to reach agreement on an MOU. Wherever a Local Board is an alternative entity and fails to agree on terms for its MOU with the incumbent NFJP grantee, despite good faith negotiations on the part of the grantee, new paragraph (d) requires the Grant Officer to consider the impact of the policies and actions of the alternative entity board on the incumbent grantee's ability to participate in the One-Stop system and determine whether the policies or actions contributed to the failed participation of the incumbent NFJP grantee. Where the Grant Officer finds the local policy actions of an alternative entity Board precluded or failed to promote the participation of the incumbent NFJP grantee through an MOU, and the eligible applicant is a State-controlled entity, or is an entity represented on the alternative entity

Board within the State, the Grant Officer must consider this fact when weighing the capacity of the competitors. Under this provision, the Grant Officer has the discretion to determine that the incumbent has the capacity to work effectively as a One-Stop partner. (The provisions of § 669.200 (d)(1) apply only when the incumbent grantee does not have voting status in the alternative entity Local Board.)

The Judge Richey Court Order and the NFJP

Several non-NFJP commenters raised a question about the relationship between the Judge Richey Court Order and the NFJP for serving migrant and seasonal farmworkers under WIA section 167. The comments basically inquire whether the NFJP is the program for farmworkers under WIA, and, as such, whether it brings to an end the system of monitor advocates created by the Order.

Response: These commenters seem to be unaware of the fact that the NFJP has been authorized continuously since its creation under the Economic Opportunity Act of 1964, and most recently under section 402 of JTPA. The NFJP supplements the workforce investment activities of the States with services that respond to the unique needs of farmworkers and their families. The NFJP is not a substitute for the other WIA services that must be made available to the farmworker job seekers in the State.

The States are required to make the services of the One-Stop systems in the State available to all job seekers in an equitable fashion. The services available from the Adult and Dislocated Workers program, from the Job Service, and from all other DOL-funded Workforce Investment System partners in the State, must be available to farmworkers in an equitable fashion, appropriate to their needs as job seekers as well as to their needs as farmworkers. Judge Richey's decision in the case brought against the Employment Service required the entire system to serve farmworkers equitably. That requirement has not changed under WIA.

Subpart A—Purpose, Definitions, and Federal Administration

Technical Corrections to Definitions

The commenters noted several typographical errors and suggested clarifications in the definitions for the farmworker program in § 669.110 of the Interim Final Rule.

Response: The word ''be'' is missing from the definition of ''work experience'' in the Interim Final Rule and is added in the Final Rule. The definition of ''farmwork'' is corrected by removing the reference to the allocation formula. To correct for an omission, the definition of ''allowances'' is amended to permit receipt of allowance payments to participants enrolled in intensive services as well as in training services.

Add Definition of ''Related Assistance''

Questions about the characterization of emergency assistance as a form of related assistance in § 669.360 led some commenters to ask about the nature of related assistance and what other services it includes.

Response: We have added a definition of ''related assistance'' in § 669.110. We discuss related assistance further in the discussion below of ''Classification of Emergency Assistance and Other Named Activities as Related Assistance.''

Eligibility

There were a variety of comments asking that we define certain terms related to participant eligibility, in particular that we specify which dependents of a farmworker are eligible for NFJP assistance and that we add an adjustment for family-size to the definition of ''disadvantaged'' for eligibility purposes. Other comments raised a variety of issues that include: clarification of the floating 12 month eligibility determination period; allowing for exceptions to the eligibility period for formerly institutionalized and hospitalized applicants; identifying the qualifying farmwork occupations and defining the farmwork thresholds—expressed in terms of income from farmwork and time employed in farmwork—that must be met by an applicant to qualify as a farmworker who is eligible for NFJP services.

Response: While most requests for clarification of eligibility provisions will be addressed in the policy guidance on participant eligibility to be provided by the Division of Seasonal Farmworker Programs (DSFP), we have revised the definitions section in response to these comments. We have added a definition of ''dependent'' to the Final Rule to specify the family member relationships within the family of an eligible farmworker who qualify for receipt of assistance from the NFJP. Because of comments suggesting that the definition of ''disadvantaged'' needed to be clarified to consider family size when making eligibility determinations, we have revised the definition of ''disadvantaged'' by adding ''adjusted for family size'' to be clear that the requirement to be economically disadvantaged, as determined under the poverty line or the Lower Living Standard Income Level, must take family size into account.

The comments about the clarification of the floating 12 month eligibility determination period, formerly institutionalized and hospitalized applicants, identifying the qualifying farmwork occupations and defining the farmwork thresholds topics will be addressed in policy guidance on participant eligibility. Grantees should refer to WIA nondiscrimination regulations, at 29 CFR 37.8, for guidance on whether an extension of the eligibility period for formerly institutionalized and hospitalized participants may be a form of reasonable accomodation.

The commenters raised a related concern that allowance be made for situations where a farmworker may be disqualified by the income of an abusive spouse and the family unit may technically remain in place. The commenters prefer that there be the flexibility available to accommodate such situations where appropriate.

Response: We have revised the definition of ''disadvantaged'' to recognize this concern by permitting consideration of circumstances where, due to known instability of the family unit, the inclusion of income from certain members would be inappropriate or unjust. We will provide policy guidance in consultation with the grantee partners to provide clarification for determining what is appropriate.

Additional Technical Corrections

We have removed the definition of ''Department'' from § 669.110 since it appears in 20 CFR 660.300. In addition, we have added a new paragraph (e) to § 669.170 clarifying that the Department's regulations implementing the nondiscrimination provisions in WIA section 188 (29 CFR part 37) apply to NFJP grants.

Subpart B—MSFW Program's Service Delivery System

Clarification of the Areas of a State Where the NFJP Program Operates

Commenters reported that there was confusion between the NFJP grantees and the States and Local Boards over the areas within the States where the NFJP grantee is a mandatory partner in the local One-Stop system. The grantees asked that the regulations be amended to clarify that the NFJP is a One-Stop partner in those local workforce investment areas where the NFJP operates by serving NFJP customers, not necessarily where there is ''field office'' presence, as provided in § 669.220(a) of the Interim Final Rule.

Response: We have modified § 669.220(a) to clarify that the NFJP grantee is a required One-Stop partner for the local workforce investment areas where it operates its NFJP program.

Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

Classification of Emergency Assistance and Other Named Activities as Related Assistance

Commenters questioned the consistency of classifying emergency assistance as a form of related assistance and of classifying certain non-occupational training activities as training services. Specifically, the commenters questioned the classification of ''workplace safety'' training and ''farmworker pesticide training'' as training services in § 669.410(a)(2) of the Interim Final Rule. The commenters suggested that the designation of emergency assistance as a form of related assistance, without further clarifying the nature of related assistance, also contributed to the confusing organization of the service classifications.

Response: Pesticide safety instruction for farmworkers means educational instruction on health and safety information about agricultural pesticides. To protect their health, farmworkers need to have a general understanding of this information and a full appreciation of the seriousness of these hazzards when approved procedures are compromised or disregarded. The instruction typically includes information on the hazzards associated with pesticide exposure, the physical symptoms of toxic exposures, use of protective equipment and the importance of adhering to the manufacturer's instructions on when fields may be entered following application. These activities are considered supportive services under JTPA and are often provided under JTPA in a ''non-training related'' context that advance the farmworker's welfare as a farmworker. These types of farmworker ''training'' activities are very short term instructional services. They are not occupational skills training. Although they may be provided to participants enrolled in intensive services or training services, these activities are principally designed to assist farmworkers who are continuing to be employed in farmwork. We agree with the commenters that the classification of these non-skills-training activities as training services and the classification of emergency assistance as the only form of ''related assistance'' is confusing.

To resolve the confusing classifications, we have decided to combine the short-term, non-occupational skills training activities with supportive services such as emergency assistance. This will form a classification of congruous services that historically have been provided to MSFW's and that are uniquely required by them. To accomplish this, we have amended § 669.310 to create a fourth basic service component of the NFJP service delivery strategy, called ''related assistance services.'' Related assistance consists of short-term forms of direct assistance to eligible farmworkers and their family members. The related assistance services are ones that stabilize farmworkers' agricultural employment. The activities include such services as emergency assistance, English language instruction, short duration basic education, workplace safety training, farmworker pesticide safety instruction, and farmworker housing development assistance. The services under related assistance encompass all the activities formerly classified under JTPA as ''services-only.'' Related assistance activities also include the non training-related ''enhancement-only'' services that were recognized under JTPA. These forms of assistance predominantly assist farmworkers to maintain their current lifestyle within the agricultural community by supporting them in their endeavors to remain employed in farmwork, thereby contributing collaterally to the economic stabilization of the agricultural community. Related assistance services also may be used to support farmworkers who have enrolled in either intensive or training services.

To establish the ''related assistance services'' category, we made a number of changes. We added a definition of ''related assistance,'' as described above, in § 669.110. Related assistance services are identified in § 669.310 as one of the four basic components of the NFJP service delivery strategy. A new § 669.430 is added to classify the activities that are included in related assistance services as described above. The description of training services in § 669.410 has been revised to reflect that training services are activities focusing on occupational training, including basic education activity. A new § 669.440 provides that related assistance services may be provided at any time there is a need identified for any eligible farmworker or family member. This includes farmworker youth enrolled in the MSFW Youth program. Accordingly, we added a clause to § 669.680 clarifying that the related assistance services available under § 669.430 are authorized under the MSFW Youth program. The need for related assistance may be documented by the grantee or in a statement by the farmworker that is acceptable to the grantee.

We also added a definition for ''farmworker housing development assistance'' as requested by comments made at the National Conference. Finally, a technical correction is made by adding the word ''grantee'' to § 669.360(b) where it was omitted from the Interim Final Rule.

Work Experience Classification

We received a number of comments about the treatment of work experience in the Interim Final Rule. The comments addressed two issues. One issue is the authorization under § 669.370(b)(3)(i) to develop arrangements with private for-profit businesses to host work experience activities. The commenters were concerned that this will lead to abuse of program resources by providing favored businesses with free, albeit unskilled, WIA-funded laborers. Commenters were also concerned that the authorization for unpaid work experience contained in the definition could lead to abuses.

Response: Unlike ETA's relationship with the States, the NFJP grantees are the program operators in most instances. After considering the commenters' concerns, we agree that a closer federal-level oversight of work experience is appropriate to ensure the farmworker program participants are adequately protected where the activity will be unpaid or will be hosted by for-profit entities.

We have changed § 669.370(b)(3)(i) to authorize NFJP work experience in the for-profit sector only when there is a system described in the approved grant plan for the use of for-profit businesses to host the structured learning experience for NFJP participants. Similarly, to reconcile the authorization for unpaid work experience to the requirement in § 669.370(b)(3)(ii), which establishes a minimum compensation rate for paid work experience, we have revised § 669.370(b)(3)(ii) to require that the grantee's unpaid work experience activity be described in the approved grant plan. To be acceptable, the plan must show how the work experience participation at a for-profit host or in an unpaid activity will provide tangible benefits to the work experience participant. The plan must show that such benefits will be commensurate

with the participant's contributions to the hosting agency.

We also received comments about the classification of work experience as an intensive service under § 669.370. A number of commenters urged that work experience be considered a training service. Some commenters explained that work experience is effectively used to ''train'' farmworker participants on the different working conditions of non-agricultural work environments, since the participants have developed the basic workplace-values from their farmwork experiences.

Response: In our view, work experience primarily functions as a workplace-values activity, while training activities are about the acquisition of specific occupational or job skills. Work experience provides an opportunity for new entrants in the workforce to acquire, through close supervision, an appreciation of workplace norms that may include self-discipline, relating to others, attendance and accountability, understanding compensation and learning to appreciate and meet employers' reasonable expectations. The concept of intensive services in WIA is more than sufficiently broad to encompass the full range of activities traditionally undertaken as work experience. The classification of work experience as a WIA intensive service does not change the nature of work experience as it was authorized and operated under the predecessor laws: the Job Training Partnership Act, the Comprehensive Employment and Training Act and the Economic Opportunity Act. As a practical matter, the grantees retain the same degree of flexibility in designing service strategies for meeting the needs of their customers, regardless of perceived differences caused by the classification nomenclature used under WIA. The adult program under § 663.200(b) also classifies work experience as an intensive service.

WIA section 134(d)(4)(D) does recognize ''job readiness training'' as a training service. Job readiness training provides, through classroom lecture and role play, the development of the same set of skills and understanding to be acquired through work experience. It is generally offered as pre-vocational world-of-work skills that may include showing up on time, work place attitudes and behaviors, and the like. Job readiness training usually does not include an associated work component, but it may.

For these reasons, we have made no change to the Final Rule about the classification of work experience as an intensive service.

Subpart D—Performance Accountability, Planning and Waiver Provision

Administrative Costs Limitation

The issue on which we received the largest number of comments during the formal comment period is the administrative costs limitation. The Interim Final Rule, at 20 CFR 667.210(b), provides that the administrative costs for the NFJP ''will be identified in the grant or contract award document.'' In the guidance (Farmworker Bulletin No. 99–04) to grantees for preparation of their 1999 Program Year plans, we established an administrative cost limitation policy for those grantees implementing WIA for the 1999 Program Year. The policy limited the amount budgeted for administration to 20 percent, with costs over 15 percent requiring justification satisfactory to the Grant Officer. It was anticipated that, after WIA transition, the rates could be expected to fall. The grantees have traditionally operated within a 20 percent limitation for administrative costs, without having to justify the administrative cost rates to the Department.

The grantees' comments on administrative costs limitations were based on the historical context of this stated policy. They expressed concern that a 10–15% administrative costs limitation was unjust because of the state-wide scope of most NFJP operations and the continuing need to participate in the business of the State Board and to serve on and negotiate MOU's with numerous Local Boards.

Response: In order to provide clarification on this issue, we are adding a new section, § 669.555 to the Final Rule stating that limits on administrative costs for NFJP grants will be negotiated with the grantee and identified in the grant award document. In addition, 20 CFR 667.210 (b), which provides that the administrative costs limitation for Subtitle D programs (INA and NFJP) will be identified in the grant award document, is unchanged.

Part 670—Job Corps

Introduction

This part provides regulations for the Job Corps program, authorized in title I, subtitle C of WIA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to selection of sites for Job Corps centers; selection and funding of service providers; screening, selection and assignment of eligible youth to Job Corps centers; operation of Job Corps centers; and required services for Job Corps students. This part also provides regulations covering new WIA requirements such as the establishment of a business and community liaison, and an industry council for each Job Corps center, and the focus on accountability, including specific performance measures for Job Corps centers and service providers. Our intent in these regulations is to incorporate the requirements of title I, subtitle C of the Act, and to describe the programs and services which must be available for Job Corps students, as well as the requirements dictated by the unique residential environment of a Job Corps center (such as provision of meals, transportation, recreational activities and related services).

Subpart A—Scope and Purpose

Purpose

Subpart A describes the purpose of the program and provides definitions. Section 670.100 explains that references in this part referring to guidelines or procedures issued by the Secretary mean that the Job Corps Director will issue such guidelines. Section 670.130 specifies that the Job Corps Director has been delegated authority to carry out the Secretary's responsibilities under title I, subtitle C of the Act for the operation of the Job Corps program. As section 670.100 explains, procedures guiding day-to-day operations are provided in a Policy and Requirements Handbook (PRH). The PRH includes minimum program requirements and expected outcomes for specific program components, such as education and training, student support, and administration. In addition, general guidance and best practices are provided in a number of program areas in Job Corps Technical Assistance Guides issued by the Job Corps Director.

Partnership

The regulatory provision on program purpose (§ 670.110) incorporates the Act's intent that Job Corps will operate as a national, residential program in partnership with States and local communities. This partnering relationship is carried throughout various sections of part 670, such as in requirements for Job Corps centers and service providers to serve on local youth councils, to operate as a One-Stop partner, and to work with employers.

During the development of the Interim Final Rule, several parties noted that the regulations in this subpart provide that Job Corps is a national program which operates in partnership with States, communities, Local Boards, youth councils, One-Stop centers and

partners, and other youth programs. They argued that the language relating to partnership with One-Stops was not strong enough in other regulatory provisions governing services (such as outreach/admissions and placement). They believed that the regulations should clearly state that services would be provided by One-Stop centers or partners to the extent practicable. Our intent in using language such as ''to the extent practicable'' or ''to the fullest extent possible'' is not to limit or discourage the development of linkages between Job Corps and One-Stops, but to recognize (1) the language in section 145(a)(3) of the Act which requires the Secretary to conduct outreach and screening activities ''to the extent practicable'' through arrangements with applicable One-Stop centers, community action agencies, business organizations, labor organizations, and entities that have contact with youth; (2) the requirements in section 147 of the Act for selection of Job Corps center operators and other service providers (such as outreach/admissions, placement, and provision of continued services) on a competitive basis in accordance with Federal procurement law and regulations; and (3) the language in sections 148(d) and 149(b) of the Act which requires the Secretary to give priority to ''One-Stop partners'' in selecting a provider for continued services for graduates and to ''utilize One-Stop delivery systems to the fullest extent possible'' for the placement of graduates into jobs. The use of these phrases should not be interpreted as a limitation, but as a statement of intent to enter into partnerships in all situations where it is feasible to do so.

Subpart B—Site Selection and Protection and Maintenance of Facilities

Subpart B describes how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The requirements in this subpart are not significantly different from the corresponding requirements in the JTPA Job Corps regulations.

Subpart C—Funding and Selection of Service Providers

Subpart C describes entities which are eligible to receive funds to operate Job Corps centers and to provide operational support services. It also describes how contract center operators and operational support service contractors are selected, emphasizing the requirements for competitive contract awards. Section 670.300 specifically describes the kinds of entities that are eligible to receive funds to operate centers and provide training and operational support services as specified in sections 147(a) and (d), 145(a)(3) and 149(b) of the Act.

One commenter suggested that § 670.300 be revised to expand the list of entities eligible to receive funds to operate centers and provide training and operational support services by adding ''including service or conservation corps'' to paragraphs (a)(1) and (a)(2) of that section.

Response: We have not revised this section because these entities were not specifically listed in the Act and the existing regulatory language does not preclude service or conservation corps from responding to requests for proposals (RFP's) for operation of Job Corps centers or provision of training and support services.

New requirements, including consultation with the appropriate Governor, center industry council, and Local Board in development of requests for proposals for center operators, are included in § 670.310(a). In addition, § 670.310(c), restates the criteria, specified in WIA section 147(a)(2)(B), that must be included in center requests for proposals. These criteria include an assessment of providers' past performance, their ability to coordinate Job Corps center activities with State and local activities (including One-Stop centers), and their ability to provide vocational training that reflects employment opportunities in areas where students will seek jobs. Several commenters recommended adding a fifth criterion category to § 670.310(c) that would require that criteria for selection of center operators include the degree to which the entity would provide access to non-traditional jobs and career paths for women and girls.

Response: Each Job Corps center must offer training in occupational areas which will enable all students—male and female—to get jobs in their home communities after completing the program. In selecting their occupational training, students go through an occupational exploration program which provides exposure to all types of training offered by the center as well as information on training requirements, qualifications for job entry and average wages for each occupational area. Existing regulatory language and policies regarding student services require that young women be provided access to occupational training, including training in non-traditional occupations. Accordingly, we have not revised § 670.310.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Subpart D describes who is eligible for Job Corps under WIA and provides additional factors which must be considered in selecting an eligible applicant for enrollment. This subpart also discusses who will conduct outreach and admissions activities for the Job Corps, and the responsibilities of those organizations. Section 670.450(a) describes the new requirements of section 145(c) of WIA for an assignment plan for Job Corps centers. Assignment plans will be developed and used to establish a target for each Job Corps center for the percentage of students enrolled who will come from the State or Department of Labor region in which the center is located, and the regions surrounding the center. In addition, § 670.450(b) and (c) addresses the requirement of section 145(d) of the Act which requires that students be assigned to the center closest to their homes, with consideration given to the special needs of applicants or their parents or guardians, as listed in the regulation, when making assignments. Section 670.490 provides authorization for extensions of enrollment of students for up to one year in special cases, such as when additional time is required for a student to complete an advanced program or to reasonably accommodate a student's disability.

Several commenters supported the regulatory exclusion in § 670.400 of an upper age limit for an otherwise Job Corps eligible individual with a disability. Several other commenters noted that parenting and child care responsibility in the Job Corps program are mentioned in §§ 670.400 (eligibility), 670.410(c) (factors for selection of applicants for enrollment), 670.460 (nonresidential enrollment), and 670.550 (center responsibility to assist students with child care needs), and suggested that the regulations be clarified to require contractors to provide on-site or nearby child care for students.

Response: WIA section 148(e) requires that ''The Secretary shall, to the extent practicable, provide child care at or near Job Corps centers, for individuals who require child care for their children in order to participate in Job Corps.'' In response to Congressional reports accompanying recent appropriations, some Job Corps centers now have on-site child care programs operated by other Federally-funded initiatives such as Head Start. However, provision of child care at or near all Job Corps centers is not always feasible due to

space, center size and other factors such as their remote or rural location. Where Job Corps centers do not have on-site child care, Job Corps admissions counselors and center staff must work with students to assist them in making off-center arrangements to make sure their children are properly cared for during the time they are enrolled in the program. Accordingly, these sections have not been revised.

Subpart E—Program Activities and Center Operations

Program Activities

Subpart E describes the services and types of training each Job Corps center must provide, as well as center responsibilities in the administration of work-based learning. This subpart also describes the residential support services Job Corps centers must provide, and centers' responsibility for student accountability. Under § 670.520, required residential support services include providing a safe, secure environment, an ongoing counseling program, food service, access to medical care, recreation, leadership programs for students and a student welfare association. In addition, centers must account for the whereabouts, participation, and status of students while they are enrolled in Job Corps.

Section 670.555 discusses religious rights of students. Based on comments received, § 670.555 has been revised to clarify that students may file a complaint under the procedures set forth in 29 CFR part 37 if they believe their religious rights have been violated.

Behavior Management and Zero Tolerance for Violence and Drugs

Subpart E establishes requirements for Job Corps centers to have student behavior management systems. Section 670.540 describes Job Corps' zero tolerance policy for violence, drugs, and unauthorized goods. The regulatory language in this section continues current requirements for automatic dismissal of students who commit specific offenses (the one strike and you're out policy) specified in the Policy and Requirements Handbook (PRH) in Job Corps' zero tolerance policy. The Secretary will issue procedures which continue this practice. Section 670.540(b) also addresses the requirements of section 145(a)(2) of the Act for drug testing of all students. Section 670.545 of this subpart also contains requirements to ensure that students are provided due process in disciplinary actions. This process includes center fact-finding and behavior review boards, notification of potential penalties and appeal procedures, including going to a regional appeal board.

Experimental, Research, and Demonstration Projects

Subpart E section 670.560 also addresses the authorization, provided in section 156 of the Act, for experimental, research and demonstration projects related to the Job Corps program.

Subpart F—Student Support

Subpart F includes authorization of leave for students from center activities, and provisions of cash allowances, bonuses and clothing for students. In addition to being eligible to receive transportation, students are eligible for other benefits, including basic living allowances to cover personal expenses, such as toiletries, snacks, etc., in accordance with guidance issued by the Secretary. The allowance and bonus system is structured to provide incentives for specific accomplishments of students, such as vocational completion. Students are also provided with a modest clothing allowance to enable them to obtain clothes that are appropriate for class and for the workplace.

Subpart G—Placement and Continued Services

Placement Services

Subpart G discusses placement services for graduates of the Job Corps program in accordance with section 149 of the Act. The regulations focus on graduates, which is a significant change from previous Job Corps policy and practice, since placement services have traditionally been provided for all students who leave Job Corps, no matter how long they were enrolled or how much of the program they completed. The regulatory language in subpart G is substantially different from the language in the JTPA Job Corps regulations in order to reflect this new emphasis on providers of services to graduates. This subpart also discusses who provides placement services, and the responsibilities of Job Corps placement agencies in placing graduates in jobs.

The authority provided in section 149(d) of the Act, to allow for placement of former students (non-graduates), is reflected in §§ 670.710 and 670.720; however, placement services are not required for anyone other than graduates. Implementation of new requirements for provision of 12 months of continued services for graduates and for 6 and 12 month follow-up tracking of graduates placed in jobs (§ 670.980 (a)(4) and (a)(5)) will require a realignment of existing financial resources to support these new initiatives. The ability to provide placement services for former students in addition to the required placement services for graduates will be contingent on having the funding resources to do so. We anticipate that some funds used in the past to provide placement services for all former enrollees will have to be realigned to support the new required services for graduates, therefore, it is likely that the level of placement services for graduates and for former enrollees will differ.

Continued Services for Graduates

Subpart G discusses section 148(d) of the Act, which requires provision of 12 months of continued service for graduates. Sections 670.740 and 670.750 discuss this requirement and who may provide those services. Provision of 12 months of continued services is a new requirement, which requires a new level of effort for Job Corps service providers. As discussed above, this will likely divert some funding resources which have been used in the past for provision of placement services for all students. As we implement the new requirement for 12 months of continued services for graduates, we will use various approaches in order to learn what these services should consist of and how best to procure and provide them. We anticipate that provision of continued services for graduates may be handled by placement and support contractors, by Job Corps centers, and/or by One-Stops.

Subpart H—Community Connections

Subpart H describes new requirements for Job Corps representatives to serve on local youth councils, as provided for in section 117(h) of the Act, as well as for center business and community liaisons, and for center industry councils, as provided for in WIA sections 153 and 154, respectively. Section 670.800(f) describes the role and responsibilities of center industry councils, as prescribed in section 154(c) of the Act, to analyze labor market information and identify job opportunities in areas where students will seek employment and the skills needed for those jobs, and to recommend changes in center vocational training offerings as appropriate. The intent of this subpart is to provide regulatory language to tie Job Corps centers more closely to their local communities and local employers to ensure that the vocational and other training students receive will enable them to obtain meaningful jobs in their home communities upon graduation.

Subpart I—Administrative and Management Provisions

Student Benefits and Protections

Subpart I provides requirements relating to Tort Claims (§§ 670.900 and .905), Federal Employees Compensation Act (FECA) benefits for students (§§ 670.910 through 930), safety and health (§ 670.935), and law enforcement jurisdiction on Job Corps center property (§ 670.940).

Financial and Audit Responsibilities

Subpart I also discusses financial management responsibilities of Job Corps center operators and other Job Corps service providers, as well as Federal audit requirements.

Program Accountability and Performance Indicators

Subpart I also incorporates specific requirements relating to performance assessment and accountability contained in section 159(c) of the Act, as well as requirements for performance improvement plans, as provided for in WIA section 159(f)(2), for Job Corps center operators or other service providers who fail to meet expected levels of performance. Sections 670.975 and 670.980 describe how performance of the Job Corps program will be assessed and the required indicators of performance. Indicators of performance include: placement rates of graduates in jobs, including jobs related to vocational training received; average wage at placement at six months and twelve months after job entry; retention in employment six and twelve months after job entry; the number of graduates who achieved job readiness and employment skills; and the number who entered postsecondary or advanced training programs.

Disclosure of Information and Resolution of Complaints

Subpart I includes requirements relating to student records and disclosure of information about Job Corps students. It also contains the procedures that center operators and service providers must follow when resolving complaints and disputes of students and other parties.

Part 671—National Emergency Grants for Dislocated Workers

Introduction

Section 170 of WIA provides for technical assistance, and section 171 provides for demonstration, pilot, multiservice, research and multistate projects. Although we have not regulated on these sections, it is again important to note these activities for the general workforce investment system.

Section 170(a) provides that the Secretary will provide, coordinate and support the development of training, technical assistance, staff development and other activities to States and localities, and in particular, assist States in making transitions from carrying out JTPA to carrying out activities under title I of WIA.

Section 170(b) provides that a portion of the funds reserved by the Secretary under WIA section 132(a)(2) be used to: (1) Assist States that do not meet the State performance measures for dislocated workers; (2) assist other States, local areas and other entities involved in providing assistance for dislocated workers and promote continuous improvement to dislocated workers under title I of WIA; or (3) assist staff who provide rapid response services, including training of those staff in proven methods of promoting, establishing and assisting labor-management or transition committees to plan for effective adjustment assistance for workers impacted by dislocation events.

Section 171(a), (b) and (c) of WIA describe employment and training projects which may be funded, as well as the processes for such funding. Section 171(d) provides for dislocated worker demonstration projects and pilot projects, multiservice and multistate projects. The purpose of dislocated worker demonstration projects is to test innovative approaches that address priorities established by the Secretary, are consistent with the goals described in WIA, and subsequently may prove beneficial in providing adjustment assistance to larger dislocated worker populations. Generally, projects will be funded as a result of competitive solicitations published in the **Federal Register**, however, the Secretary may negotiate and fund projects other than through such solicitations.

Part 671 describes the availability of a portion of the funds reserved by the Secretary under WIA section 132(a)(2)(A) for assistance to dislocated workers.

National Emergency Grants

Part 671 contains limited regulations about dislocated worker funds reserved for national emergency grants. Section 173 of WIA authorizes the Secretary to award discretionary funds to serve dislocated workers in certain situations. These regulations describe circumstances under which funds may be available, including to provide employment and training assistance to workers affected by major economic dislocations (such as plant closures, mass layoffs, closures or realignments of military installations, dislocations due to federal policies, etc.); and to provide assistance to Governors of States when FEMA has determined that a major disaster, as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 (1) and (2)), has occurred in the area.

These regulations emphasize the importance of rapid response assistance for the development of requests for national emergency funds. We set a high priority on the early collection of information about workers being laid off, so that requests for funds will be made promptly when it is determined that there are insufficient State and local formula funds available to meet the needs of workers being laid off. This process ensures that there are funds available in the local area when the workers first need the assistance. Early intervention to assist workers being dislocated is critical to enable them to find or qualify for new jobs as soon as possible after the dislocation occurs. While these regulations highlight some of the key elements and requirements for applying for national emergency funds, guidelines to apply for national emergency funds will be published separately in the **Federal Register**.

We received several comments on § 671.120, including requests that we add language to allow labor organizations the opportunity to comment on and grieve decisions regarding eligible applications to the Department, and that we add language that cites labor organizations as an example of an organization with unique capabilities to respond to a dislocation.

Response: WIA provides for labor organization membership on both State and Local Boards. In addition, labor organizations are represented on labor-management committees, where such committees are formed. These boards and committees would be involved in the development and review of National Emergency Grant requests and, therefore, labor organizations, as well as other interested parties, should have sufficient opportunity to comment on applications through those roles. While we agree that labor organizations are often valuable partners in, or operators of, dislocated worker programs, we have not granted the request to specifically name them in the regulations. Employers and other organizations may also be excellent partners or operators. To list one group to the exclusion of others could be considered unfair. Section 671.120(b) and (c), identifying ''other private entities'' and ''other entities,'' respectively, as potential

eligible applicants for National Emergency Grants are sufficiently inclusive of a wide variety of organizations, including labor organizations.

Section 671.140(c)(1) describes the deadline for a National Emergency Grant participant to be enrolled in training to be eligible for needs-related payments under the grant. The current deadline is by the end of the 6th week following the date of grant award. Comments focused on extending this deadline. The commenters viewed the time frame as overly restrictive, given the new requirements under WIA, such as receipt of core and intensive services and the use of ITA's.

Response: This provision is based on prior years' JTPA appropriations language, and is included to give States additional flexibility, beyond the 13/8 week enrollment in training requirement at WIA section 134(e)(3)(B), in the event that there is a lack of formula or emergency grant funds in the State or local area at the time of the dislocation. We have not granted the request to extend the deadline, as this deadline is only to prevent a participant from losing their eligibility for needs-related payments because funds are not available in the State or local area to enroll the participant in training by the 13/8 week deadline. We have, however, revised the regulations to include other exceptions ''as described in the National Emergency Grant application guidelines''. Early intervention is critical in getting workers back to work quickly, potential grant participants should be receiving core and intensive services while a National Emergency Grant application is being developed and reviewed, then enrolled in training once the grant funds become available. While 20 CFR 663.160 and 663.240 require that an individual receive at least one core and one intensive service, respectively; 20 CFR 663.165 and 663.250 provide that there is no minimum time period in which an individual must participate in core services before receiving intensive services, nor in intensive services before moving to training services, that would hinder a grant participants from meeting the six week time frame.

Part 652—Establishment and Functioning of State Employment Services

Introduction

In amending the Wagner-Peyser Act in title III of the Workforce Investment Act (WIA) of 1998, Congress intended to encourage coordination in the planning and delivery of Wagner-Peyser Act and WIA title I services, while retaining State agency administration of a separate Wagner-Peyser Act program and funding stream for the delivery of services in a One-Stop environment. The amendments to the Wagner-Peyser Act require the State agency to provide labor exchange services delivered by State merit-staff employees as part of a One-Stop delivery system, and to ensure that the delivery of services funded under the Wagner-Peyser Act is coordinated with other One-Stop partner programs in accordance with a five-year strategic plan.

Subpart A—Employment Service Operations

The rules governing the operation of the basic labor exchange program have been located in 20 CFR part 652, subpart A for many years and are well known to State agencies administering the Wagner-Peyser Act. The rules governing Wagner-Peyser Act services in a One-Stop delivery system environment, as required by WIA, are contained in subpart C of 20 CFR part 652.

The final regulations at part 652 subpart A contain revisions that update definitions and update references in administrative provisions.

Under the authority of the Wagner-Peyser Act, the Governor is required to designate a State agency to administer funds authorized under the Wagner-Peyser Act and to provide labor exchange services to employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and persons with disabilities.

We received no written comments about the Interim Final Rule's changes to subpart A. However, we have made some technical changes to conform the regulations to WIA requirements. The words ''Planning and'' are removed from the heading of subpart A to reflect the previous removal of §§ 652.6 and 652.7 that discussed planning. Regulations for State plans are now located in subpart C at §§ 652.211 through 652.214. The definition of State Job Training Coordinating Council (SJTCC), at § 652.1, is removed. Citation errors are corrected in the revision to § 652.5.

Technical changes to § 652.8, Administrative Provisions, consist of revised references to specified federal regulations and OMB Circular A–87 (Revised). We have made a technical change to § 652.8(j)(1), to clarify that Wagner-Peyser Act grantees are required to comply with all applicable Federal nondiscrimination laws, including laws prohibiting discrimination on the basis of the factors specified in the regulation. As it is used in the WIA regulations, the term ''including'' in this provision is used to indicate an illustrative, but not exhaustive list of examples. Additionally, the term ''handicap'' has been changed to ''disability'' to correspond to the phrase normally used in laws prohibiting discrimination on the basis of handicap or disability.

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

Part 652, subpart C, describes requirements for the establishment and functioning of State Wagner-Peyser Act services in a One-Stop delivery system environment. Governors must designate a State agency responsible for administering Wagner-Peyser Act funds as a distinct funding source. The rule requires that the State agency retain responsibility for, and oversight of, all Wagner-Peyser Act labor exchange services provided through the One-Stop delivery system.

Employment Services in the One-Stop Delivery System

Funds allocated to States under section 7(a) of the Wagner-Peyser Act must be used by the State agency to provide the three methods of labor exchange services (self-service, facilitated self-help service, and staff-assisted service) in at least one comprehensive physical center in each local workforce investment area during normal and customary hours of operation, and in accordance with a local Memorandum of Understanding (MOU). Within the local area, there also may be affiliated sites, as described in § 652.202(b), that provide the labor exchange services described at section 7(a) of the Wagner-Peyser Act. In accordance with the local MOU, and, consistent with State and Local Plans, these affiliated sites should be an important part of the State's network of local sites that provide job seekers and employers multiple access points to One-Stop partners' services through the One-Stop delivery system. We have revised §§ 652.202 and 652.207 to add the word ''comprehensive'' which was omitted in error in the Interim Final Rule. To ensure coordination of service delivery with title I of WIA, we have revised § 652.202(b)(1) to reference § 652.207(b). For the same reason, we have revised § 652.202(b)(2) to reference 20 CFR 662.100. Finally, we emphasize that Wagner-Peyser Act funded services must be available to and accessible by individuals with disabilities.

Wagner-Peyser Act Funds

We received comments about funds authorized under section 7 of the Wagner-Peyser Act. One commenter expressed concern that § 652.205 had given State legislatures the authority to distribute funds under section 7(c) of the Wagner-Peyser Act.

Response: Under section 4 of the Wagner-Peyser Act, the Governor is required to designate or authorize the creation of a State agency responsible for cooperating with the Secretary under the Wagner-Peyser Act. The State agency, under the direction of the Governor, is responsible for the distribution and oversight of all authorized funds under section 7 of the Wagner-Peyser Act, as described in § 652.203. Section 7(c) of the Wagner-Peyser Act does not authorize State legislatures to distribute Wagner-Peyser Act funds. Thus, no change needs to be made to § 652.205. While the State legislature may not distribute the funds, it may have the authority to set priorities for the uses of Wagner-Peyser funds.

Another commenter suggested that § 652.206 clearly indicate the limitations on the use of funds under section 7(b) of the Wagner-Peyser Act.

Response: Since § 652.204 references the specific activities authorized for funds reserved by the Governor under section 7(b), no change has been made to § 652.206.

Wagner-Peyser Act Services

Wagner-Peyser Act funds must be used to provide core services and may be used to provide applicable intensive services, as defined in title I of WIA. One commenter asked that core and intensive services be defined in the regulations and asked how it would be determined whether to provide intensive services.

Response: Section 652.206 contains cross-references to the definitions of core and intensive services, which are found on 20 CFR 663.150 and 663.200. The regulations allow the State agency discretion in providing required core and applicable intensive Wagner-Peyser Act services under section 7(a) of the Wagner-Peyser Act. Applicable intensive services include services such as individual and group counseling, job search and placement assistance, staff-assisted referrals to jobs, and staff-assisted employer services. These services must be provided consistent with the needs of job seekers and employers, in accordance with a local MOU. State agencies must ensure the availability of an appropriate mix of services, ranging from electronic self-services to staff-assisted services, in their One-Stop delivery systems. No change has been made to § 652.206.

Two commenters suggested that Wagner-Peyser Act resources should be used solely, or to the greatest extent possible, to provide the core services delivered through the One-Stop delivery system.

Response: The rule, at 20 CFR 662.250, discusses the requirements to provide core services funded under other One-Stop partner programs. However, both the Wagner-Peyser Act and § 652.206 permit the expenditure of Wagner-Peyser Act funds on applicable intensive services as well. Funding of core services authorized and traditionally provided by the Wagner-Peyser program and other One-Stop partner programs should be determined by the local MOU. No change has been made to the regulations.

Services to UI Claimants

One commenter suggested that the term ''other activities'' referred to at section 3(c)(3) of the Wagner-Peyser Act, be specified in the regulations.

Response: We agree with the commenter and have revised § 652.209 to specify what are considered ''other activities.'' These ''other activities'' are: (1) coordination of labor exchange services with the provision of UI eligibility services as required by section 5(b)(2) of the Wagner-Peyser Act; and (2) administration of the work test and provision of job finding and placement services as required by section 7(a)(3)(F) of the Wagner-Peyser Act.

The commenter also expressed concern about the availability of Wagner-Peyser Act funds to provide reemployment services to UI claimants who are required to participate in reemployment services as a condition for receipt of benefits.

Response: Section 652.209 requires the provision of Wagner-Peyser Act reemployment services to those UI claimants required by Federal or State law to participate in reemployment services as a condition for receipt of UI benefits, to the extent that funds are available. An individual's requirement to participate in reemployment services also may be met through the provision of services funded through sources other than the Wagner-Peyser Act. States have discretion in determining the sources of funding for services to these claimants. Moreover, UI claimants who are not required to participate in reemployment services as a condition for receipt of UI benefits, also may request reemployment services provided under § 652.210.

State Planning Requirements

One commenter identified the need to make clear that the detailed Wagner-Peyser Act plan is part of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and the Wagner-Peyser Act submitted by the Governor in accordance with WIA regulations at 20 CFR 661.220.

Response: We have made a technical change to § 652.211 to indicate that the State agency must prepare that portion of the Strategic Five-Year Plan for Title I of the Workforce Investment Act and Wagner-Peyser Act describing the delivery of services provided under the Wagner-Peyser Act. Further, to correct an editorial error in § 652.214, the requirement on modifications to the State Plan to adjust service strategies if performance goals are not met has been moved to the list of requirements in § 652.212(b).

Delivery of Wagner-Peyser Act Services by State Merit-Staff Employees

We received several comments about the Secretary's authority under sections 3(a) and 5(b) of the Wagner-Peyser Act to require the delivery of labor exchange services by merit-staff employees. Section 652.215 of the final regulations reflects the Department's authority under the Wagner-Peyser Act, affirmed in *State of Michigan* v. *Alexis M. Herman,* 81 F.Supp. 2d 840 (W.D. Mich. 1998), to require that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by State merit-staff employees.

Two commenters suggested that § 652.215 be clarified to stipulate that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Three commenters suggested that the interpretation of the merit-staffing requirement be broadened specifically to include units of general local government.

Response: After carefully examining and considering all of the comments received, we have revised § 652.215 to make clear that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for

receipt of grants. We have determined that State agency merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, prior to issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services utilizing non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options utilizing non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. Therefore, the Department is not authorizing other States to demonstrate Wagner-Peyser Act service delivery using non-State agency employees. Failure to comply with the State merit staffing requirements of § 652.215 may result in revocation of authority to draw down Wagner-Peyser Act funds, disallowance of costs, and/or decertification of a State to receive Wagner-Peyser Act funds.

One commenter suggested that the Department develop federal procedures to ensure compliance with State merit-staffing requirements.

Response: We believe that State merit-staffing compliance is ensured through the final regulations at 20 CFR part 652 and the federal review guidelines contained in the *Wagner-Peyser Act Review Guide for Basic Labor Exchange Services* (ETA Field Memorandum No. 14–99, January 12, 1999). Thus, at this time, we do not believe there is a need to issue further guidance.

Guidance by the One-Stop Operator

One commenter suggested that the provision in § 652.216 which limits the ability of a One-Stop operator, other than the State agency, to provide only guidance to State agency merit-staff employees is contrary to the concept of service integration by preventing the operator from providing supervision to all employees in the One-Stop center. Other commenters recommended that the regulations remain silent on the issue of guidance. Another suggestion was that labor unions, whose members and/or bargaining agreements are affected by the terms of a local MOU that defines ''guidance,'' must provide written concurrence.

Response: The focus of these comments was on whether the word ''guidance'' in § 652.216 gives the One-Stop operator too little or too much control over State agency employees. After careful consideration of the comments, we are retaining the term ''guidance'' to describe the level of supervision of State merit-staff employees by the One-Stop operator. This term best reflects the appropriate relationship that should exist between a non-State agency One-Stop operator and State merit-staff employees funded under the Wagner-Peyser Act in the day-to-day operation of the One-Stop center. To ensure consistency with collective bargaining agreements, we have revised § 652.216 to allow the One-Stop operator to provide guidance to merit-staff employees of the State agency consistent with the provisions of the Wagner-Peyser Act, the local MOU, and applicable collective bargaining agreements.

Finally, a commenter indicated that the wording regarding delegation to ''any other public agency'' contained in the parenthetical phrase in § 652.216 of the Interim Final Rule may appear to be contradictory.

Response: We agree that the parenthetical phrase is unnecessary since the State agency is solely responsible for personnel matters pertaining to merit-staff employees of the State agency funded by the Act. Thus, the parenthetical phrase is removed.

Additional Comments

We received a number of comments that did not pertain directly to 20 CFR part 652 subpart A or C, but which did refer to the Wagner-Peyser Act. One was a question of whether priority of service to veterans under the Wagner-Peyser Act has been maintained.

Response: The rule, at 20 CFR 652, Subpart B—Services to Veterans is retained. Subpart B refers to 20 CFR part 1001 which contains criteria for priority of service to veterans under the Wagner-Peyser Act.

Another commenter asked whether the current migrant and seasonal farmworkers' regulations for the Employment Service remain in effect.

Response: The requirements for services to migrant and seasonal farmworkers and other requirements pertaining to the administration of Wagner-Peyser Act services at 20 CFR parts 653 and 658 remain in effect.

A commenter expressed concern about the lack of a limit on administrative costs for Wagner-Peyser Act services as well as the lack of a requirement to track the income of job seekers.

Response: The WIA amendments to the Wagner-Peyser Act did not include a limitation on administrative costs or a requirement to track the income of job seekers. The Employment Service system created by the Wagner-Peyser Act has always been universally available to all job seekers regardless of income. Nothing in WIA has changed this requirement. Thus, we can see no need to track job seekers' income. We intend, however, to develop a system of performance measures for Wagner-Peyser funded labor exchange services and will soon publish for comment a proposal describing such measures.

III. Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. ''Small entities'' are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this Final Rule by consulting with a wide range of small entities, in order to identify and address any areas of concern. Based on that assessment, we certify that the Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities. We are transmitting a copy our certification to the Chief Counsel for Advocacy of the Small Business Administration.

The WIA Final Rule implements major reforms to the nation's job training system. The WIA will provide resources to States, localities, and other entities, including small entities, to assist youth, adults, and dislocated workers in preparing for, obtaining and retaining employment. This Rule sets forth the rights, responsibilities and conditions under which State and local governments may receive grants to operate programs in local workforce investment areas with these funds. Governments in local workforce investment areas are not small governmental entities. These areas generally have a population of at least 500,000 and are intended to replace existing service areas under the Job Training Partnership Act (JTPA) which generally have a population of at least 200,000. Consequently, we do not

foresee an adverse impact on small governmental entities. Nevertheless, we have consulted extensively with State and local officials and their representatives to insure that any potential effect would be minimal. These consultations included two week-long conferences in which State and local governmental participants worked in groups divided by specialized area of interest, and the participation of State and local governmental officials under the Intergovernmental Personnel Act.

As during the development of the Interim Final Rule, we also provided a number of opportunities, through a variety of media, for the input of small businesses, non-profits and any other interested parties. These opportunities included town hall meetings spanning the nation in eleven locations, and an interactive web site providing ETA policy and responses to questions from the public. Additionally, in order to solicit comments from the widest possible audience, we broadly disseminated our developing policies through the publication of consultation documents which were available on the Internet, published in the **Federal Register** and distributed throughout the employment and training community. These documents were published before all the issues had been fully resolved so that stakeholders could truly have a voice in the policy making process. In addition to the Interim Final Rule, which was posted on our web site in addition to being published in the **Federal Register**, we also used the Internet to publish guidance about policy issues and to engage the system in discussions around those issues.

The Final Rule provides significant flexibility to States and local governments to design programs and to determine policy and spending priorities for the use of WIA grant funds. This policy-making flexibility is embodied in 20 CFR 661.120. The Rule provides States and local governments with additional flexibility to design systems that meet the specific needs of each State and local area through the general and work-flex waiver provisions at 20 CFR 661.410 and 661.430. We have taken steps to further ameliorate any potential burdens through 20 CFR 667.210 of the Final Rule, which provides that States and localities may use a portion of their grant funds (up to five percent at the State level and up to ten percent at the local level) for management and administration of the grant, rather than for the direct provision of services to participants. Because the WIA statutory limit on administrative costs is lower than the existing JTPA limit, we extensively consulted with States and localities about the regulatory definition of these administrative costs to ensure that this cost category is defined as flexibly as possible. We also initiated a pilot study of ten JTPA service delivery areas (SDA's), to assess the Interim Final Rule's definition of administrative costs. As a result of those consultations and our study, we made significant adjustments to the definition of administrative costs in the Final Rule in order to take account of the practical realities of implementing and maintaining this new system.

A portion of WIA funds is available to certain communities in direct grants from the Department. We have consulted with representatives of the migrant and seasonal farm worker community, and Indian and Native American tribal governments to minimize any burdens that provisions of the Rule would have on those communities. The Rule also provides limited authority to these grantees to receive waivers of certain provisions of the Rule, to lessen any burden on these communities.

To further ameliorate any burden on WIA direct grantees, the Rule permits direct grantees to use a portion of WIA funds for administrative costs expenditure. Unlike formula funds, the administrative cost limit for direct grantees is not specified in the Rule but will be negotiated in the grant agreement to take into account individual circumstances. Due to some confusion, new regulatory provisions have been added to expressly state this. Similarly, the period of availability for expenditure of grant funds is established in the grant agreement rather than set by Rule to take into account individual circumstances. Based on provisions such as these, we have concluded that the Rule will not place undue burdens on small entities. In addition, under the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), we have determined that this Final Rule is not a ''major rule,'' as defined in 5 U.S.C. 804(2). We certify that this Final Rule has been assessed in accordance with Pub. L. 105–227, 112 Stat. 2681, for its effect on family well-being.

IV. Executive Order 12866

Under Executive Order 12866, we have evaluated this Final Rule and have determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required by statute to prescribe regulations for the WIA program. We have made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, Intergovernmental Organizations, other stakeholders, and the general public). The WIA grants increase the resources available to the public and private organizations that promote long-term employment and self-sufficiency. We have determined the Final Rule will not have an adverse effect in a material way on the nation's economy.

We have developed the Final Rule in close consultation with the Department of Education, and with other interested Federal agencies. Based on those consultations, we have determined that this Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another Federal Agency.

This Final Rule implements the Workforce Investment Act, which is the first major reform of the nation's job training and employment system in over 15 years. Consequently, this Final Rule raises novel policy issues. Therefore, this is a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

V. Unfunded Mandates

The Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

We have determined that the WIA Final Rule will not mandate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and

advising any significant or uniquely impacted small government.

VI. Executive Order 12988

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation 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.

VII. Executive Order 13132

Federalism Impact Statement

There are some federalism implications in this rule, for example, the regulations implementing sections 3(a) and 5(b) of the Wagner-Peyser Act may have a direct effect on the States' personnel management policies. Specifically, 20 CFR 652.215 and 652.216, reiterate, in regulation, the long-standing policy of requiring that the delivery of Wagner-Peyser Act labor exchange services be provided by State merit staff employees in the context of the One-Stop delivery system. Since the implementation of the Wagner-Peyser Act of 1933, there has been an uninterrupted application of this requirement as a condition imposed upon States for receipt of grants for the administration of Wagner-Peyser Act services. The requirement that job finding, placement, and reemployment services funded under the Wagner-Peyser Act, including services to veterans, be delivered by merit-staff employees was affirmed by the Federal District Court in *Michigan* v. *Alexis M. Herman*, 81 F.Supp. 2d 840 (W.D. Mich. 1998).

Throughout the development of the Interim Final Rule and the Final Rule, we participated in numerous consultations with State and local officials, including organizations representing elected officials, about these particular provisions as well as the regulations in general. These consultations began with the development of the Interim Final Rule before the issuance of Executive Order 13132 and continued throughout the rulemaking process. The groups consulted included the National Governors Association, the U.S. Conference of Mayors, the National Association of State Legislators, the Interstate Conference of Employment Security Agencies, the National Association of Counties, the National League of Cities, and the U.S. Conference of Black Mayors. Perhaps because 20 CFR 652.215 and 652.216 merely reiterate the long-standing policy of the Department, State and local government officials and representatives did not raise any concerns with this on-going policy. During these consultations we did receive questions regarding the scope and duration of the three demonstrations authorized by the Secretary, to which we promptly responded. Although not from State and local government officials, we did receive some written comments on these provisions. These are discussed and responded to in detail in the preamble section on part 652.

After consulting with the groups specified above, and carefully examining and considering all of the concerns raised, we have revised 20 CFR 652.215 to more clearly state our long-standing policy position that Wagner-Peyser Act services must be delivered by merit-staff employees of a State agency. Since the beginning of the Federal-State Wagner-Peyser Act program, we have required that annual State Wagner-Peyser Act service plans include a merit system of personnel administration. To ensure consistency in the application of merit personnel systems and to promote greater statewide administrative efficiency, merit-staff employees of the State agency must deliver Wagner-Peyser Act services, as a condition for receipt of grants. Under 20 CFR 652.216 non-merit staff employees are not prohibited from providing guidance to merit staff employees. We have determined that State merit-staffing preserves and maintains competence, impartiality, and nonpartisanship in the administration of Wagner-Peyser Act services to job seekers and employers as part of the One-Stop delivery system.

Under section 3(a) of the Wagner-Peyser Act, before issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services using non-State agency employees in the States of Colorado, Massachusetts, and Michigan. These three demonstrations were permitted as exceptions to the long-standing policy described above in order to assess the effectiveness of alternative delivery systems. We have determined that these three demonstrations reflect a sufficient range of delivery options using non-State agency employees to determine whether using such employees is an effective and efficient way to deliver Wagner-Peyser services. No additional demonstrations will be authorized.

We, therefore, have promulgated these regulations only after extensive consultations as well as initiating actual demonstrations in three States.

VIII. Effective Date

WIA became effective upon the date of enactment, August 7, 1998. We determined, in accordance with 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations within 180 days of the enactment of the statute constituted good cause for waiving notice and comment proceeding in order for the timely issuance of regulations to assist States in operating under WIA as early as possible. Congress also recognized this urgency in section 506(c) of the Act, by specifically authorizing the issuance of an Interim Final Rule. The Interim Final Rule set a comment period to elicit any concerns raised by the rule for consideration in the development of this Final Rule. We provided a comment period of 90 days to provide a significant period for public input into any revisions to part 652, and parts 660 through 671 for the Final Rule. We fully reviewed all comments received, and considered the input provided by our State, local and Federal partners through our many consultations. This Final Rule will become effective on September 11, 2000.

IX. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.255.

List of Subjects in 20 CFR Parts 652 and 660 through 671

Employment, Grant programs, Job training programs, Labor.

Signed at Washington, DC, this 24th day of July, 2000.

Alexis M. Herman,

Secretary of Labor.

For the reasons stated in the preamble, 20 CFR Chapter V is amended as follows:

1. Parts 660 through 671 are revised to read as follows:

PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

660.100 What is the purpose of title I of the Workforce Investment Act of 1998?
660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?
660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)

§ 660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

The regulations found in 20 CFR parts 660 through 671 set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIA. This part 660 describes the purpose of that Act, explains the format of these regulations and sets forth definitions for terms that apply to each part. Part 661 contains regulations relating to Statewide and local governance of the workforce investment system. Part 662 describes the One-Stop system and the roles of One-Stop partners. Part 663 sets forth requirements applicable to WIA title I programs serving adults and dislocated workers. Part 664 sets forth requirements applicable to WIA title I programs serving youth. Part 665 contains regulations relating to Statewide activities. Part 666 describes the WIA title I performance accountability system. Part 667 sets forth the administrative requirements applicable to programs funded under WIA title I. Parts 668 and 669 contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 670 and 671 describe the particular requirements applicable to the Job Corps and other national programs, respectively. In addition, part 652 describes the establishment and functioning of State Employment Services under the Wagner-Peyser Act, and 29 CFR part 37 contains the Department's nondiscrimination regulations implementing WIA section 188.

§ 660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

In addition to the definitions set forth at WIA section 101, the following definitions apply to the regulations in 20 CFR parts 660 through 671:

Department or DOL means the U.S. Department of Labor, including its agencies and organizational units.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State under WIA section 116(c), or a similar interstate region that is designated by two or more States under WIA section 116(c)(4).

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker.

EO data means data on race and ethnicity, age, sex, and disability required by 29 CFR part 37 of the DOL regulations implementing section 188 of WIA, governing nondiscrimination.

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

Grant means an award of WIA financial assistance by the U.S. Department of Labor to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the Department of Labor. A grantee may also be referred to as a recipient.

Individual with a disability means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). For purposes of WIA section 188, this term is defined at 29 CFR 37.4.

Labor Federation means an alliance of two or more organized labor unions for the purpose of mutual support and action.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local Board means a Local Workforce Investment Board established under WIA section 117, to set policy for the local workforce investment system.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period. For purposes of the reallotment process described at 20 CFR 667.150, the Secretary also treats as State obligations any amounts allocated by the State under WIA sections 128(b) and 133(b) to a single area State or to a balance of State local area administered by a unit of the State government, and inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

Outlying area means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Participant means an individual who has registered under 20 CFR 663.105 or 664.215 and has been determined to be eligible to participate in and who is receiving services (except for follow up services) under a program authorized by WIA title I. Participation commences on the first day, following determination of eligibility, on which the individual begins receiving core, intensive, training or other services provided under WIA title I.

Recipient means an entity to which a WIA grant is awarded directly from the Department of Labor to carry out a program under title I of WIA. The State is the recipient of funds awarded under WIA sections 127(b)(1)(C)(I)(II), 132(b)(1)(B) and 132(b)(2)(B). The recipient is the entire legal entity that received the award and is legally responsible for carrying out the WIA program, even if only a particular component of the entity is designated in the grant award document.

Register means the process for collecting information to determine an individual's eligibility for services under WIA title I. Individuals may be registered in a variety ways, as described in 20 CFR 663.105 and 20 CFR 664.215.

Secretary means the Secretary of the U.S. Department of Labor.

Self certification means an individual's signed attestation that the information he/she submits to demonstrate eligibility for a program under title I of WIA is true and accurate.

State means each of the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The term ''State'' does not include outlying areas.

State Board means a State Workforce Investment Board established under WIA section 111.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money made under a grant by a grantee to an eligible subrecipient. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *Grant* in this part.

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

Unobligated balance means the portion of funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. DOL's audit requirements for States, local governments, and non-profit organizations provides guidance on distinguishing between a subrecipient and a vendor at 29 CFR 99.210.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

WIA regulations mean the regulations in 20 CFR parts 660 through 671, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIA section 188 in 29 CFR part 37.

Workforce investment activities mean the array of activities permitted under title I of WIA, which include employment and training activities for adults and dislocated workers, as described in WIA section 134, and youth activities, as described in WIA section 129.

Youth activity means a workforce investment activity that is carried out for youth.

PART 661—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE INVESTMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A —General Governance Provisions

Sec.

661.100 What is the workforce investment system?
661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?
661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

Subpart B—State Governance Provisions

661.200 What is the State Workforce Investment Board?
661.203 What is meant by the terms ''optimum policy making authority'' and ''expertise relating to [a] program, service or activity''?
661.205 What is the role of the State Board?
661.207 How does the State Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 111(g)?
661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?
661.220 What are the requirements for the submission of the State Workforce Investment Plan?
661.230 What are the requirements for modification of the State Workforce Investment Plan?
661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?
661.250 What are the requirements for designation of local workforce investment areas?
661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?
661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?
661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?
661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

Subpart C—Local Governance Provisions

661.300 What is the Local Workforce Investment Board?
661.305 What is the role of the Local Workforce Investment Board?
661.307 How does the Local Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 117(e)?
661.310 Under what conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?
661.315 Who are the required members of the Local Workforce Investment Boards?
661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?
661.320 Who must chair a Local Board?
661.325 What criteria will be used to establish the membership of the Local Board?
661.330 Under what circumstances may the State use an alternative entity as the Local Workforce Investment Board?
661.335 What is a youth council, and what is its relationship to the Local Board?
661.340 What are the responsibilities of the youth council?
661.345 What are the requirements for the submission of the local workforce investment plan?
661.350 What are the contents of the local workforce investment plan?
661.355 When must a local plan be modified?

Subpart D—Waivers and Work-Flex

661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?
661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under WIA section189(i)(4)?
661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?
661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Governance Provisions

§ 661.100 What is the workforce investment system?

Under title I of WIA, the workforce investment system provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required, in accordance with the requirements of this part, to establish a State Board; to designate local workforce investment areas; and to oversee the creation of Local Boards and One-Stop service delivery systems in the State.

§ 661.110 What is the role of the Department of Labor as the Federal governmental partner in the governance of the workforce investment system?

(a) Successful governance of the workforce investment system will be achieved through cooperation and coordination of Federal, State and local governments.

(b) The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to best achieve the

goals of WIA based on their particular needs. The WIA regulations provide the framework in which State and local officials can exercise such flexibility within the confines of the statutory requirements. Wherever possible, system features such as design options and categories of services are broadly defined, and are subject to State and local interpretation.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the Act for purposes of § 661.120.

§ 661.120 What are the roles of the local and State governmental partner in the governance of the workforce investment system?

(a) Local areas should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, Federal statutes and regulations governing One-Stop partner programs, and with State policies.

(b) States should establish policies, interpretations, guidelines and definitions to implement provisions of title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act, as well as Federal statutes and regulations governing One-Stop partner programs.

Subpart B—State Governance Provisions

§ 661.200 What is the State Workforce Investment Board?

(a) The State Board is a board established by the Governor in accordance with the requirements of WIA section 111 and this section.

(b) The membership of the State Board must meet the requirements of WIA section 111(b). The State Board must contain two or more members representing the categories described in WIA section 111(b)(1)(C)(iii)–(v), and special consideration must be given to chief executive officers of community colleges and community based organizations in the selection of members representing the entities identified in WIA section 111(b)(1)(C)(v).

(c) The Governor may appoint any other representatives or agency officials, such as agency officials responsible for economic development, child support and juvenile justice programs in the State.

(d) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(e) A majority of members of the State Board must be representatives of business. Members who represent business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policy making or hiring authority, including members of Local Boards.

(f) The Governor must appoint the business representatives from among individuals who are nominated by State business organizations and business trade associations. The Governor must appoint the labor representatives from among individuals who are nominated by State labor federations.

(g) The Governor must select a chairperson of the State Board from the business representatives on the board.

(h) The Governor may establish terms of appointment or other conditions governing appointment or membership on the State Board.

(i) For the programs and activities carried out by One-Stop partners, as described in WIA section 121(b) and 20 CFR 662.200 and 662.210, the State Board must include:

(1) The lead State agency officials with responsibility for such program, or

(2) In any case in which no lead State agency official has responsibility for such a program service, a representative in the State with expertise relating to such program, service or activity.

(3) If the director of the designated State unit, as defined in section 7(8)(B) of the Rehabilitation Act, does not represent the State Vocational Rehabilitation Services program (VR program) on the State Board, then the State must describe in its State plan how the member of the State Board representing the VR program will effectively represent the interests, needs, and priorities of the VR program and how the employment needs of individuals with disabilities in the State will be addressed.

(j) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (d) through (f) of this section, for each entity. (WIA sec. 111)

§ 661.203 What is meant by the terms ''optimum policy making authority'' and ''expertise relating to [a] program, service or activity''?

For purposes of selecting representatives to State and local workforce investment boards:

(a) A representative with ''optimum policy making authority'' is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with ''expertise relating to [a] program, service or activity'' includes a person who is an official with a One-stop partner program and a person with documented expertise relating to the One-stop partner program.

§ 661.205 What is the role of the State Board?

The State Board must assist the Governor in the:

(a) Development of the State Plan;

(b) Development and continuous improvement of a Statewide system of activities that are funded under subtitle B of title I of WIA, or carried out through the One-Stop delivery system, including—

(1) Development of linkages in order to assure coordination and nonduplication among the programs and activities carried out by One-Stop partners, including, as necessary, addressing any impasse situations in the development of the local Memorandum of Understanding; and

(2) Review of local plans;

(c) Commenting at least once annually on the measures taken under section 113(b)(14) of the Carl D. Perkins Vocational and Technical Education Act;

(d) Designation of local workforce investment areas,

(e) Development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas, as permitted under WIA sections 128(b)(3)(B) and 133(b)(3)(B);

(f) Development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State, as required under WIA section 136(b);

(g) Preparation of the annual report to the Secretary described in WIA section 136(d);

(h) Development of the Statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and

(i) Development of an application for an incentive grant under WIA section 503. (WIA sec. 111(d).)

§ 661.207 How does the State Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 111(g)?

The State Board must conduct its business in an open manner as required by WIA section 111(g), by making available to the public, on a regular basis through open meetings, information about the activities of the State Board. This includes information about the State Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the State Board.

§ 661.210 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Investment Board?

(a) The State may use any State entity that meets the requirements of WIA section 111(e) to perform the functions of the State Board.

(b) If the State uses an alternative entity, the State workforce investment plan must demonstrate that the alternative entity meets all three of the requirements of WIA section 111(e). Section 111(e) requires that such entity:

(1) Was in existence on December 31, 1997;

(2)(i) Was established under section 122 (relating to State Job Training Coordinating Councils) or title VII (relating to State Human Resource Investment Councils) of the Job Training Partnership Act (29 U.S.C.1501 *et seq.*), as in effect on December 31, 1997, or

(ii) Is substantially similar to the State Board described in WIA section 111(a), (b), and (c) and § 661.200; and

(3) Includes, at a minimum, two or more representatives of business in the State and two or more representatives of labor organizations in the State.

(c) If the alternative entity does not provide for representative membership of each of the categories of required State Board membership under WIA section 111(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce investment system. The State Board may maintain an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups.

(d) If the membership structure of the alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the State Board. In such case, the Governor must establish a new State Board which meets all of the criteria of WIA section 111(b).

(e) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members are added, or when a member is added to fill a vacancy created in an existing membership category.

(f) In 20 CFR parts 660 through 671, all references to the State Board also apply to an alternative entity used by a State.

§ 661.220 What are the requirements for the submission of the State Workforce Investment Plan?

(a) The Governor of each State must submit a State Workforce Investment Plan (State Plan) in order to be eligible to receive funding under title I of WIA and the Wagner-Peyser Act. The State Plan must outline the State's five year strategy for the workforce investment system.

(b) The State Plan must be submitted in accordance with planning guidelines issued by the Secretary of Labor. The planning guidelines set forth the information necessary to document the State's vision, goals, strategies, policies and measures for the workforce investment system (that were arrived at through the collaboration of the Governor, chief elected officials, business and other parties), as well as the information required to demonstrate compliance with WIA, and the information detailed by WIA and the WIA regulations, including 29 CFR part 37, and the Wagner-Peyser Act and the Wagner-Peyser regulations at 20 CFR part 652:

(c) The State Plan must contain a description of the State's performance accountability system, and the State performance measures in accordance with the requirements of WIA section 136 and 20 CFR part 666.

(d) The State must provide an opportunity for public comment on and input into the development of the State Plan prior to its submission. The opportunity for public comment must include an opportunity for comment by representatives of business, representatives of labor organizations, and chief elected official(s) and must be consistent with the requirement, at WIA section 111(g), that the State Board makes information regarding the State Plan and other State Board activities available to the public through regular open meetings. The State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) The Secretary reviews completed plans and must approve all plans within ninety days of their submission, unless the Secretary determines in writing that:

(1) The plan is inconsistent with the provisions of title I of WIA or the WIA regulations, including 29 CFR part 37. For example, a finding of inconsistency would be made if the Secretary and the Governor have not reached agreement on the adjusted levels of performance under WIA section 136(b)(3)(A), or there is not an effective strategy in place to ensure development of a fully operational One-Stop delivery system in the State; or

(2) The portion of the plan describing the detailed Wagner-Peyser plan does not satisfy the criteria for approval of such plans as provided in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser regulations at 20 CFR part 652.

(3) A plan which is incomplete, or which does not contain sufficient information to determine whether it is consistent with the statutory or regulatory requirements of title I of WIA or of section 8(d) of the Wagner-Peyser Act, will be considered to be inconsistent with those requirements.

§ 661.230 What are the requirements for modification of the State Workforce Investment Plan?

(a) The State may submit a modification of its workforce investment plan at any time during the five-year life of the plan.

(b) Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

(c) Modifications are required in accordance with the Wagner-Peyser provisions at 20 CFR 652.212.

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

(e) State Plan modifications will be approved by the Secretary based on the approval standard applicable to the original State Plan under § 661.220(e).

§ 661.240 How do the unified planning requirements apply to the five-year strategic WIA and Wagner-Peyser plan and to other Department of Labor plans?

(a) A State may submit to the Secretary a unified plan for any of the programs or activities described in WIA section 501(b)(2). This includes the following DOL programs and activities:

(1) The five-year strategic WIA and Wagner-Peyser plan;

(2) Trade adjustment assistance activities and NAFTA–TAA;

(3) Veterans' programs under 38 U.S.C. Chapter 41;

(4) Programs authorized under State unemployment compensation laws;

(5) Welfare-to-Work (WtW) programs; and

(6) Senior Community Service Employment Programs under title V of the Older Americans Act.

(b) For purposes of paragraph (a) of this section:

(1) A State may submit, as part of the unified plan, any plan, application form or any other similar document, that is required as a condition for the approval of Federal funding under the applicable program. These plans include such things as the WIA plan, or the WtW plan. They do not include jointly executed funding instruments, such as grant agreements, or Governor/Secretary Agreements or items such as corrective actions plans.

(2) A state may submit a unified plan meeting the requirements of the Interagency guidance entitled *State Unified Plan, Planning Guidance for State Unified Plans Under Section 501 of the Workforce Investment Act of 1998,* in lieu of completing the individual State planning guidelines of the programs covered by the unified plan.

(c) A State which submits a unified plan covering an activity or program described in subsection 501(b) of WIA that is approved under subsection 501(d) of the Act will not be required to submit any other plan or application in order to receive Federal funds to carry out the activity or program.

(d) Each portion of a unified plan submitted under paragraph (a) of this section is subject to the particular requirements of Federal law authorizing the program. All grantees are still subject to such things as reporting and record-keeping requirements, corrective action plan requirements and other generally applicable requirements.

(e) A unified plan must contain the information required by WIA section 501(c) and will be approved in accordance with the requirements of WIA section 501(d).

§ 661.250 What are the requirements for designation of local workforce investment areas?

(a) The Governor must designate local workforce investment areas in order for the State to receive funding under title I of WIA.

(b) The Governor must take into consideration the factors described in WIA section 116(a)(1)(B) in making designations of local areas. Such designation must be made in consultation with the State Board, and after consultation with chief elected officials. The Governor must also consider comments received through the public comment process described in the State workforce investment plan under § 661.220(d).

(c) The Governor may approve a request for designation as a workforce investment area from any unit of general local government, including a combination of such units, if the State Board determines that the area meets the requirements of WIA section 116(a)(1)(B) and recommends designation.

(d) The Governor of any State that was a single service delivery area State under the Job Training Partnership Act as of July 1, 1998, and only those States, may designate the State as a single local workforce investment area State. (WIA sec.116.)

§ 661.260 What are the requirements for automatic designation of workforce investment areas relating to units of local government with a population of 500,000 or more?

The requirements for automatic designation relating to units of local government with a population of 500,000 or more and to rural concentrated employment programs are contained in WIA section 116(a)(2). The Governor has authority to determine the source of population data to use in making these designations.

§ 661.270 What are the requirements for temporary and subsequent designation of workforce investment areas relating to areas that had been designated as service delivery areas under JTPA?

The requirements for temporary and subsequent designation relating to areas that had been designated as service delivery areas under JTPA are contained in WIA section 116(a)(3).

§ 661.280 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce investment area?

(a) A unit of local government (or combination of units) or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B), which has requested but has been denied its request for designation as a workforce investment area under §§ 661.260 through 661.270, may appeal the decision to the State Board, in accordance with appeal procedures established in the State Plan.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State Board does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at 20 CFR 667.640(a).

(c) The Secretary may require that the area be designated as a workforce investment area, if the Secretary determines that:

(1) The entity was not accorded procedural rights under the State appeals process; or

(2) The area meets the automatic designation requirements at WIA section 116(a)(2) or the temporary and subsequent designation requirements at WIA section 116(a)(3), as appropriate.

§ 661.290 Under what circumstances may States require Local Boards to take part in regional planning activities?

(a) The State may require Local Boards within a designated region (as defined at 20 CFR 660.300) to:

(1) Participate in a regional planning process that results in regional performance measures for workforce investment activities under title I of WIA. Regions that meet or exceed the regional performance measures may receive regional incentive grants;

(2) Share, where feasible, employment and other types of information that will assist in improving the performance of

all local areas in the designated region on local performance measures; and

(3) Coordinate the provision of WIA title I services, including supportive services such as transportation, across the boundaries of local areas within the designated region.

(b) Two or more States may designate a labor market area, economic development region, or other appropriate contiguous subarea of the States as an interstate region. In such cases, the States may jointly exercise the State's functions described in this section.

(c) Designation of intrastate regions and interstate regions and their corresponding performance measures must be described in the respective State Plan(s). For interstate regions, the roles of the respective Governors, State Boards and Local Boards must be described in the respective State Plans.

(d) Unless agreed to by all affected chief elected officials and the Governor, these regional planning activities may not substitute for or replace the requirements applicable to each local area under other provisions of the WIA. (WIA sec. 116(a).)

Subpart C—Local Governance Provisions

§ 661.300 What is the Local Workforce Investment Board?

(a) The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2).

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.

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

(d) The Local Board, in partnership with the chief elected official, develops the local workforce investment plan and performs the functions described in WIA section 117(d). (WIA sec.117 (d).)

(e) If a local area includes more than one unit of general local government in accordance with WIA section 117 (c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If, after a reasonable effort, the chief elected officials are unable to reach agreement, the Governor may appoint the members of the local board from individuals nominated or recommended as specified in WIA section 117(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIA title I, the Governor may designate the State Board to carry out any of the roles of the Local Board.

§ 661.305 What is the role of the Local Workforce Investment Board?

(a) WIA section 117(d) specifies that the Local Board is responsible for:

(1) Developing the five-year local workforce investment plan (Local Plan) and conducting oversight of the One-Stop system, youth activities and employment and training activities under title I of WIA, in partnership with the chief elected official;

(2) Selecting One-Stop operators with the agreement of the chief elected official;

(3) Selecting eligible youth service providers based on the recommendations of the youth council, and identifying eligible providers of adult and dislocated worker intensive services and training services, and maintaining a list of eligible providers with performance and cost information, as required in 20 CFR part 663, subpart E;

(4) Developing a budget for the purpose of carrying out the duties of the Local Board, subject to the approval of the chief elected official;

(5) Negotiating and reaching agreement on local performance measures with the chief elected official and the Governor;

(6) Assisting the Governor in developing the Statewide employment statistics system under the Wagner-Peyser Act;

(7) Coordinating workforce investment activities with economic development strategies and developing employer linkages; and

(8) Promoting private sector involvement in the Statewide workforce investment system through effective connecting, brokering, and coaching activities through intermediaries such as the One-Stop operator in the local area or through other organizations, to assist employers in meeting hiring needs.

(b) The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA section 117(h) and § 661.335.

(c) Local Boards which are part of a State designated region for regional planning must carry out the regional planning responsibilities required by the State in accordance with WIA section 116(c) and § 661.290. (WIA sec. 117.)

§ 661.307 How does the Local Board meet its requirement to conduct business in an open manner under the ''sunshine provision'' of WIA section 117(e)?

The Local Board must conduct its business in an open manner as required by WIA section 117(e), by making available to the public, on a regular basis through open meetings, information about the activities of the Local Board. This includes information about the Local Plan prior to submission of the plan; information about membership; the development of significant policies, interpretations, guidelines and definitions; and, on request, minutes of formal meetings of the Local Board.

§ 661.310 Under what limited conditions may a Local Board directly be a provider of core services, intensive services, or training services, or act as a One-Stop Operator?

(a) A Local Board may not directly provide core services, or intensive services, or be designated or certified as a One-Stop operator, unless agreed to by the chief elected official and the Governor.

(b) A Local Board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA section 117(f)(1). The waiver shall apply for not more than one year. The waiver may be renewed for additional periods, but for not more than one additional year at a time.

(c) The restrictions on the provision of core, intensive, and training services by the Local Board, and designation or certification as One-Stop operator, also apply to staff of the Local Board. (WIA sec. 117(f)(1) and (f)(2).)

§ 661.315 Who are the required members of the Local Workforce Investment Boards?

(a) The membership of Local Board must be selected in accordance with criteria established under WIA section 117(b)(1) and must meet the requirements of WIA section 117(b)(2). The Local Board must contain two or more members representing the categories described in WIA section 117(b)(2)(A)(ii)—(v), and special consideration must be given to the entities identified in WIA section 117(b)(2)(A)(ii), (iv) and (v) in the selection of members representing those categories. The Local Board must contain at least one member representing each One-Stop partner.

(b) The membership of Local Boards may include individuals or representatives of other appropriate

entities, including entities representing individuals with multiple barriers to employment and other special populations, as determined by the chief elected official.

(c) Members who represent organizations, agencies or other entities must be individuals with optimum policy making authority within the entities they represent.

(d) A majority of the members of the Local Board must be representatives of business in the local area. Members representing business must be individuals who are owners, chief executive officers, chief operating officers, or other individuals with optimum policymaking or hiring authority. Business representatives serving on Local Boards may also serve on the State Board.

(e) Chief elected officials must appoint the business representatives from among individuals who are nominated by local business organizations and business trade associations. Chief elected officials must appoint the labor representatives from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees). (WIA sec. 117(b).)

(f) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (e) of this section, for each entity.

§ 661.317 Who may be selected to represent a particular One-Stop partner program on the Local Board when there is more than one partner program entity in the local area?

When there is more than one grant recipient, administrative entity or organization responsible for administration of funds of a particular One-stop partner program in the local area, the chief elected official may appoint one or more members to represent all of those particular partner program entities. In making such appointments, the local elected official may solicit nominations from the partner program entities.

§ 661.320 Who must chair a Local Board?

The Local Board must elect a chairperson from among the business representatives on the board. (WIA sec. 117(b)(5).)

§ 661.325 What criteria will be used to establish the membership of the Local Board?

The Local Board is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years, in accordance with WIA section 117(c)(2). The criteria for certification must be described in the State Plan. (WIA sec. 117(c).)

§ 661.330 Under what circumstances may the State use an alternative entity as the Local Workforce Investment Board?

(a) The State may use any local entity that meets the requirements of WIA section 117(i) to perform the functions of the Local Board. WIA section 117(i) requires that such entity:

(1) Was established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(2) Was in existence on December 31, 1997;

(3)(i) Is a Private Industry Council established under section 102 of the Job Training Partnership Act, as in effect on December 31, 1997; or

(ii) Is substantially similar to the Local Board described in WIA section 117 (a), (b), and (c) and (h)(1) and (2); and,

(4) Includes, at a minimum, two or more representatives of business in the local area and two or more representatives of labor organizations nominated by local labor federations or employees in the local area.

(b)(1) If the Governor certifies an alternative entity to perform the functions of the Local Board; the State workforce investment plan must demonstrate that the alternative entity meets the requirements of WIA section 117(i), set forth in paragraph (a) of this section.

(2) If the alternative entity does not provide for representative membership of each of the categories of required Local Board membership under WIA section 117(b), including all of the One-stop partner programs, the local workforce investment plan must explain the manner in which the Local Board will ensure an ongoing role for the unrepresented membership group in the local workforce investment system.

(3) The Local Board may provide an ongoing role for an unrepresented membership group, including entities carrying out One-stop partner programs, by means such as regularly scheduled consultations with entities within the unrepresented membership groups, by providing an opportunity for input into the local plan or other policy development by unrepresented membership groups, or by establishing an advisory committee of unrepresented membership groups. The Local Board must enter into good faith negotiations over the terms of the MOU with all entities carrying out One-stop partner programs, including programs not represented on the alternative entity.

(c) If the membership structure of an alternative entity is significantly changed after December 31, 1997, the entity will no longer be eligible to perform the functions of the Local Board. In such case, the chief elected official(s) must establish a new Local Board which meets all of the criteria of WIA section 117(a), (b), and (c) and (h)(1) and (2).

(d) A significant change in the membership structure includes any significant change in the organization of the alternative entity or in the categories of entities represented on the alternative entity which requires a change to the alternative entity's charter or a similar document that defines the formal organization of the alternative entity, regardless of whether the required change to the document has or has not been made. A significant change in the membership structure is considered to have occurred when members are added to represent groups not previously represented on the entity. A significant change in the membership structure is not considered to have occurred when additional members are added to an existing membership category, when non-voting members (including a Youth Council) are added, or when a member is added to fill a vacancy created in an existing membership category.

(e) In 20 CFR parts 660 through 671, all references to the Local Board must be deemed to also apply to an alternative entity used by a local area. (WIA sec. 117(i).)

§ 661.335 What is a youth council, and what is its relationship to the Local Board?

(a) A youth council must be established as a subgroup within each Local Board.

(b) The membership of each youth council must include:

(1) Members of the Local Board, such as educators, which may include special education personnel, employers, and representatives of human service agencies, who have special interest or expertise in youth policy;

(2) Members who represent service agencies, such as juvenile justice and local law enforcement agencies;

(3) Members who represent local public housing authorities;

(4) Parents of eligible youth seeking assistance under subtitle B of title I of WIA;

(5) Individuals, including former participants, and members who represent organizations, that have

experience relating to youth activities; and

(6) Members who represent the Job Corps, if a Job Corps Center is located in the local area represented by the council.

(c) Youth councils may include other individuals, who the chair of the Local Board, in cooperation with the chief elected official, determines to be appropriate.

(d) Members of the youth council who are not members of the Local Board must be voting members of the youth council and nonvoting members of the Local Board.

§ 661.340 What are the responsibilities of the youth council?

The youth council is responsible for:

(a) Coordinating youth activities in a local area;

(b) Developing portions of the local plan related to eligible youth, as determined by the chairperson of the Local Board;

(c) Recommending eligible youth service providers in accordance with WIA section 123, subject to the approval of the Local Board;

(d) Conducting oversight with respect to eligible providers of youth activities in the local area, subject to the approval of the Local Board; and

(e) Carrying out other duties, as authorized by the chairperson of the Local Board, such as establishing linkages with educational agencies and other youth entities.

§ 661.345 What are the requirements for the submission of the local workforce investment plan?

(a) WIA section 118 requires that each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Plan.

(b) The Local Board must provide an opportunity for public comment on and input into the development of the local workforce investment plan prior to its submission, and the opportunity for public comment on the local plan must:

(1) Make copies of the proposed local plan available to the public (through such means as public hearings and local news media);

(2) Include an opportunity for comment by members of the Local Board and members of the public, including representatives of business and labor organizations;

(3) Provide at least a thirty (30) day period for comment, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) Be consistent with the requirement, in WIA section 117(e), that the Local Board make information about the plan available to the public on a regular basis through open meetings.

(c) The Local Board must submit any comments that express disagreement with the plan to the Governor along with the plan.

§ 661.350 What are the contents of the local workforce investment plan?

(a) The local workforce investment plan must meet the requirements of WIA section 118(b). The plan must include:

(1) An identification of the workforce investment needs of businesses, job-seekers, and workers in the local area;

(2) An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;

(3) A description of the One-Stop delivery system to be established or designated in the local area, including:

(i) How the Local Board will ensure continuous improvement of eligible providers of services and ensure that such providers meet the employment needs of local employers and participants; and

(ii) A copy of the local Memorandum(s) of Understanding between the Local Board and each of the One-Stop partners concerning the operation of the local One-Stop delivery system;

(4) A description of the local levels of performance negotiated with the Governor and the chief elected official(s) to be used by the Local Board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the local One-Stop delivery system;

(5) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area, including a description of the local ITA system and the procedures for ensuring that exceptions to the use of ITA's, if any, are justified under WIA section 134(d)(4)(G)(ii) and 20 CFR 663.430;

(6) A description of how the Local Board will coordinate local activities with Statewide rapid response activities;

(7) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;

(8) A description of the process used by the Local Board to provide opportunity for public comment, including comment by representatives of business and labor organizations, and input into the development of the local plan, prior to the submission of the plan;

(9) An identification of the fiscal agent, or entity responsible for the disbursal of grant funds;

(10) A description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA section 134(d)(4)(G)),

(11) A description of the criteria to be used by the Governor and the Local Board, under 20 CFR 663.600, to determine whether funds allocated to a local area for adult employment and training activities under WIA sections 133(b)(2)(A) or (3) are limited, and the process by which any priority will be applied by the One-Stop operator;

(12) In cases where an alternate entity functions as the Local Board, the information required at § 661.330(b), and

(13) Such other information as the Governor may require.

(b) The Governor must review completed plans and must approve all such plans within ninety days of their submission, unless the Governor determines in writing that:

(1) There are deficiencies identified in local workforce investment activities carried out under this subtitle that have not been sufficiently addressed; or

(2) The plan does not comply with title I of WIA and the WIA regulations, including the required consultations, the public comment provisions, and the nondiscrimination requirements of 29 CFR part 37.

(c) In cases where the State is a single local area:

(1) The Secretary performs the roles assigned to the Governor as they relate to local planning activities.

(2) The Secretary issues planning guidance for such States.

(3) The requirements found in WIA and in the WIA regulations for consultation with chief elected officials apply to the development of State and local plans and to the development and operation of the One-Stop delivery system.

(d) During program year 2000, if a local plan does not contain all of the elements described in paragraph (a) of this section, the Governor may approve a local plan on a transitional basis. A transitional approval under this paragraph is considered to be a written determination that the local plan is not

approved under paragraph (b) of this section.

§ 661.355 When must a local plan be modified?

The Governor must establish procedures governing the modification of local plans. Situations in which modifications may be required by the Governor include significant changes in local economic conditions, changes in the financing available to support WIA title I and partner-provided WIA services, changes to the Local Board structure, or a need to revise strategies to meet performance goals.

Subpart D—Waivers and Work-Flex Waivers

§ 661.400 What is the purpose of the General Statutory and Regulatory Waiver Authority provided at section 189(i)(4) of the Workforce Investment Act?

(a) The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce investment system.

(b) A waiver may be requested to address impediments to the implementation of a strategic plan, including the continuous improvement strategy, consistent with the key reform principles of WIA. These key reform principles include:

(1) Streamlining services and information to participants through a One-Stop delivery system;

(2) Empowering individuals to obtain needed services and information to enhance their employment opportunities;

(3) Ensuring universal access to core employment-related services;

(4) Increasing accountability of States, localities and training providers for performance outcomes;

(5) Establishing a stronger role for Local Boards and the private sector;

(6) Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and

(7) Improving youth programs through services which emphasize academic and occupational learning.

§ 661.410 What provisions of WIA and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive any of the statutory or regulatory requirements of subtitles B and E of title I of WIA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and local boards;

(10) Procedures for review and approval of State and Local plans; and

(b) The Secretary may waive any of the statutory or regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

(c) The Secretary does not intend to waive any of the statutory or regulatory provisions essential to the key reform principles embodied in the Workforce Investment Act, described in § 661.400, except in extremely unusual circumstances where the provision can be demonstrated as impeding reform. (WIA sec. 189(i).)

§ 661.420 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under WIA section 189(i)(4)?

(a) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIA 5-year strategic Plan; or

(2) After a State's WIA Plan is approved, by directly submitting a waiver plan.

(b) A Governor's waiver request may seek waivers for the entire State or for one or more local areas.

(c) A Governor requesting a general waiver must submit to the Secretary a plan to improve the Statewide workforce investment system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Strategic Plan goals;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes the individuals affected by the waiver; and

(5) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local Board affected by the waiver;

(iii) Provide any Local Board affected by the waiver an opportunity to comment on the request; and

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver.

(d) The Secretary issues a decision on a waiver request within 90 days after the receipt of the original waiver request.

(e) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's plan to improve the Statewide workforce investment system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIA section 189(i)(4) and §§ 661.400 through 661.420; and

(3) The State has executed a Memorandum of Understanding with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(f) The Secretary will issue guidelines under which the States may request general waivers of WIA and Wagner-Peyser requirements. (WIA sec. 189(i).)

§ 661.430 Under what conditions may the Governor submit a Workforce Flexibility Plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (work-flex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIA;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and local boards;

(viii) Review and approval of local plans;

(ix) Worker rights, participation, and protection; and

(x) Any of the statutory provisions essential to the key reform principles

embodied in the Workforce Investment Act, described in § 661.400.

(2) Any of the statutory or regulatory requirements applicable to the State under section 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g–49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers; and

(3) Any of the statutory or regulatory requirements under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), applicable to State agencies on aging with respect to activities carried out using funds allotted under OAA section 506(a)(3) (42 U.S.C. 3056d(a)(3)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for agreements.

(b) A State's workforce flexibility plan may accompany the State's five-year Strategic Plan or may be submitted separately. If it is submitted separately, the workforce flexibility plan must identify related provisions in the State's five-year Strategic Plan.

(c) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers;

(2) The statutory and regulatory requirements of title I of WIA that are likely to be waived by the State under the workforce flexibility plan;

(3) The statutory and regulatory requirements of sections 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(4) The statutory and regulatory requirements of the Older Americans Act of 1965 that are proposed for waiver, if any;

(5) The outcomes to be achieved by the waivers described in paragraphs (c)(1) to (4) of this section including, where appropriate, revisions to adjusted levels of performance included in the State or local plan under title I of WIA; and

(6) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(d) The Secretary may approve a workforce flexibility plan for a period of up to five years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State.

§ 661.440 What limitations apply to the State's Workforce Flexibility Plan authority under WIA?

(a)(1) Under work-flex waiver authority a State must not waive the WIA, Wagner-Peyser or Older Americans Act requirements which are excepted from the work-flex waiver authority and described in § 661.430(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests may only be granted by the Secretary under the general waiver authority described at §§ 661.410 through 661.420.

(b) As required in § 661.430(c)(5), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. Once approved, a State's work-flex designation is conditioned on the State demonstrating it has met the agreed-upon outcomes contained in its workforce flexibility plan.

PART 662—DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Sec.

662.100 What is the One-Stop delivery system?

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662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

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Subpart D—One-Stop Operators

662.400 Who is the One-Stop operator?
662.410 How is the One-Stop operator selected?
662.420 Under what conditions may the Local Board be designated or certified as the One-Stop operator?
662.430 Under what conditions may One-Stop operators designated to operate in a One-Stop delivery system established prior to the enactment of WIA be designated to continue to act as a One-Stop operator under WIA without meeting the requirements of § 662.410(b)?

Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

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

§ 662.100 What is the One-Stop delivery system?

(a) In general, the One-Stop delivery system is a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) collaborate to create a seamless system of service delivery that will enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(b) Title I of WIA assigns responsibilities at the local, State and Federal level to ensure the creation and maintenance of a One-Stop delivery system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance.

(c) The system must include at least one comprehensive physical center in each local area that must provide the core services specified in WIA section 134(d)(2), and must provide access to other programs and activities carried out by the One-Stop partners.

(d) While each local area must have at least one comprehensive center (and may have additional comprehensive centers), WIA section 134(c) allows for arrangements to supplement the center. These arrangements may include:

(1) A network of affiliated sites that can provide one or more partners' programs, services and activities at each site;

(2) A network of One-Stop partners through which each partner provides services that are linked, physically or technologically, to an affiliated site that assures individuals are provided information on the availability of core services in the local area; and

(3) Specialized centers that address specific needs, such as those of dislocated workers.

(e) The design of the local area's One-Stop delivery system, including the number of comprehensive centers and the supplementary arrangements, must be described in the local plan and be consistent with the Memorandum of Understanding executed with the One-Stop partners.

Subpart B—One-Stop Partners and the Responsibilities of Partners

§ 662.200 Who are the required One-Stop partners?

(a) WIA section 121(b)(1) identifies the entities that are required partners in the local One-Stop systems.

(b) The required partners are the entities that are responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIA, serving:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) Native American programs;

(vi) Migrant and seasonal farmworker programs; and

(vii) Veterans' workforce programs; (WIA sec. 121(b)(1)(B)(i));

(2) Programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*); (WIA sec. 121(b)(1)(B)(ii));

(3) Adult education and literacy activities authorized under title II of WIA; (WIA sec. 121(b)(1)(B)(iii));

(4) Programs authorized under parts A and B of title I of the Rehabilitation Act (29 U.S.C. 720 *et seq.*); (WIA sec. 121(b)(1)(B)(iv));

(5) Welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5) *et seq.*); (WIA sec. 121(b)(1)(B)(v));

(6) Senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*); (WIA sec. 121(b)(1)(B)(vi));

(7) Postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); (WIA sec. 121(b)(1)(B)(vii));

(8) Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); (WIA sec. 121(b)(1)(B)(viii));

(9) Activities authorized under chapter 41 of title 38, U.S.C. (local veterans' employment representatives and disabled veterans outreach programs); (WIA sec. 121(b)(1)(B)(ix));

(10) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*); (WIA sec. 121(b)(1)(B)(x));

(11) Employment and training activities carried out by the Department of Housing and Urban Development; (WIA sec. 121(b)(1)(B)(xi)); and

(12) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (WIA sec. 121(b)(1)(B)(xii).)

§ 662.210 What other entities may serve as One-Stop partners?

(a) WIA provides that other entities that carry out a human resource program, including Federal, State, or local programs and programs in the private sector may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) TANF programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(2) Employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));

(3) Work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));

(4) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(5) Other appropriate Federal, State or local programs, including programs related to transportation and housing and programs in the private sector. (WIA sec. 121(b)(2).)

(c) The State may require that one or more of the programs identified in paragraph (b) of this section be included as a partner in all of the local One-Stop delivery systems in the State.

§ 662.220 What entity serves as the One-Stop partner for a particular program in the local area?

(a) The ''entity'' that carries out the program and activities listed in §§ 662.200 and 662.210 and, therefore, serves as the One-Stop partner is the grant recipient, administrative entity or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with or are subrecipients of the local administrative entity. For programs that do not include local administrative entities, the responsible State Agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 662.200 is not carried out in a local area, the requirements relating to a required One-Stop partner are not applicable to such program or activity in that local One-Stop system.

(b)(1) For title II of WIA, the entity that carries out the program for the purposes of paragraph (a) is the State eligible entity. The State eligible entity may designate an eligible provider, or a consortium of eligible providers, as the ''entity'' for this purpose;

(2) For title I, Part A, of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agency or designated unit specified under section 101(a)(2) that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; and

(3) Under WIA, the national programs, including Job Corps, the WIA Indian and Native American program, the Migrant and Seasonal Farmworkers program, and the Veterans' Workforce Investment program, are required One-Stop partners. Local Boards must include them in the One-Stop delivery system where they are present in their local area. In local areas where the national programs are not present, States and Local Boards should take steps to ensure that customer groups served by these programs have access to services through the One-Stop delivery system.

§ 662.230 What are the responsibilities of the required One-Stop partners?

All required partners must:

(a) Make available to participants through the One-Stop delivery system the core services that are applicable to the partner's programs; (WIA sec. 121(b)(1)(A).)

(b) Use a portion of funds made available to the partner's program, to the extent not inconsistent with the Federal law authorizing the partner's program, to:

(1) Create and maintain the One-Stop delivery system; and

(2) Provide core services; (WIA sec. 134(d)(1)(B).)

(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of § 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c));

(d) Participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws; (WIA sec. 121(b)(1)(B).) and

(e) Provide representation on the Local Workforce Investment Board. (WIA sec. 117(b)(2)(A)(vi).)

§ 662.240 What are a program's applicable core services?

(a) The core services applicable to any One-Stop partner program are those services described in paragraph (b) of this section, that are authorized and provided under the partner's program.

(b) The core services identified in section 134(d)(2) of the WIA are:

(1) Determinations of whether the individuals are eligible to receive assistance under subtitle B of title I of WIA;

(2) Outreach, intake (which may include worker profiling), and orientation to the information and other services available through the One-Stop delivery system;

(3) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(4) Job search and placement assistance, and where appropriate, career counseling;

(5) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in such labor market areas;

(ii) Information on job skills necessary to obtain the listed jobs; and

(iii) Information relating to local occupations in demand and the earnings and skill requirements for such occupations;

(6) Provision of program performance information and program cost information on:

(i) Eligible providers of training services described in WIA section 122;

(ii) Eligible providers of youth activities described in WIA section 123;

(iii) Providers of adult education described in title II;

(iv) Providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*); and

(v) Providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*);

(7) Provision of information on how the local area is performing on the local performance measures and any additional performance information with respect to the One-Stop delivery system in the local area;

(8) Provision of accurate information relating to the availability of supportive services, including, at a minimum, child care and transportation, available in the local area, and referral to such services, as appropriate;

(9) Provision of information regarding filing claims for unemployment compensation;

(10) Assistance in establishing eligibility for—

(i) Welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)) available in the local area; and

(ii) Programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(11) Followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under subtitle (B) of title I of WIA who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

§ 662.250 Where and to what extent must required One-Stop partners make core services available?

(a) At a minimum, the core services that are applicable to the program of the partner under § 662.220, and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program, must be made available at the comprehensive One-Stop center. These services must be made available to individuals attributable to the partner's program who seek assistance at the center. The adult and dislocated worker program partners are required to make all of the core services listed in § 662.240 available at the center in accordance with 20 CFR 663.100(b)(1).

(b) The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner, as described in the MOU.

(c) The responsibility of the partner for the provision of core services must be proportionate to the use of the services at the comprehensive One-Stop center by the individuals attributable to the partner's program. The specific method of determining each partner's proportionate responsibility must be described in the MOU.

(d) For purposes of this part, individuals attributable to the partner's program may include individuals who are referred through the comprehensive One-Stop center and enrolled in the partner's program after the receipt of core services, who have been enrolled in the partner's program prior to receipt of the applicable core services at the center, who meet the eligibility criteria for the partner's program and who receive an applicable core service, or who meet an alternative definition described in the MOU.

(e) Under the MOU, the provision of applicable core services at the center by the One-Stop partner may be supplemented by the provision of such services through the networks of affiliated sites and networks of One-Stop partners described in WIA section 134(c)(2).

§ 662.260 What services, in addition to the applicable core services, are to be provided by One-Stop partners through the One-Stop delivery system?

In addition to the provision of core services, One-Stop partners must provide access to the other activities and programs carried out under the partner's authorizing laws. The access to these services must be described in the local MOU. 20 CFR part 663 describes the specific requirements relating to the provision of core, intensive, and training services through the One-Stop system that apply to the adult and the dislocated worker programs authorized under title I of WIA. Additional requirements apply to the provision of all labor exchange services under the Wagner-Peyser Act. (WIA sec. 134(c)(1)(D).)

§ 662.270 How are the costs of providing services through the One-Stop delivery system and the operating costs of the system to be funded?

The MOU must describe the particular funding arrangements for services and operating costs of the One-Stop delivery system. Each partner must contribute a fair share of the operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. There are a number of methods, consistent with the

requirements of the relevant OMB circulars, that may be used for allocating costs among the partners. Some of these methodologies include allocations based on direct charges, cost pooling, indirect cost rates and activity-based cost allocation plans. Additional guidance relating to cost allocation methods may be issued by the Department in consultation with the other appropriate Federal agencies.

§ 662.280 Does title I require One-Stop partners to use their funds for individuals who are not eligible for the partner's program or for services that are not authorized under the partner's program?

No, the requirements of the partner's program continue to apply. The Act intends to create a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. While the overall effect is to provide universal access to core services, the resources of each partner may only be used to provide services that are authorized and provided under the partner's program to individuals who are eligible under such program. (WIA sec. 121(b)(1).)

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

§ 662.300 What is the Memorandum of Understanding (MOU)?

(a) The Memorandum of Understanding (MOU) is an agreement developed and executed between the Local Board, with the agreement of the chief elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the local area.

(b) The MOU must contain the provisions required by WIA section 121(c)(2). These provisions cover services to be provided through the One-Stop delivery system; the funding of the services and operating costs of the system; and methods for referring individuals between the One-Stop operators and partners. The MOU's provisions also must determine the duration and procedures for amending the MOU, and may contain any other provisions that are consistent with WIA title I and the WIA regulations agreed to by the parties. (WIA sec. 121(c).)

§ 662.310 Is there a single MOU for the local area or are there to be separate MOU's between the Local Board and each partner?

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local One-Stop delivery system for the Local Board, chief elected official and all partners, or the Local Board, chief elected official and the partners may decide to enter into separate agreements between the Local Board (with the agreement of the chief elected official) and one or more partners. Under either approach, the requirements described in this subpart apply. Since funds are generally appropriated annually, financial agreements may be negotiated with each partner annually to clarify funding of services and operating costs of the system under the MOU.

(b) WIA emphasizes full and effective partnerships between Local Boards, chief elected officials and One-Stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials and partners may request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties. The State agencies, the State Board, and the Governor may also consult with the appropriate Federal agencies to address impasse situations after exhausting other alternatives. The Local Board and partners must document the negotiations and efforts that have taken place. Any failure to execute an MOU between a Local Board and a required partner must be reported by the Local Board and the required partner to the Governor or State Board, and the State agency responsible for administering the partner's program, and by the Governor or the State Board and the responsible State agency to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program. (WIA sec. 121(c).)

(c) If an impasse has not been resolved through the alternatives available under this section any partner that fails to execute an MOU may not be permitted to serve on the Local Board. In addition, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants awarded on the basis of local coordination of activities under 20 CFR 665.200(d)(2). These sanctions are in addition to, not in lieu of, any other remedies that may be applicable to the Local Board or to each partner for failure to comply with the statutory requirement.

Subpart D—One-Stop Operators

§ 662.400 Who is the One-Stop operator?

(a) The One-Stop operator is the entity that performs the role described in paragraph (c) of this section. The types of entities that may be selected to be the One-Stop operator include:

(1) A postsecondary educational institution;

(2) An Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;

(3) A private, nonprofit organization (including a community-based organization);

(4) A private for-profit entity;

(5) A government agency; and

(6) Another interested organization or entity.

(b) One-Stop operators may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

(c) The agreement between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center, to being the primary provider of services within the center, to coordinating activities throughout the One-Stop system. (WIA sec. 121(d).)

§ 662.410 How is the One-Stop Operator selected?

(a) The Local Board, with the agreement of the chief elected official, must designate and certify One-Stop operators in each local area.

(b) The One-Stop operator is designated or certified:

(1) Through a competitive process,

(2) Under an agreement between the Local Board and a consortium of entities that includes at least three or more of the required One-Stop partners.identified at § 662.200, or

(3) Under the conditions described in §§ 662.420 or 662.430. (WIA sec.121(d), 121(e) and 117(f)(2))

(c) The designation or certification of the One-Stop operator must be carried out in accordance with the ''sunshine provision'' at 20 CFR 661.307.

§ 662.420 Under what limited conditions may the Local Board be designated or certified as the One-Stop operator?

(a) The Local Board may be designated or certified as the One-Stop operator only with the agreement of the chief elected official and the Governor.

(b) The designation or certification must be reviewed whenever the biennial certification of the Local Board is made under 20 CFR 663.300(a). (WIA sec. 117(f)(2).)

§ 662.430 Under what conditions may One-Stop operators designated to operate in a One-Stop delivery system established prior to the enactment of WIA be designated to continue as a One-Stop operator under WIA without meeting the requirements of § 662.410(b)?

Under WIA section 121(e), the Local Board, the chief elected official and the Governor may agree to certify an entity that has been serving as a One-Stop operator in a One-Stop delivery system established prior to the enactment of WIA (August 7,1998) to continue to serve as a One-Stop operator without meeting the requirements for designation under § 662.410(b) if the local One-Stop delivery system is modified, as necessary, to meet the other requirements of this part, including the requirements relating to the inclusion of One-Stop partners, the execution of the MOU, and the provision of services.(WIA sec. 121(e).)

PART 663—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A— Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

Sec.

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Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Delivery of Adult and Dislocated Worker Services through the One-Stop Delivery System

§ 663.100 What is the role of the adult and dislocated worker programs in the One-Stop delivery system?

(a) The One-Stop system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are organized into three levels: core, intensive, and training.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required One-Stop partner and is subject to the provisions relating to such partners described in 20

CFR part 662. Consistent with those provisions:

(1) Core services for adults and dislocated workers must be made available in at least one comprehensive One-Stop center in each local workforce investment area. Services may also be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) The One-Stop centers also make intensive services available to adults and dislocated workers, as needed, either by the One-Stop operator directly or through contracts with service providers that are approved by the Local Board.

(3) Through the One-Stop system, adults and dislocated workers needing training are provided Individual Training Accounts (ITA's) and access to lists of eligible providers and programs of training. These lists contain quality consumer information, including cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITA's. (ITA's are more fully discussed in subpart D of this part.)

§ 663.105 When must adults and dislocated workers be registered?

(a) Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.

(b) Adults and dislocated workers who receive services funded under title I other than self-service or informational activities must be registered and determined eligible.

(c) EO data must be collected on every individual who is interested in being considered for WIA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the recipient.

§ 663.110 What are the eligibility criteria for core services for adults in the adult and dislocated worker program?

To be eligible to receive core services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for the dislocated worker programs, an eligible adult must meet the criteria of § 663.115. Eligibility criteria for intensive and training services are found at §§ 663.220 and 663.310.

663.115 What are the eligibility criteria for core services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive core services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of ''dislocated worker'' at WIA section 101(9). Eligibility criteria for intensive and training services are found at §§ 663.220 and 663.310.

(b) Governors and Local Boards may establish policies and procedures for One-Stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIA section 101(9). These policies and procedures may address such conditions as:

(1) What constitutes a ''general announcement'' of plant closing under WIA section 101(9)(B)(ii) or (iii); and

(2) What constitutes ''unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters'' for determining the eligibility of self-employed individuals, including family members and farm or ranch hands, under WIA section 101(9)(C).

§ 663.120 Are displaced homemakers eligible for dislocated worker activities under WIA?

(a) Yes, there are two significant differences from the eligibility requirements under the Job Training Partnership Act.

(b) Under the dislocated worker program in JTPA, displaced homemakers are defined as ''additional dislocated workers'' and are only eligible to receive services if the Governor determines that providing such services would not adversely affect the delivery of services to the other eligible dislocated workers. Under WIA section 101(9), displaced homemakers who meet the definition at WIA section 101(10) are eligible dislocated workers without any additional determination.

(c) The definition of displaced homemaker under JTPA included individuals who had been dependent upon public assistance under Aid for Families with Dependent Children (AFDC) as well as those who had been dependent on the income of another family member. The definition in WIA section 101(10) includes only those individuals who were dependent on a family member's income. Those individuals who have been dependent on public assistance may be served in the adult program.

§ 663.145 What services are WIA title I adult and dislocated workers formula funds used to provide?

(a) WIA title I formula funds allocated to local areas for adults and dislocated workers must be used to provide core, intensive and training services through the One-Stop delivery system. Local Boards determine the most appropriate mix of these services, but all three types must be available for both adults and dislocated workers. There are different eligibility criteria for each of these types of services, which are described at §§ 663.110, 663.115, 663.220 and 663.310.

(b) WIA title I funds may also be used to provide the other services described in WIA section 134(e):

(1) Discretionary One-Stop delivery activities, including:

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

(ii) Customized employment-related services to employers on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act.

(2) Supportive services, including needs-related payments, as described in subpart H of this part.

§ 663.150 What core services must be provided to adults and dislocated workers?

(a) At a minimum, all of the core services described in WIA section 134(d)(2) and 20 CFR 662.240 must be provided in each local area through the One-Stop delivery system.

(b) Followup services must be made available, as appropriate, for a minimum of 12 months following the first day of employment, to registered participants who are placed in unsubsidized employment.

§ 663.155 How are core services delivered?

Core services must be provided through the One-Stop delivery system. Core services may be provided directly by the One-Stop operator or through contracts with service providers that are approved by the Local Board. The Local Board may only be a provider of core services when approved by the chief elected official and the Governor in accordance with the requirements of WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.160 Are there particular core services an individual must receive before receiving intensive services under WIA section 134(d)(3)?

(a) Yes, at a minimum, an individual must receive at least one core service, such as an initial assessment or job

search and placement assistance, before receiving intensive services. The initial assessment provides preliminary information about the individual's skill levels, aptitudes, interests, and supportive services needs. The job search and placement assistance helps the individual determine whether he or she is unable to obtain employment, and thus requires more intensive services to obtain employment. The decision on which core services to provide, and the timing of their delivery, may be made on a case-by-case basis at the local level depending upon the needs of the participant.

(b) A determination of the need for intensive services under § 663.220, as established by the initial assessment or the individual's inability to obtain employment through the core services provided, must be contained in the participant's case file.

§ 663.165 How long must an individual be in core services in order to be eligible for intensive services?

There is no Federally-required minimum time period for participation in core services before receiving intensive services. (WIA sec. 134(d)(3).)

Subpart B—Intensive Services

§ 663.200 What are intensive services for adults and dislocated workers?

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

§ 663.210 How are intensive services delivered?

(a) Intensive services must be provided through the One-Stop delivery system, including specialized One-Stop centers. Intensive services may be provided directly by the One-Stop operator or through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit service providers (including specialized service providers), that are approved by the Local Board. (WIA secs. 117(d)(2)(D) and 134(d)(3)(B).)

(b) The Local Board may only be a provider of intensive services when approved by the chief elected official and the Governor in accordance with WIA section 117(f)(2) and 20 CFR 661.310.

§ 663.220 Who may receive intensive services?

There are two categories of adults and dislocated workers who may receive intensive services:

(a) Adults and dislocated workers who are unemployed, have received at least one core service and are unable to obtain employment through core services, and are determined by a One-Stop operator to be in need of more intensive services to obtain employment; and

(b) Adults and dislocated workers who are employed, have received at least one core service, and are determined by a One-Stop operator to be in need of intensive services to obtain or retain employment that leads to self-sufficiency, as described in § 663.230.

§ 663.230 What criteria must be used to determine whether an employed worker needs intensive services to obtain or retain employment leading to ''self-sufficiency''?

State Boards or Local Boards must set the criteria for determining whether employment leads to self-sufficiency. At a minimum, such criteria must provide that self-sufficiency means employment that pays at least the lower living standard income level, as defined in WIA section 101(24). Self-sufficiency for a dislocated worker may be defined in relation to a percentage of the layoff wage. The special needs of individuals with disabilities or other barriers to employment should be taken into account when setting criteria to determine self-sufficiency.

§ 663.240 Are there particular intensive services an individual must receive before receiving training services under WIA section 134(d)(4)(A)(i)?

(a) Yes, at a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services.

(b) The case file must contain a determination of need for training services under § 663.310, as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

§ 663.245 What is the individual employment plan?

The individual employment plan is an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

§ 663.250 How long must an individual participant be in intensive services to be eligible for training services?

There is no Federally-required minimum time period for participation in intensive services before receiving training services. The period of time an individual spends in intensive services should be sufficient to prepare the individual for training or employment. (WIA sec. 134(d)(4)(A)(i).)

Subpart C—Training Services

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

Training services are listed in WIA section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.

§ 663.310 Who may receive training services?

Training services may be made available to employed and unemployed adults and dislocated workers who:

(a) Have met the eligibility requirements for intensive services, have received at least one intensive service under § 663.240, and have been determined to be unable to obtain or retain employment through such services;

(b) After an interview, evaluation, or assessment, and case management, have been determined by a One-Stop operator or One-Stop partner, to be in need of training services and to have the skills and qualifications to successfully complete the selected training program;

(c) Select a program of training services that is directly linked to the employment opportunities either in the local area or in another area to which the individual is willing to relocate;

(d) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as Welfare-to-Work, State-funded training funds, Trade Adjustment Assistance and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at

§ 663.320 and WIA section 134(d)(4)(B)); and

(e) For individuals whose services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system, if any, in effect for adults under WIA section 134(d)(4)(E) and § 663.600. (WIA sec. 134(d)(4)(A).)

§ 663.320 What are the requirements for coordination of WIA training funds and other grant assistance?

(a) WIA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Program operators and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section.

(b) Program operators must coordinate training funds available and make funding arrangements with One-Stop partners and other entities to apply the provisions of paragraph (a) of this section. Training providers must consider the availability of other sources of grants to pay for training costs such as Welfare-to-Work, State-funded training funds, and Federal Pell Grants, so that WIA funds supplement other sources of training grants.

(c) A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIA participant for education-related expenses. (WIA sec. 134(d)(4)(B).)

Subpart D—Individual Training Accounts

§ 663.400 How are training services provided?

Except under the three conditions described in WIA section 134(d)(4)(G)(ii) and § 663.430(a), the Individual Training Account (ITA) is established for eligible individuals to finance training services. Local Boards may only provide training services under § 663.430 if they receive a waiver from the Governor and meet the requirements of 20 CFR 661.310 and WIA section 117(f)(1). (WIA sec. 134(d)(4)(G).)

§ 663.410 What is an Individual Training Account (ITA)?

The ITA is established on behalf of a participant. WIA title I adult and dislocated workers purchase training services from eligible providers they select in consultation with the case manager. Payments from ITA's may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course. (WIA sec. 134(d)(4)(G).)

§ 663.420 Can the duration and amount of ITA's be limited?

(a) Yes, the State or Local Board may impose limits on ITA's, such as limitations on the dollar amount and/or duration.

(b) Limits to ITA's may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or

(2) There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITA's.

(c) Limitations established by State or Local Board policies must be described in the State or Local Plan, respectively, but should not be implemented in a manner that undermines the Act's requirement that training services are provided in a manner that maximizes customer choice in the selection of an eligible training provider. ITA limitations may provide for exceptions to the limitations in individual cases.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

§ 663.430 Under what circumstances may mechanisms other than ITA's be used to provide training services?

(a) Contracts for services may be used instead of ITA's only when one of the following three exceptions applies:

(1) When the services provided are on-the-job training (OJT) or customized training;

(2) When the Local Board determines that there are an insufficient number of eligible providers in the local area to accomplish the purpose of a system of ITA's. The Local Plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days;

(3) When the Local Board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in paragraph (b) in this section. The Local Board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to hard to serve participant populations through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(b) Under paragraph (a)(3) of this section, special participant populations that face multiple barriers to employment are populations of low-income individuals that are included in one or more of the following categories:

(1) Individuals with substantial language or cultural barriers;

(2) Offenders;

(3) Homeless individuals; and

(4) Other hard-to-serve populations as defined by the Governor.

§ 663.440 What are the requirements for consumer choice?

(a) Training services, whether under ITA's or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local Board, through the One-Stop center, must make available to customers the State list of eligible providers required in WIA section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIA section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA sections 122 (e) and (h).

(c) An individual who has been determined eligible for training services under § 663.310 may select a provider described in paragraph (b) of this section after consultation with a case manager. Unless the program has exhausted training funds for the program year, the operator must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph, a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIA.

Subpart E—Eligible Training Providers

§ 663.500 What is the purpose of this subpart?

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. Local Boards, in partnership with the State, identify training providers and programs whose performance qualifies them to receive WIA funds to train adults and dislocated workers. In order to maximize customer choice and assure that all significant population groups are served, States and local areas should administer the eligible provider process in a manner to assure that significant numbers of competent providers, offering a wide variety of training programs and occupational choices, are available to customers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers to make an informed choice. The ability of providers to successfully perform, the procedures State and Local Boards use to establish eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system. This subpart describes the process for determining eligible training providers.

§ 663.505 What are eligible providers of training services?

(a) Eligible providers of training services are described in WIA section 122. They are those entities eligible to receive WIA title I–B funds to provide training services to eligible adult and dislocated worker customers.

(b) In order to provide training services under WIA title I–B, a provider must meet the requirements of this subpart and WIA section 122.

(1) These requirements apply to the use of WIA title I adult and dislocated worker funds to provide training:

(i) To individuals using ITA's to access training through the eligible provider list; and

(ii) To individuals for training provided through the exceptions to ITA's described at § 663.430 (a)(2) and (a)(3).

(2) These requirements apply to all organizations providing training to adult and dislocated workers, including:

(i) Postsecondary educational institutions providing a program described in WIA section 122(a)(2)(A)(ii);

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

(iii) Other public or private providers of a program of training services described in WIA section 122(a)(2)(C);

(iv) Local Boards, if they meet the conditions of WIA section 117(f)(1); and

(v) Community-based organizations and other private organizations providing training under § 663.430.

(c) Provider eligibility procedures must be established by the Governor, as required by this subpart. Different procedures are described in WIA for determinations of ''initial'' and ''subsequent'' eligibility. Because the processes are different, they are discussed separately.

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

A program of training services is one or more courses or classes, or a structured regimen, that upon successful completion, leads to:

(a) A certificate, an associate degree, baccalaureate degree, or

(b) The skills or competencies needed for a specific job or jobs, an occupation, occupational group, or generally, for many types of jobs or occupations, as recognized by employers and determined prior to training.

§ 663.510 Who is responsible for managing the eligible provider process?

(a) The State and the Local Boards each have responsibilities for managing the eligible provider process.

(b) The Governor must establish eligibility criteria for certain providers to become initially eligible and must set minimum levels of performance for all providers to remain subsequently eligible.

(c) The Governor must designate a State agency (called the ''designated State agency'') to assist in carrying out WIA section 122. The designated State agency is responsible for:

(1) Developing and maintaining the State list of eligible providers and programs, which is comprised of lists submitted by Local Boards;

(2) Determining if programs meet performance levels, including verifying the accuracy of the information on the State list in consultation with the Local Boards, removing programs that do not meet program performance levels, and taking appropriate enforcement actions, against providers in the case of the intentional provision of inaccurate information, as described in WIA section 122(f)(1), and in the case of a substantial violation of the requirements of WIA, as described in WIA section 122(f)(2);

(3) Disseminating the State list, accompanied by performance and cost information relating to each provider, to One-Stop operators throughout the State.

(d) The Local Board must:

(1) Accept applications for initial eligibility from certain postsecondary institutions and entities providing apprenticeship training;

(2) Carry out procedures prescribed by the Governor to assist in determining the initial eligibility of other providers;

(3) Carry out procedures prescribed by the Governor to assist in determining the subsequent eligibility of all providers;

(4) Compile a local list of eligible providers, collect the performance and cost information and any other required information relating to providers;

(5) Submit the local list and information to the designated State agency;

(6) Ensure the dissemination and appropriate use of the State list through the local One-Stop system;

(7) Consult with the designated State agency in cases where termination of an eligible provider is contemplated because inaccurate information has been provided; and

(8) Work with the designated State agency in cases where the termination of an eligible provider is contemplated because of violations of the Act.

(e) The Local Board may:

(1) Make recommendations to the Governor on the procedures to be used in determining initial eligibility of certain providers;

(2) Increase the levels of performance required by the State for local providers to maintain subsequent eligibility;

(3) Require additional verifiable program-specific information from local

providers to maintain subsequent eligibility.

§ 663.515 What is the process for initial determination of provider eligibility?

(a) To be eligible to receive adult or dislocated worker training funds under title I of WIA, all providers must submit applications to the Local Boards in the areas in which they wish to provide services. The application must describe each program of training services to be offered.

(b) For programs eligible under title IV of the Higher Education Act and apprenticeship programs registered under the National Apprenticeship Act (NAA), and the providers or such programs, Local Boards determine the procedures to use in making an application. The procedures established by the Local Board must specify the timing, manner, and contents of the required application.

(c) For programs not eligible under title IV of the HEA or registered under the NAA, and for providers not eligible under title IV of the HEA or carrying out apprenticeship programs under NAA:

(1) The Governor must develop a procedure for use by Local Boards for determining the eligibility of other providers, after

(i) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(ii) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(iii) Designating a specific time period for soliciting and considering the recommendations of Local Boards and provider, and for providing an opportunity for public comment.

(2) The procedure must be described in the State Plan.

(3)(i) The procedure must require that the provider must submit an application to the Local Board at such time and in such manner as may be required, which contains a description of the program of training services;

(ii) If the provider provides a program of training services on the date of application, the procedure must require that the application include an appropriate portion of the performance information and program cost information described in § 663.540, and that the program meet appropriate levels of performance;

(iii) If the provider does not provide a program of training services on that date, the procedure must require that the provider meet appropriate requirements specified in the procedure. (WIA sec. 122(b)(2)(D).)

(d) The Local Board must include providers that meet the requirements of paragraphs (b) and (c) of this section on a local list and submit the list to the designated State agency. The State agency has 30 days to determine that the provider or its programs do not meet the requirements relating to the providers under paragraph (c) of this section. After the agency determines that the provider and its programs meet(s) the criteria for initial eligibility, or 30 days have elapsed, whichever occurs first, the provider and its programs are initially eligible. The programs and providers submitted under paragraph (b) of this section are initially eligible without State agency review. (WIA sec. 122(e).)

§ 663.530 Is there a time limit on the period of initial eligibility for training providers?

Yes, under WIA section 122(c)(5), the Governor must require training providers to submit performance information and meet performance levels annually in order to remain eligible providers. States may require that these performance requirements be met one year from the date that initial eligibility was determined, or may require all eligible providers to submit performance information by the same date each year. If the latter approach is adopted, the Governor may exempt eligible providers whose determination of initial eligibility occurs within six months of the date of submissions. The effect of this requirement is that no training provider may have a period of initial eligibility that exceeds eighteen months. In the limited circumstance when insufficient data is available, initial eligibility may be extended for a period of up to six additional months, if the Governor's procedures provide for such an extension.

§ 663.535 What is the process for determining of the subsequent eligibility of a provider?

(a) The Governor must develop a procedure for the Local Board to use in determining the subsequent eligibility of all eligible training providers determined initially eligible under § 663.515 (b) and (c), after:

(1) Soliciting and taking into consideration recommendations from Local Boards and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local Boards and providers, and for providing an opportunity for public comment.

(b) The procedure must be described in the State Plan.

(c) The procedure must require that:

(1) Providers annually submit performance and cost information as described at WIA section 122(d)(1) and (2), for each program of training services for which the provider has been determined to be eligible, in a time and manner determined by the Local Board;

(2) Providers and programs annually meet minimum performance levels described at WIA section 122(c)(6), as demonstrated utilizing UI quarterly wage records where appropriate.

(d) The program's performance information must meet the minimum acceptable levels established under paragraph (c)(2) of this section to remain eligible;

(e) Local Boards may require higher levels of performance for local programs than the levels specified in the procedures established by the Governor. (WIA sec.122(c)(5) and (c)(6).)

(f) The State procedure must require Local Boards to take into consideration:

(1) The specific economic, geographic and demographic factors in the local areas in which providers seeking eligibility are located, and

(2) The characteristics of the populations served by programs seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

(g) The Local Board retains those programs on the local list that meet the required performance levels and other elements of the State procedures and submits the list, accompanied by the performance and cost information, and any additional required information, to the designated State agency. If the designated State agency determines within 30 days from the receipt of the information that the program does not meet the performance levels established under paragraph (c)(2) of this section, the program may be removed from the list. A program retained on the local list and not removed by the designated State agency is considered an eligible program of training services.

§ 663.540 What kind of performance and cost information is required for determinations of subsequent eligibility?

(a) Eligible providers of training services must submit, at least annually, under procedures established by the Governor under § 663.535(c):

(1) Verifiable program-specific performance information, including:

(i) The information described in WIA section 122(d)(1)(A)(i) for all

individuals participating in the programs of training services, including individuals who are not receiving assistance under WIA section 134 and individuals who are receiving such assistance; and

(ii) The information described in WIA section 122(d)(1)(A)(ii) relating only to individuals receiving assistance under the WIA adult and dislocated worker program who are participating in the applicable program of training services; and

(2) Information on program costs (such as tuition and fees) for WIA participants in the program.

(b) Governors may require any additional verifiable performance information (such as the information described at WIA section 122(d)(2)) that the Governor determines to be appropriate to obtain subsequent eligibility, including information regarding all participating individuals as well as individuals receiving assistance under the WIA adult and dislocated worker program.

(c) Governors must establish procedures by which providers can demonstrate if the additional information required under paragraph (b) of this section imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information. If, through these procedures, providers demonstrate that they experience such extraordinary costs:

(1) The Governor or Local Board must provide access to cost-effective methods for the collection of the information; or

(2) The Governor must provide additional resources to assist providers in the collection of the information from funds for Statewide workforce investment activities reserved under WIA sections 128(a) and 133(a)(1).

(d) The Local Board and the designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 from a provider for purposes of enabling the provider to fulfill the applicable requirements of this section, if the information is substantially similar to the information otherwise required under this section.

§ 663.550 How is eligible provider information developed and maintained?

(a) The designated State agency must maintain a list of all eligible training programs and providers in the State (the ''State list'').

(b) The State list is a compilation of the eligible programs and providers identified or retained by local areas and that have not been removed under §§ 663.535(g) and 663.565.

(c) The State list must be accompanied by the performance and cost information contained in the local lists as required by § 663.535(e). (WIA sec. 122(e)(4)(A).)

§ 663.555 How is the State list disseminated?

(a) The designated State agency must disseminate the State list and accompanying performance and cost information to the One-Stop delivery systems within the State.

(b) The State list and information must be updated at least annually.

(c) The State list and accompanying information form the primary basis of the One-Stop consumer reports system that provides for informed customer choice. The list and information must be widely available, through the One-Stop delivery system, to customers seeking information on training outcomes, as well as participants in employment and training activities funded under WIA and other programs.

(1) The State list must be made available to individuals who have been determined eligible for training services under § 663.310.

(2) The State list must also be made available to customers whose training is supported by other One-Stop partners.

§ 663.565 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must deliver results and provide accurate information in order to retain its status as an eligible training provider.

(b) If the provider's programs do not meet the established performance levels, the programs will be removed from the eligible provider list.

(1) A Local Board must determine, during the subsequent eligibility determination process, whether a provider's programs meet performance levels. If the program fails to meet such levels, the program must be removed from the local list. If all of the provider's programs fail to meet such levels, the provider must be removed from the local list.

(2) The designated State agency upon receipt of the performance information accompanying the local list, may remove programs from the State list if the agency determines the program failed to meet the levels of performance prescribed under § 663.535(c). If all of the provider's programs are determined to have failed to meet the levels, the designated State agency may remove the provider from the State list.

(3) Providers determined to have intentionally supplied inaccurate information or to have subsequently violated any provision of title I of WIA or the WIA regulations, including 29 CFR part 37, may be removed from the list in accordance with the enforcement provisions of WIA section 122(f). A provider whose eligibility is terminated under these conditions is liable to repay all adult and dislocated worker training funds it received during the period of noncompliance.

(4) The Governor must establish appeal procedures for providers of training to appeal a denial of eligibility under this subpart according to the requirements of 20 CFR 667.640(b).

§ 663.570 What is the consumer reports system?

The consumer reports system, referred to in WIA as performance information, is the vehicle for informing the customers of the One-Stop delivery system about the performance of training providers and programs in the local area. It is built upon the State list of eligible providers and programs developed through the procedures described in WIA section 122 and this subpart. The consumer reports system must contain the information necessary for an adult or dislocated worker customer to fully understand the options available to him or her in choosing a program of training services. Such program-specific factors may include overall performance, performance for significant customer groups (including wage replacement rates for dislocated workers), performance of specific provider sites, current information on employment and wage trends and projections, and duration of training programs.

§ 663.575 In what ways can a Local Board supplement the information available from the State list?

(a) Local Boards may supplement the information available from the State list by providing customers with additional information to assist in supporting informed customer choice and the achievement of local performance measures (as described in WIA section 136).

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible providers; and

(3) Other appropriate information related to the objectives of WIA, which may include the information described in § 663.570.

§ 663.585 May individuals choose training providers located outside of the local area?

Yes, individuals may choose any of the eligible providers and programs on the State list. A State may also establish a reciprocal agreement with another State(s) to permit providers of eligible training programs in each State to accept individual training accounts provided by the other State. (WIA secs. 122(e)(4) and (e)(5).)

§ 663.590 May a community-based organization (CBO) be included on an eligible provider list?

Yes, CBO's may apply and they and their programs may be determined eligible providers of training services, under WIA section 122 and this subpart. As eligible providers, CBO's provide training through ITA's and may also receive contracts for training special participant populations when the requirements of § 663.430 are met.

§ 663.595 What requirements apply to providers of OJT and customized training?

For OJT and customized training providers, One-Stop operators in a local area must collect such performance information as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate a list of providers that have met such criteria, along with the relevant performance information about them, through the One-Stop delivery system. Providers determined to meet the criteria are considered to be identified as eligible providers of training services. These providers are not subject to the other requirements of WIA section 122 or this subpart.

Subpart F—Priority and Special Populations

§ 663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?

(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.

(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.

(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.

§ 663.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No, the statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

§ 663.620 How do the Welfare-to-Work program and the TANF program relate to the One-Stop delivery system?

(a) The local Welfare-to-Work (WtW) program operator is a required partner in the One-Stop delivery system. 20 CFR part 662 describes the roles of such partners in the One-Stop delivery system and applies to the Welfare-to-Work program operator. WtW programs serve individuals who may also be served by the WIA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the WtW program in the One-Stop system. WtW participants, who are determined to be WIA eligible, and who need occupational skills training may be referred through the One-Stop system to receive WIA training, when WtW grant and other grant funds are not available in accordance with § 663.320(a). WIA participants who are also determined WtW eligible, may be referred to the WtW operator for job placement and other WtW assistance.

(b) The local TANF agency is specifically suggested under WIA as an additional partner in the One-Stop system. TANF recipients will have access to more information about employment opportunities and services when the TANF agency participates in the One-Stop delivery system. The Governor and Local Board should encourage the TANF agency to become a One-Stop partner to improve the quality of services to the WtW and TANF-eligible populations. In addition, becoming a One-Stop partner will ensure that the TANF agency is represented on the Local Board and participates in developing workforce investment strategies that help cash assistance recipients secure lasting employment.

§ 663.630 How does a displaced homemaker qualify for services under title I?

Displaced homemakers may be eligible to receive assistance under title I in a variety of ways, including:

(a) Core services provided by the One-Stop partners through the One-Stop delivery system;

(b) Intensive or training services for which an individual qualifies as a dislocated worker/displaced homemaker if the requirements of this part are met;

(c) Intensive or training services for which an individual is eligible if the requirements of this part are met;

(d) Statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in 20 CFR 665.210(f).

§ 663.640 May an individual with a disability whose family does not meet income eligibility criteria under the Act be eligible for priority as a low-income adult?

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

Subpart G—On-the-Job Training (OJT) and Customized Training

§ 663.700 What are the requirements for on-the-job training (OJT)?

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIA participant in

exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer's extraordinary costs. (WIA sec. 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA sec. 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA sec. 101(31)(C).)

§ 663.705 What are the requirements for OJT contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local Board.

§ 663.710 What conditions govern OJT payments to employers?

(a) On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. (WIA sec. 101(31)(B).)

(c) Employers are not required to document such extraordinary costs.

§ 663.715 What is customized training?

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training; and

(c) For which the employer pays for not less than 50 percent of the cost of the training. (WIA sec. 101(8).)

§ 663.720 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage as determined by Local Board policy;

(b) The requirements in § 663.715 are met; and

(c) The customized training relates to the purposes described in § 663.705(c) or other appropriate purposes identified by the Local Board.

§ 663.730 May funds provided to employers for OJT of customized training be used to assist, promote, or deter union organizing?

No, funds provided to employers for OJT or customized training must not be used to directly or indirectly assist, promote or deter union organizing.

Subpart H—Supportive Services

§ 663.800 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIA sections 101(46) and 134(e)(2) and (3). They include services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under WIA title I. Local Boards, in consultation with the One-Stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. Such policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the core services that must be available to adults and dislocated workers through the One-Stop delivery system. (WIA sec. 134(d)(2)(H).)

§ 663.805 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in core, intensive or training services; and

(2) Unable to obtain supportive services through other programs providing such services. (WIA sec. 134(e)(2)(A) and (B).)

(b) Supportive services may only be provided when they are necessary to enable individuals to participate in title I activities. (WIA sec. 101(46).)

§ 663.810 Are there limits on the amounts or duration of funds for supportive services?

(a) Local Boards may establish limits on the provision of supportive services or provide the One-Stop operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures may also be established to allow One-Stop operators to grant exceptions to the limits established under paragraph (a) of this section.

§ 663.815 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling individuals to participate in training and are one of the supportive services authorized by WIA section 134(e)(3).

§ 663.820 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed,

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIA section 134(d)(4).

§ 663.825 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA or NAFTA–TAA; and

(2) Be enrolled in a program of training services under WIA section 134(d)(4) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment

compensation or trade readjustment assistance under TAA or NAFTA–TAA.

§ 663.830 May needs-related payments be paid while a participant is waiting to start training classes?

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calender days. The Governor may authorize local areas to extend the 30 day period to address appropriate circumstances.

§ 663.840 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local Board.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) For participants who were eligible for unemployment compensation as a result of the qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit; or

(2) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level must be adjusted to reflect changes in total family income as determined by Local Board policies. (WIA sec. 134(e)(3)(C).)

PART 664—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Youth Councils

§ 664.100 What is the youth council?

(a) The duties and membership requirements of the youth council are described in WIA section 117(h) and 20 CFR 661.335 and 661.340.

(b) The purpose of the youth council is to provide expertise in youth policy and to assist the Local Board in:

(1) Developing and recommending local youth employment and training policy and practice;

(2) Broadening the youth employment and training focus in the community to incorporate a youth development perspective;

(3) Establishing linkages with other organizations serving youth in the local area; and

(4) Taking into account a range of issues that can have an impact on the success of youth in the labor market. (WIA sec. 117(h).)

§ 664.110 Who is responsible for oversight of youth programs in the local area?

(a) The Local Board, working with the youth council, is responsible for conducting oversight of local youth programs operated under the Act, to ensure both fiscal and programmatic accountability.

(b) Local program oversight is conducted in consultation with the local area's chief elected official.

(c) The Local Board may, after consultation with the CEO, delegate its responsibility for oversight of eligible youth providers, as well as other youth program oversight responsibilities, to the youth council, recognizing the advantage of delegating such responsibilities to the youth council whose members have expertise in youth issues. (WIA sec. 117(d); 117(h)(4).)

Subpart B—Eligibility for Youth Services

§ 664.200 Who is eligible for youth services?

An eligible youth is defined, under WIA sec. 101(13), as an individual who:

(a) Is age 14 through 21;

(b) Is a low income individual, as defined in the WIA section 101(25); and

(c) Is within one or more of the following categories:

(1) Deficient in basic literacy skills;

(2) School dropout;

(3) Homeless, runaway, or foster child;

(4) Pregnant or parenting;

(5) Offender; or

(6) Is an individual (including a youth with a disability) who requires

additional assistance to complete an educational program, or to secure and hold employment. (WIA sec. 101(13).)

§ 664.205 How is the ''deficient in basic literacy skills'' criterion in § 664.200(c)(1) defined and documented?

(a) Definitions and eligibility documentation requirements regarding the ''deficient in basic literacy skills'' criterion in § 664.200(c)(1) may be established at the State or local level. These definitions may establish such criteria as are needed to address State or local concerns, and must include a determination that an individual:

(1) Computes or solves problems, reads, writes, or speaks English at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test; or

(2) Is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family or in society. (WIA secs. 101(19), 203(12).)

(b) In cases where the State Board establishes State policy on this criterion, the policy must be included in the State plan. (WIA secs. 101(13)(C)(i), 101(19).)

§ 664.210 How is the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion in § 664.200(c)(6) defined and documented?

Definitions and eligibility documentation requirements regarding the ''requires additional assistance to complete an educational program, or to secure and hold employment'' criterion of § 664.200(c)(6) may be established at the State or local level. In cases where the State Board establishes State policy on this criterion, the policy must be included in the State Plan. (WIA sec. 101(13)(C)(iv).)

§ 664.215 Must youth participants be registered to participate in the youth program?

(a) Yes, all youth participants must be registered.

(b) Registration is the process of collecting information to support a determination of eligibility.

(c) Equal opportunity data must be collected during the registration process on any individual who has submitted personal information in response to a request by the recipient for such information.

§ 664.220 Is there an exception to permit youth who are not low-income individuals to receive youth services?

Yes, up to five percent of youth participants served by youth programs in a local area may be individuals who do not meet the income criterion for eligible youth, provided that they are within one or more of the following categories:

(a) School dropout;

(b) Basic skills deficient, as defined in WIA section 101(4);

(c) Are one or more grade levels below the grade level appropriate to the individual's age;

(d) Pregnant or parenting;

(e) Possess one or more disabilities, including learning disabilities;

(f) Homeless or runaway;

(g) Offender; or

(h) Face serious barriers to employment as identified by the Local Board. (WIA sec. 129(c)(5).)

§ 664.230 Are the eligibility barriers for eligible youth the same as the eligibility barriers for the five percent of youth participants who do not have to meet income eligibility requirements?

No, the barriers listed in §§ 664.200 and 664.220 are not the same. Both lists of eligibility barriers include school dropout, homeless or runaway, pregnant or parenting, and offender, but each list contains barriers not included on the other list.

§ 664.240 May a local program use eligibility for free lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of WIA?

No, the criteria for income eligibility under the National School Lunch Program are not the same as the Act's income eligibility criteria. Therefore, the school lunch list may not be used as a substitute for income eligibility to determine who is eligible for services under the Act.

§ 664.250 May a disabled youth whose family does not meet income eligibility criteria under the Act be eligible for youth services?

Yes, even if the family of a disabled youth does not meet the income eligibility criteria, the disabled youth may be considered a low-income individual if the youth's own income:

(a) Meets the income criteria established in WIA section 101(25)(B); or

(b) Meets the income eligibility criteria for cash payments under any Federal, State or local public assistance program. (WIA sec. 101(25)(F).)

Subpart C—Out-of-School Youth

§ 664.300 Who is an ''out-of-school youth''?

An out-of-school youth is an individual who:

(a) Is an eligible youth who is a school dropout; or

(b) Is an eligible youth who has either graduated from high school or holds a GED, but is basic skills deficient, unemployed, or underemployed. (WIA sec. 101(33).)

§ 664.310 When is dropout status determined, particularly for youth attending alternative schools?

A school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth's dropout status is determined at the time of registration. A youth attending an alternative school at the time of registration is not a dropout. An individual who is out-of school at the time of registration and subsequently placed in an alternative school, may be considered an out-of-school youth for the purposes of the 30 percent expenditure requirement for out-of-school youth. (WIA sec. 101(39).)

§ 664.320 Does the requirement that at least 30 percent of youth funds be used to provide activities to out-of-school youth apply to all youth funds?

(a) Yes, the 30 percent requirement applies to the total amount of all funds allocated to a local area under WIA section 128(b)(2)(A) or (b)(3), except for local area expenditures for administrative purposes under 20 CFR 667.210(a)(2).

(b) Although it is not necessary to ensure that 30 percent of such funds spent on summer employment opportunities (or any other particular element of the youth program) are spent on out-of-school youth, the funds spent on these activities are included in the total to which the 30 percent requirement applies.

(c) There is a limited exception, at WIA section 129(c)(4)(B), under which certain small States may apply to the Secretary to reduce the minimum amount that must be spent on out-of-school youth. (WIA sec. 129(c)(4).)

Subpart D—Youth Program Design, Elements, and Parameters

§ 664.400 What is a local youth program?

A local youth program is defined as those youth activities offered by a Local Workforce Investment Board for a designated local workforce investment area, as specified in 20 CFR part 661.

§ 664.405 How must local youth programs be designed?

(a) The design framework of local youth programs must:

(1) Provide an objective assessment of each youth participant, that meets the requirements of WIA section

129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs, of each youth;

(2) Develop an individual service strategy for each youth participant that meets the requirements of WIA section 129(c)(1)(B), including identifying an age-appropriate career goal and consideration of the assessment results for each youth; and

(3) Provide preparation for postsecondary educational opportunities, provide linkages between academic and occupational learning, provide preparation for employment, and provide effective connections to intermediary organizations that provide strong links to the job market and employers.

(4) The requirement in WIA section 123 that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis does not apply to the design framework component, such as services for intake, objective assessment and the development of individual service strategy, when these services are provided by the grant recipient/fiscal agent.

(b) The local plan must describe the design framework for youth program design in the local area, and how the ten program elements required in § 664.410 are provided within that framework.

(c) Local Boards must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Job Corps representatives; and

(5) Representatives of other area youth initiatives, including those that serve homeless youth and other public and private youth initiatives.

(d) Local Boards must ensure that the referral requirements in WIA section 129(c)(3) for youth who meet the income eligibility criteria are met, including:

(1) Providing these youth with information regarding the full array of applicable or appropriate services available through the Local Board or other eligible providers, or One-Stop partners; and

(2) Referring these youth to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) In order to meet the basic skills and training needs of eligible applicants who do not meet the enrollment requirements of a particular program or who cannot be served by the program, each eligible youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary, and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(f) Local Boards must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(g) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program. (WIA section 129(c)(1).)

§ 664.410 Must local programs include each of the ten program elements listed in WIA section 129(c)(2) as options available to youth participants?

(a) Yes, local programs must make the following services available to youth participants:

(1) Tutoring, study skills training, and instruction leading to secondary school completion, including dropout prevention strategies;

(2) Alternative secondary school offerings;

(3) Summer employment opportunities directly linked to academic and occupational learning;

(4) Paid and unpaid work experiences, including internships and job shadowing, as provided in §§ 664.460 and 664.470;

(5) Occupational skill training;

(6) Leadership development opportunities, which include community service and peer-centered activities encouraging responsibility and other positive social behaviors;

(7) Supportive services, which may include the services listed in § 664.440;

(8) Adult mentoring for a duration of at least twelve (12) months, that may occur both during and after program participation;

(9) Followup services, as provided in § 664.450; and

(10) Comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth.

(b) Local programs have the discretion to determine what specific program services will be provided to a youth participant, based on each participant's objective assessment and individual service strategy. (WIA sec. 129(c)(2).)

§ 664.420 What are leadership development opportunities?

Leadership development opportunities are opportunities that encourage responsibility, employability, and other positive social behaviors such as:

(a) Exposure to postsecondary educational opportunities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities; and

(f) Citizenship training, including life skills training such as parenting, work behavior training, and budgeting of resources. (WIA sec. 129(c)(2)(F).)

§ 664.430 What are positive social behaviors?

Positive social behaviors are outcomes of leadership opportunities, often referred to as soft skills, which are incorporated by many local programs as part of their menu of services. Positive social behaviors focus on areas that may include the following:

(a) Positive attitudinal development;

(b) Self esteem building;

(c) Openness to working with individuals from diverse racial and ethnic backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol and drug free;

(e) Maintaining positive relationships with responsible adults and peers, and contributing to the well being of one's community, including voting;

(f) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency;

(h) Postponed and responsible parenting; and

(i) Positive job attitudes and work skills. (WIA sec. 129(c)(2)(F).)

§ 664.440 What are supportive services for youth?

Supportive services for youth, as defined in WIA section 101(46), may include the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Referrals to medical services; and

(f) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eye glasses and protective eye gear. (WIA sec. 129(c)(2)(G).)

§ 664.450 What are follow-up services for youth?

(a) Follow-up services for youth may include:

(1) The leadership development and supportive service activities listed in §§ 664.420 and 664.440;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Tracking the progress of youth in employment after training.

(b) All youth participants must receive some form of follow-up services for a minimum duration of 12 months. Follow-up services may be provided beyond twelve (12) months at the State or Local Board's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual. The scope of these follow-up services may be less intensive for youth who have only participated in summer youth employment opportunities. (WIA sec. 129(c)(2)(I).)

§ 664.460 What are work experiences for youth?

(a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As provided in WIA section 129(c)(2)(D) and § 664.470, work experiences may be paid or unpaid.

(b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.

(c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences are appropriate and desirable activities for many youth throughout the year. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities performed by the youth. Work experiences may be subsidized or unsubsidized and may include the following elements:

(1) Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);

(2) Exposure to various aspects of an industry;

(3) Progressively more complex tasks;

(4) Internships and job shadowing;

(5) The integration of basic academic skills into work activities;

(6) Supported work, work adjustment, and other transition activities;

(7) Entrepreneurship;

(8) Service learning;

(9) Paid and unpaid community service; and

(10) Other elements designed to achieve the goals of work experiences.

(d) In most cases, on-the-job training is not an appropriate work experiences activity for youth participants under age 18. Local program operators may choose, however, to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant. (WIA sec. 129(c)(2)(D).)

§ 664.470 Are paid work experiences allowable activities?

Funds under the Act may be used to pay wages and related benefits for work experiences in the public; private, for-profit or non-profit sectors where the objective assessment and individual service strategy indicate that work experiences are appropriate. (WIA sec. 129(c)(2)(D).)

Subpart E—Concurrent Enrollment

§ 664.500 May youth participate in both youth and adult/dislocated worker programs concurrently?

(a) Yes, under the Act, eligible youth are 14 through 21 years of age. Adults are defined in the Act as individuals age 18 and older. Thus, individuals ages 18 through 21 may be eligible for both adult and youth programs. There is no specified age for the dislocated worker program.

(b) Individuals who meet the respective eligibility requirements may participate in adult and youth programs concurrently. Concurrent enrollment is allowable for youth served in programs under WIA titles I or II. Such individuals must be eligible under the youth or adult/dislocated worker eligibility criteria applicable to the services received. Local program operators may determine, for individuals in this age group, the appropriate level and balance of services under the youth, adult, dislocated worker, or other services.

(c) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult/dislocated worker programs concurrently, and ensure that services are not duplicated.

§ 664.510 Are Individual Training Accounts allowed for youth participants?

No, however, individuals age 18 and above, who are eligible for training services under the adult and dislocated worker programs, may receive Individual Training Accounts through those programs. Requirements for concurrent participation requirements are set forth in § 664.500. To the extent possible, in order to enhance youth participant choice, youth participants should be involved in the selection of educational and training activities.

Subpart F—Summer Employment Opportunities

§ 664.600 Are Local Boards required to offer summer employment opportunities in the local youth program?

(a) Yes, Local Boards are required to offer summer youth employment opportunities that link academic and occupational learning as part of the menu of services required in § 664.410(a).

(b) Summer youth employment must provide direct linkages to academic and occupational learning, and may provide other elements and strategies as appropriate to serve the needs and goals of the participants.

(c) Local Boards may determine how much of available youth funds will be used for summer and for year-round youth activities.

(d) The summer youth employment opportunities element is not intended to be a stand-alone program. Local programs should integrate a youth's participation in that element into a comprehensive strategy for addressing the youth's employment and training needs. Youths who participate in summer employment opportunities must be provided with a minimum of twelve months of followup services, as required in § 664.450. (WIA sec. 129(c)(2)(C).)

§ 664.610 How is the summer employment opportunities element administered?

Chief elected officials and Local Boards are responsible for ensuring that the local youth program provides summer employment opportunities to youth. The chief elected officials (which may include local government units operating as a consortium) are the grant recipients for local youth funds, unless another entity is chosen to be grant recipient or fiscal agent under WIA section 117(d)(3)(B). If, in the administration of the summer employment opportunities element of the local youth program, providers other than the grant recipient/fiscal agent, are used to provide summer youth employment opportunities, these

providers must be selected by awarding a grant or contract on a competitive basis, based on the recommendation of the youth council and on criteria contained in the State Plan. However, the selection of employers who are providing unsubsidized employment opportunities may be excluded from the competitive process. (WIA sec. 129(c)(2)(C).)

§ 664.620 Do the core indicators described in 20 CFR 666.100(a)(3) apply to participation in summer employment activities?

Yes, the summer employment opportunities element is one of a number of activities authorized by the WIA youth program. WIA section 136(b)(2) (A)(ii) and(B) provides specific core indicators of performance for youth, and requires that all participating youth be included in the determination of whether the local levels of performance are met. Program operators can help ensure positive outcomes for youth participants by providing them with continuity of services.

Subpart G—One-Stop Services to Youth

§ 664.700 What is the connection between the youth program and the One-Stop service delivery system?

(a) The chief elected official (or designee, under WIA section 117(d)(3)(B)), as the local grant recipient for the youth program is a required One-Stop partner and is subject to the requirements that apply to such partners, described in 20 CFR part 662.

(b) In addition to the provisions of 20 CFR part 662, connections between the youth program and the One-Stop system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in §§ 664.400 and 664.410; and

(4) Other activities designed to achieve the purposes of the youth program and youth activities as described in WIA section 129(a). (WIA secs. 121(b)(1)(B)(i); 129.)

§ 664.710 Do Local Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the One-Stop centers?

Yes, however, One-Stop services for non-eligible youth must be funded by programs that are authorized to provide services to such youth. For example, basic labor exchange services under the Wagner-Peyser Act may be provided to any youth.

Subpart H—Youth Opportunity Grants

§ 664.800 How are the recipients of Youth Opportunity Grants selected?

(a) Youth Opportunity Grants are awarded through a competitive selection process. The Secretary establishes appropriate application procedures, selection criteria, and an approval process for awarding Youth Opportunity Grants to applicants which can accomplish the purpose of the Act and use available funds in an effective manner in the Solicitation for Grant Applications announcing the competition.

(b) The Secretary distributes grants equitably among urban and rural areas by taking into consideration such factors as the following:

(1) The poverty rate in urban and rural communities;

(2) The number of people in poverty in urban and rural communities; and

(3) The quality of proposals received. (WIA sec.169(a) and (e).)

§ 664.810 How does a Local Board or other entity become eligible to receive a Youth Opportunity Grant?

(a) A Local Board is eligible to receive a Youth Opportunity Grant if it serves a community that:

(1) Has been designated as an empowerment zone (EZ) or enterprise community (EC) under section 1391 of the Internal Revenue Code of 1986;

(2) Is located in a State that does not have an EZ or an EC and that has been designated by its Governor as a high poverty area; or

(3) Is one of two areas in a State that has been designated by the Governor as an area for which a local board may apply for a Youth Opportunity Grant, and that meets the poverty rate criteria in section 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

(b) An entity other than a Local Board is eligible to receive a grant if that entity:

(1) Is a WIA Indian and Native American grant recipient under WIA section 166; and

(2) Serves a community that:

(i) Meets the poverty rate criteria in section 1392(a)(4), (b), and (d) of the Internal Revenue Code of 1986; and

(ii) Is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups, as provided in WIA section 169 (d)(2)(B). (WIA sec. 169(c) and (d).)

§ 664.820 Who is eligible to receive services under Youth Opportunity Grants?

All individuals ages 14 through 21 who reside in the community identified in the grant are eligible to receive services under the grant. (WIA sec. 169(a).)

§ 664.830 How are performance measures for Youth Opportunity Grants determined?

(a) The Secretary negotiates performance measures, including appropriate performance levels for each indicator, with each selected grantee, based on information contained in the application.

(b) Performance indicators for the measures negotiated under Youth Opportunity Grants are the indicators of performance provided in WIA sections 136(b)(2)(A) and (B). (WIA sec. 169(f).).

PART 665—STATEWIDE WORKFORCE INVESTMENT ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—General Description

Sec.

665.100 What are the Statewide workforce investment activities under title I of WIA?
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Subpart B—Required and Allowable Statewide Workforce Investment Activities

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Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—General Description

§ 665.100 What are the Statewide workforce investment activities under title I of WIA?

Statewide workforce investment activities include Statewide employment and training activities for adults and dislocated workers, as described in WIA section 134(a), and Statewide youth activities, as described in WIA section 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of

Statewide workforce investment funds. Descriptions of these policies and strategies must be included in the State Plan. (WIA secs. 129(b), 134(a).)

§ 665.110 How are Statewide workforce investment activities funded?

(a) Except for the Statewide rapid response activities described in paragraph (c) of this section, Statewide workforce investment activities are supported by funds reserved by the Governor under WIA section 128(a).

(b) Funds reserved by the Governor for Statewide workforce investment activities may be combined and used for any of the activities authorized in WIA sections 129(b), 134(a)(2)(B) or 134(a)(3)(A) (which are described in §§ 665.200 and 665.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for Statewide rapid response activities are reserved under WIA section 133(a)(2) and may be used to provide the activities authorized at section 134(a)(2)(A) (which are described in §§ 665.310 through 665.330). (WIA secs. 129(b), 133(a)(2), 134(a)(2)(B), and 134(a)(3)(A).)

Subpart B—Required and Allowable Statewide Workforce Investment Activities

§ 665.200 What are required Statewide workforce investment activities?

Required Statewide workforce investment activities are:

(a) Required rapid response activities, as described in § 665.310;

(b) Disseminating:

(1) The State list of eligible providers of training services (including those providing non-traditional training services), for adults and dislocated workers;

(2) Information identifying eligible providers of on-the-job training (OJT) and customized training;

(3) Performance and program cost information about these providers, as described in 20 CFR 663.540; and

(4) A list of eligible providers of youth activities as described in WIA section 123;

(c) States must assure that the information listed in paragraphs (b)(1) through (4) of this section is widely available.

(d) Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system. Such evaluations must be designed and conducted in conjunction with the State and Local Boards, and must include analysis of customer feedback, outcome and process measures in the workforce investment system. To the maximum extent practicable, these evaluations should be conducted in coordination with Federal evaluations carried out under WIA section 172.

(e) Providing incentive grants:

(1) To local areas for regional cooperation among Local Boards (including Local Boards for a designated region, as described in 20 CFR 661.290);

(2) For local coordination of activities carried out under WIA; and

(3) For exemplary performance by local areas on the performance measures.

(f) Providing technical assistance to local areas that fail to meet local performance measures.

(g) Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State workforce investment plan. (WIA sec. 112(b)(14).)

(h) Providing additional assistance to local areas that have high concentrations of eligible youth.

(i) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary after consultation with the Governors, chief elected officials, and One-Stop partners, as required by WIA section 136(f). (WIA secs. 129(b)(2), 134(a)(2), and 136(e)(2).)

§ 665.210 What are allowable Statewide workforce investment activities?

Allowable Statewide workforce investment activities include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at 20 CFR 667.210(a)(1).

(b) Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers, which may include:

(1) Staff development and training; and

(2) The development of exemplary program activities.

(c) Conducting research and demonstrations.

(d) Establishing and implementing:

(1) Innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading; and

(2) Programs targeted to Empowerment Zones and Enterprise Communities.

(e) Providing support to local areas for the identification of eligible training providers.

(f) Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.

(g) Carrying out such adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.

(h) Carrying out youth activities Statewide.

(i) Preparation and submission to the Secretary of the annual performance progress report as described in 20 CFR 667.300(e). (WIA secs. 129(b)(3) and 134(a)(3).)

§ 665.220 Who is an ''incumbent worker'' for purposes of Statewide workforce investment activities?

States may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services under this subpart. An incumbent worker is an individual who is employed, but an incumbent worker does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CFR 663.220(b) and 663.310. (WIA sec. 134(a)(3)(A)(iv)(I).)

Subpart C—Rapid Response Activities

§ 665.300 What are rapid response activities and who is responsible for providing them?

(a) Rapid response activities are described in §§ 665.310 through 665.330. They encompass the activities necessary to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation.

(b) The State is responsible for providing rapid response activities. Rapid response is a required activity carried out in local areas by the State, or an entity designated by the State, in conjunction with the Local Board and chief elected officials. The State must establish methods by which to provide additional assistance to local areas that experience disasters, mass layoffs, plant closings, or other dislocation events when such events substantially increase the number of unemployed individuals.

(c) States must establish a rapid response dislocated worker unit to carry out Statewide rapid response activities.

(WIA secs. 101(38), 112(b)(17)(A)(ii) and 134(a)(2)(A).)

§ 665.310 What rapid response activities are required?

Rapid response activities must include:

(a) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, which may include an assessment of the:

(1) Layoff plans and schedule of the employer;

(2) Potential for averting the layoff(s) in consultation with State or local economic development agencies, including private sector economic development entities;

(3) Background and probable assistance needs of the affected workers;

(4) Reemployment prospects for workers in the local community; and

(5) Available resources to meet the short and long-term assistance needs of the affected workers.

(b) The provision of information and access to unemployment compensation benefits, comprehensive One-Stop system services, and employment and training activities, including information on the Trade Adjustment Assistance (TAA) program and the NAFTA–TAA program (19 U.S.C. 2271 *et seq.*);

(c) The provision of guidance and/or financial assistance in establishing a labor-management committee voluntarily agreed to by labor and management, or a workforce transition committee comprised of representatives of the employer, the affected workers and the local community. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee;

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIA-authorized services to affected workers. Typically, such support will last no longer than six months; and

(3) Providing a list of potential candidates to serve as a neutral chairperson of the committee.

(d) The provision of emergency assistance adapted to the particular closing, layoff or disaster.

(e) The provision of assistance to the local board and chief elected official(s) to develop a coordinated response to the dislocation event and, as needed, obtain access to State economic development assistance. Such coordinated response may include the development of an application for National Emergency Grant under 20 CFR part 671. (WIA secs. 101(38) and 134(a)(2)(A).)

§ 665.320 May other activities be undertaken as part of rapid response?

Yes, a State or designated entity may provide rapid response activities in addition to the activities required to be provided under § 665.310. In order to provide effective rapid response upon notification of a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation, the State or designated entity may:

(a) In conjunction, with other appropriate Federal, State and Local agencies and officials, employer associations, technical councils or other industry business councils, and labor organizations:

(1) Develop prospective strategies for addressing dislocation events, that ensure rapid access to the broad range of allowable assistance;

(2) Identify strategies for the aversion of layoffs; and

(3) Develop and maintain mechanisms for the regular exchange of information relating to potential dislocations, available adjustment assistance, and the effectiveness of rapid response strategies.

(b) In collaboration with the appropriate State agency(ies), collect and analyze information related to economic dislocations, including potential closings and layoffs, and all available resources in the State for dislocated workers in order to provide an adequate basis for effective program management, review and evaluation of rapid response and layoff aversion efforts in the State.

(c) Participate in capacity building activities, including providing information about innovative and successful strategies for serving dislocated workers, with local areas serving smaller layoffs.

(d) Assist in devising and overseeing strategies for:

(1) Layoff aversion, such as prefeasibility studies of avoiding a plant closure through an option for a company or group, including the workers, to purchase the plant or company and continue it in operation;

(2) Incumbent worker training, including employer loan programs for employee skill upgrading; and

(3) Linkages with economic development activities at the Federal, State and local levels, including Federal Department of Commerce programs and available State and local business retention and recruitment activities.

§ 665.330 Are the NAFTA–TAA program requirements for rapid response also required activities?

The Governor must ensure that rapid response activities under WIA are made available to workers who, under the NAFTA Implementation Act (Public Law 103–182), are members of a group of workers (including those in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a preliminary finding that:

(a) A significant number or proportion of the workers in such firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(b) Either: (1) The sales or production, or both, of such firm or subdivision have decreased absolutely; and

(2) Imports from Mexico or Canada of articles like or directly competitive with those produced by such firm or subdivision have increased; or

(c) There has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

§ 665.340 What is meant by ''provision of additional assistance'' in WIA section 134(a)(2)(A)(ii)?

Up to 25 percent of dislocated worker funds may be reserved for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in § 665.310 and 665.320, the remainder of the funds may be used by the State to provide funds to local areas, that experience increased numbers of unemployed individuals due to natural disasters, plant closings, mass layoffs or other events, for provision of direct services to participants (such as intensive, training, and other services) if there are not adequate local funds available to assist the dislocated workers.

PART 666—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—State Measures of Performance

Sec.

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666.120 What are the procedures for negotiating annual levels of performance?

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666.300 What performance indicators apply to local areas?
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Subpart D—Incentives and Sanctions for Local Performance

666.400 Under what circumstances are local areas eligible for State Incentive Grants?
666.410 How may local incentive awards be used?
666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—State Measures of Performance

§ 666.100 What performance indicators must be included in a State's plan?

(a) All States submitting a State Plan under WIA title I, subtitle B must propose expected levels of performance for each of the core indicators of performance for the adult, dislocated worker and youth programs, respectively and the two customer satisfaction indicators.

(1) For the Adult program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(2) For the Dislocated Worker program, these indicators are:

(i) Entry into unsubsidized employment;

(ii) Retention in unsubsidized employment six months after entry into the employment;

(iii) Earnings received in unsubsidized employment six months after entry into the employment; and

(iv) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

(3) For the Youth program, these indicators are:

(i) For eligible youth aged 14 through 18:

(A) Attainment of basic skills goals, and, as appropriate, work readiness or occupational skills goals, up to a maximum of three goals per year;

(B) Attainment of secondary school diplomas and their recognized equivalents; and

(C) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

(ii) For eligible youth aged 19 through 21:

(A) Entry into unsubsidized employment;

(B) Retention in unsubsidized employment six months after entry into the employment;

(C) Earnings received in unsubsidized employment six months after entry into the employment; and

(D) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter post-secondary education, advanced training, or unsubsidized employment.

(4) A single customer satisfaction measure for employers and a single customer satisfaction indicator for participants must be used for the WIA title I, subtitle B programs for adults, dislocated workers and youth. (WIA sec. 136(b)(2).)

(b) After consultation with the representatives identified in WIA sections 136(i) and 502(b), the Departments of Labor and Education will issue definitions for the performance indicators established under title I and title II of WIA. (WIA sec. 136 (b), (f) and (i).)

§ 666.110 May a Governor require additional indicators of performance?

Yes, Governors may develop additional indicators of performance for adults, youth and dislocated worker activities. These indicators must be included in the State Plan. (WIA sec. 136(b)(2)(C).)

§ 666.120 What are the procedures for negotiating annual levels of performance?

(a) We issue instructions on the specific information that must accompany the State Plan and that is used to review the State's expected levels of performance. The instructions may require that levels of performance for years two and three be expressed as a percentage improvement over the immediately preceding year's performance, consistent with the objective of continuous improvement.

(b) States must submit expected levels of performance for the required indicators for each of the first three program years covered by the Plan.

(c) The Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators. In negotiating these levels, the following must be taken into account:

(1) The expected levels of performance identified in the State Plan;

(2) The extent to which the levels of performance for each core indicator assist in achieving high customer satisfaction;

(3) The extent to which the levels of performance promote continuous improvement and ensure optimal return on the investment of Federal funds; and

(4) How the levels compare with those of other States, taking into account factors including differences in economic conditions, participant characteristics, and the proposed service mix and strategies.

(d) The levels of performance agreed to under paragraph (c) of this section will be the State's negotiated levels of performance for the first three years of the State Plan. These levels will be used to determine whether sanctions will be applied or incentive grant funds will be awarded.

(e) Before the fourth year of the State Plan, the Secretary and the Governor must reach agreement on levels of performance for each core indicator and the customer satisfaction indicators for the fourth and fifth years covered by the plan. In negotiating these levels, the factors listed in paragraph (c) of this section must be taken into account.

(f) The levels of performance agreed to under paragraph (e) of this section will be the State negotiated levels of performance for the fourth and fifth years of the plan and must be incorporated into the State Plan.

(g) Levels of performance for the additional indicators developed by the Governor, including additional indicators to demonstrate and measure continuous improvement toward goals identified by the State, are not part of the negotiations described in paragraphs (c) and (e) of this section. (WIA sec. 136(b)(3).)

(h) State negotiated levels of performance may be revised in accordance with § 666.130.

§ 666.130 Under what conditions may a State or DOL request revisions to the State negotiated levels of performance?

(a) The DOL guidelines describe when and under what circumstances a Governor may request revisions to negotiated levels. These circumstances include significant changes in economic conditions, in the characteristics of participants entering the program, or in the services to be provided from when the initial plan was submitted and approved. (WIA sec. 136(b)(3)(A)(vi).)

(b) The guidelines will establish the circumstances under which a State will be required to submit revisions under specified circumstances.

§ 666.140 Which individuals receiving services are included in the core indicators of performance?

(a)(1) The core indicators of performance apply to all individuals who are registered under 20 CFR 663.105 and 664.215 for the adult, dislocated worker and youth programs, except for those adults and dislocated workers who participate exclusively in self-service or informational activities. (WIA sec. 136(b)(2)(A).)

(2) Self-service and informational activities are those core services that are made available and accessible to the general public, that are designed to inform and educate individuals about the labor market and their employment strengths, weaknesses, and the range of services appropriate to their situation, and that do not require significant staff involvement with the individual in terms of resources or time.

(b) For registered participants, a standardized record that includes appropriate performance information must be maintained in accordance with WIA section 185(a)(3).

(c) Performance will be measured on the basis of results achieved by registered participants, and will reflect services provided under WIA title I, subtitle B programs for adults, dislocated workers and youth. Performance may also take into account services provided to participants by other One-Stop partner programs and activities, to the extent that the local MOU provides for the sharing of participant information.

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

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State and local performance measures. In order to meet this requirement the use of social security numbers from registered participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) The State must include in the State Plan a description of the State's performance accountability system, and a description of the State's strategy for using quarterly wage record information to measure the progress on State and local performance measures. The description must identify the entities that may have access to quarterly wage record information for this purpose.

(c) ''Quarterly wage record information'' means information regarding wages paid to an individual, the social security account number (or numbers, if more than one) of the individual and the name, address, State, and (when known) the Federal employer identification number of the employer paying the wages to the individual. (WIA sec. 136(f)(2).)

Subpart B—Incentives and Sanctions for State Performance

§ 666.200 Under what circumstances is a State eligible for an Incentive Grant?

A State is eligible to apply for an Incentive Grant if its performance for the immediately preceding year exceeds:

(a) The State's negotiated levels of performance for the required core indicators for the adult, dislocated worker and youth programs under title I of WIA as well as the customer satisfaction indicators for WIA title I programs;

(b) The adjusted levels of performance for title II Adult Education and Family Literacy programs; and

(c) The adjusted levels of performance under section 113 of the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 *et seq.*). (WIA sec. 503.)

§ 666.205 What are the time frames under which States submit performance progress reports and apply for incentive grants?

(a) State performance progress reports must be filed by the due date established in reporting instructions issued by the Department.

(b) Based upon the reports filed under paragraph (a) of this section, we will determine the amount of funds available, under WIA title I, to each eligible State for incentive grants, in accordance with the criteria of § 666.230. We will publish the award amounts for each eligible State, after consultation with the Secretary of Education, within ninety (90) days after the due date for performance progress reports established under paragraph (a) of this section.

(c) Within forty-five (45) days of the publication of award amounts under paragraph (b) of this section, States may apply for incentive grants in accordance with the requirements of § 666.220.

§ 666.210 How may Incentive Grant funds be used?

Incentive grant funds are awarded to States to carry out any one or more innovative programs under titles I or II of WIA or the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. (WIA sec. 503(a).)

§ 666.220 What information must be included in a State Board's application for an Incentive Grant?

(a) After consultation with the Secretary of Education, we will issue instructions annually which will include the amount of funds available to be awarded for each State and provide instructions for submitting applications for an Incentive Grant.

(b) Each State desiring an incentive grant must submit to the Secretary an application, developed by the State Board, containing the following assurances:

(1) The State legislature was consulted regarding the development of the application.

(2) The application was approved by the Governor, the eligible agency (as defined in WIA section 203), and the State agency responsible for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act.

(3) The State exceeded the State negotiated levels of performance for title I, the levels of performance under title II and the levels for vocational and technical programs under the Carl D. Perkins Vocational and Technical Education Act. (WIA sec. 503(b).)

§ 666.230 How does the Department determine the amounts for Incentive Grant awards?

(a) We determine the total amount to be allocated from funds available under WIA section 174(b) for Incentive Grants taking into consideration such factors as:

(1) The availability of funds under section 174(b) for technical assistance, demonstration and pilot projects, evaluations, and Incentive Grants and the needs for these activities;

(2) The number of States that are eligible for Incentive Grants and their relative program formula allocations under title I;

(3) The availability of funds under WIA section 136(g)(2) resulting from funds withheld for poor performance by States; and

(4) The range of awards established in WIA section 503(c).

(b) We will publish the award amount for eligible States, after consultation with the Secretary of Education, within 90 days after the due date, established under § 666.205(a), for the latest State performance progress report providing the annual information needed to determine State eligibility.

(c) In determining the amount available to an eligible State, the Secretary, with the Secretary of Education, may consider such factors as:

(1) The relative allocations of the eligible State compared to other States;

(2) The extent to which the negotiated levels of performance were exceeded;

(3) Performance improvement relative to previous years;

(4) Changes in economic conditions, participant characteristics and proposed service design since the negotiated levels of performance were agreed to;

(5) The eligible State's relative performance for each of the indicators compared to other States; and

(6) The performance on those indicators considered most important in terms of accomplishing national goals established by each of the respective Secretaries.

§ 666.240 Under what circumstances may a sanction be applied to a State that fails to achieve negotiated levels of performance for title I?

(a) If a State fails to meet the negotiated levels of performance agreed to under § 666.120 for core indicators of performance or customer satisfaction indicators for the adult, dislocated worker or youth programs under title I of WIA, the Secretary must, upon request, provide technical assistance, as authorized under WIA sections 136(g) and 170.

(b) If a State fails to meet the negotiated levels of performance for core indicators of performance or customer satisfaction indicators for the same program in two successive years, the amount of the succeeding year's allocation for the applicable program may be reduced by up to five percent.

(c) The exact amount of any allocation reduction will be based upon the degree of failure to meet the negotiated levels of performance for core indicators. In making a determination of the amount, if any, of such a sanction, we may consider factors such as:

(1) The State's performance relative to other States;

(2) Improvement efforts underway;

(3) Incremental improvement on the performance measures;

(4) Technical assistance previously provided;

(5) Changes in economic conditions and program design;

(6) The characteristics of participants served compared to the participant characteristics described in the State Plan; and

(7) Performance on other core indicators of performance and customer satisfaction indicators for that program. (WIA sec. 136(g).)

(d) Only performance that is less than 80 percent of the negotiated levels will be deemed to be a failure to achieve negotiated levels of performance.

(e) In accordance with 20 CFR 667.300(e), a State grant may be reduced for failure to submit an annual performance progress report.

(f) A State may request review of a sanction we impose in accordance with the provisions of 20 CFR 667.800.

Subpart C—Local Measures of Performance

§ 666.300 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State is subject to the same core indicators of performance and the customer satisfaction indicators that apply to the State under § 666.100(a).

(b) In addition to the indicators described in paragraph (a) of this section, under § 666.110, the Governor may apply additional indicators of performance to local areas in the State. (WIA sec. 136(c)(1).)

§ 666.310 What levels of performance apply to the indicators of performance in local areas?

(a) The Local Board and the chief elected official must negotiate with the Governor and reach agreement on the local levels of performance for each indicator identified under § 666.300. The levels must be based on the State negotiated levels of performance established under § 666.120 and take into account the factors described in paragraph (b) of this section.

(b) In determining the appropriate local levels of performance, the Governor, Local Board and chief elected official must take into account specific economic, demographic and other characteristics of the populations to be served in the local area.

(c) The performance levels agreed to under paragraph (a) of this section must be incorporated in the local plan. (WIA secs. 118(b)(3) and 136(c).)

Subpart D—Incentives and Sanctions for Local Performance

§ 666.400 Under what circumstances are local areas eligible for State Incentive Grants?

(a) States must use a portion of the funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1) to provide Incentive Grants to local areas for regional cooperation among local boards (including local boards for a designated region, as described in WIA section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance on the local performance measures established under subpart C of this part.

(b) The amount of funds used for Incentive Grants under paragraph (a) of this section and the criteria used for determining exemplary local performance levels to qualify for the incentive grants are determined by the Governor. (WIA sec. 134(a)(2)(B)(iii).)

§ 666.410 How may local incentive awards be used?

The local incentive grant funds may be used for any activities allowed under WIA title I–B.

§ 666.420 Under what circumstances may a sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 666.310 for the core indicators of performance or customer satisfaction indicators for a program in any program year, technical assistance must be provided. The technical assistance must be provided by the Governor with funds reserved for Statewide workforce investment activities under WIA sections 128(a) and 133(a)(1), or, upon the Governor's request, by the Secretary. The technical assistance may include the development of a performance improvement plan, a modified local plan, or other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under

§ 666.310 for the core indicators of performance or customer satisfaction indicators for a program for two consecutive program years, the Governor must take corrective actions. The corrective actions may include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board;

(2) Prohibits the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or

(3) Requires other appropriate measures designed to improve the performance of the local area.

(c) A local area may appeal to the Governor to rescind or revise a reorganization plan imposed under paragraph (b) of this section not later than thirty (30) days after receiving notice of the plan. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the Local Board to the Secretary under 20 CFR 667.650(b) not later than thirty (30) days after the local area receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. Upon receipt of the appeal from the local area, the Secretary must make a final decision within thirty (30) days. (WIA sec. 136(h).)

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Sec.

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Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Funding

§ 667.100 When do Workforce Investment Act grant funds become available?

(a) *Program year.* Except as provided in paragraph (b) of this section, fiscal year appropriations for programs and activities carried out under title I of WIA are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth fund availability.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 4, subtitle B, title I of WIA, may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

§ 667.105 What award document authorizes the expenditure of Workforce Investment Act funds under title I of the Act?

(a) *Agreement.* All WIA title I funds that are awarded by grant, contract or cooperative agreement are issued under an agreement between the Grant Officer/Contracting Officer and the recipient. The agreement describes the terms and conditions applicable to the award of WIA title I funds.

(b) *Grant funds awarded to States.* Under the Governor/Secretary Agreement described in § 667.110, each program year, the grant agreement described in paragraph (a) of this section will be executed and signed by the Governor or the Governor's designated representative and Secretary or the Grant Officer. The grant agreement and associated Notices of Obligation are the basis for Federal obligation of funds allotted to the States in accordance with WIA sections 127(b) and 132(b) for each program year.

(c) *Indian and Native American Programs.* (1) Awards of grants, contracts or cooperative agreements for the WIA Indian and Native American program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 668. An award for the succeeding two-year period may be made to the same recipient on a non-competitive basis if the recipient:

(i) Has performed satisfactorily; and

(ii) Submits a satisfactory two-year program plan for the succeeding two-year grant, contract or agreement period.

(2) A grant, contract or cooperative agreement may be renewed under the authority of paragraph (c)(1) of this section no more than once during any four-year period for any single recipient.

(d) *National Farmworker Jobs programs.* (1) Awards of grants or contracts for the National Farmworker Jobs program will be made to eligible entities on a competitive basis every two program years for a two-year period, in accordance with the provisions of 20 CFR part 669. An award for the succeeding two-year period may be made to the same recipient if the recipient:

(i) Has performed satisfactorily; and

(ii) Submits a satisfactory two-year program plan for the succeeding two-year period.

(2) A grant or contract may be renewed under the authority of paragraph (d)(1) of this section no more than once during any four-year period for any single recipient.

(e) *Job Corps.* (1) Awards of contracts will be made on a competitive basis between the Contracting Officer and eligible entities to operate contract centers and provide operational support services.

(2) The Secretary may enter into interagency agreements with Federal agencies for funding, establishment, and operation of Civilian Conservation Centers for Job Corps programs.

(f) *Youth Opportunity grants.* Awards of grants for Youth Opportunity programs will be made to eligible Local Boards and eligible entities for a one-year period. The grants may be renewed for each of the four succeeding years based on criteria that include successful performance.

(g) *Awards under WIA sections 171 and 172.* (1) Awards of grants, contracts or cooperative agreements will be made to eligible entities for programs or activities authorized under WIA sections 171 or 172. These funds are for:

(i) Demonstration;

(ii) Pilot;

(iii) Multi-service;

(iv) Research;

(v) Multi-State projects; and

(vi) Evaluations

(2) Grants and contracts under paragraphs (g)(1)(i) and (ii) of this section will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private entities that provide a portion of the funding.

(3) Contracts and grants under paragraphs (g)(1)(iii), (iv), and (v) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant or contract for the project.

(4) Grants or contracts for carrying out projects in paragraphs (g)(1)(iii), (iv), and (v) of this section may not be awarded to the same organization for more than three consecutive years, unless the project is competitively reevaluated within that period.

(5) Entities with nationally recognized expertise in the methods, techniques and knowledge of workforce investment activities will be provided priority in awarding contracts or grants for the projects under paragraphs (g)(1)(iii), (iv), and (v) of this section.

(6) A peer review process will be used for projects under paragraphs (g)(1)(iii), (iv), and (v) of this section for grants that exceed $500,000, and to designate exemplary and promising programs.

(h) *Termination.* Each grant terminates when the period of fund availability has expired. The grant must be closed in accordance with the closeout provisions at 29 CFR 95.71 or 97.50, as appropriate.

§ 667.107 What is the period of availability for expenditure of WIA funds?

(a) *Grant funds expended by States.* Funds allotted to States under WIA sections 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the two succeeding program years.

(b) *Grant funds expended by local areas.* (1) Funds allocated by a State to a local area under WIA sections 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year.

(2) Funds which are not expended by a local area in the two-year period described in paragraph (b)(1) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability. These funds may:

(i) Be used for Statewide projects, or

(ii) Be distributed to other local areas which had fully expended their allocation of funds for the same program year within the two-year period.

(c) *Job Corps.* Funds obligated for any program year for any Job Corps activity carried out under title I, subtitle C, of WIA may be expended during that program year and the two succeeding program years.

(d) *Funds awarded under WIA sections 171 and 172.* Funds obligated for any program year for a program or activity authorized under sections 171 or 172 of WIA remain available until expended.

(e) *Other programs under title I of WIA.* For all other grants, contracts and cooperative agreements issued under title I of WIA the period of availability for expenditure is set in the terms and conditions of the award document.

§ 667.110 What is the Governor/Secretary Agreement?

(a) To establish a continuing relationship under the Act, the Governor and the Secretary will enter into a Governor/Secretary Agreement. The Agreement will consist of a statement assuring that the State will comply with:

(1) The Workforce Investment Act and all applicable rules and regulations, and

(2) The Wagner-Peyser Act and all applicable rules and regulations.

(b) The Governor/Secretary Agreement may be modified, revised or terminated at any time, upon the agreement of both parties.

§ 667.120 What planning information must a State submit in order to receive a formula grant?

Each State seeking financial assistance under WIA sections 127 (youth) or 132 (adults and dislocated workers) or under the Wagner-Peyser Act must submit a single State Plan. The requirements for the plan content and the plan review process are described in WIA section 112, Wagner-Peyser Act section 8, and 20 CFR 661.220, 661.240 and 652.211 through 652.214.

§ 667.130 How are WIA title I formula funds allocated to local workforce investment areas?

(a) *General.* The Governor must allocate WIA formula funds allotted for services to youth, adults and dislocated workers in accordance with WIA sections 128 and 133, and this section.

(1) State Boards must assist Governors in the development of any discretionary within-State allocation formulas. (WIA sec. 111(d)(5).)

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in WIA sections 128(b) and 133(b) and in the State workforce investment plan, and

(ii) After consultation with chief elected officials in each of the workforce investment areas.

(b) *State reserve.* (1) Of the WIA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve funds from each of these sources for Statewide workforce investment activities. In making these reservations, the Governor may reserve up to fifteen (15) percent from each of these sources. Funds reserved under this paragraph may be combined and spent on Statewide employment and training activities, for adults and dislocated workers, and Statewide youth activities, as described in 20 CFR 665.200 and 665.210, without regard to the funding source of the reserved funds.

(2) The Governor must reserve a portion of the dislocated worker funds for Statewide rapid response activities, as described in WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330. In making this reservation, the Governor may reserve up to twenty-five (25) percent of the dislocated worker funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each workforce investment area, compared to the total number of disadvantaged youth in the State. (WIA sec. 128(b)(2)(A)(i))

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b)(1) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 128(b)(3).)

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b)(1) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce investment area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each workforce investment area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults in each workforce investment area, compared to the total number of disadvantaged adults in the State. (WIA sec. 133(b)(2)(A)(i))

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1) of this section, the State may allocate adult funds under an discretionary formula. Under that formula, the State must allocate a minimum of 70 percent of adult funds on the basis of the formula in paragraph (d)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State Board and approved by the Secretary of Labor as part of the State workforce investment plan. (WIA sec. 133(b)(3).)

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b)(1) or (b)(2) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's worker readjustment assistance needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2)(i) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(A) Insured unemployment data,

(B) Unemployment concentrations,

(C) Plant closings and mass layoff data,

(D) Declining industries data,

(E) Farmer-rancher economic hardship data, and

(F) Long-term unemployment data.

(ii) The State Plan must describe the data used for the formula and the weights assigned, and explain the State's decision to use other information or to omit any of the information sources set forth in paragraph (e)(2)(i) of this section.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(4)(i) Dislocated worker funds initially reserved by the Governor for Statewide rapid response activities in accordance with paragraph (b)(2) of this section may be:

(A) Distributed to local areas, and

(B) Used to operate projects in local areas in accordance with the requirements of WIA section 134(a)(2)(A) and 20 CFR 665.310 through 665.330.

(ii) The State Plan must describe the procedures for any distribution to local areas, including the timing and process for determining whether a distribution will take place.

§ 667.135 What ''hold harmless'' provisions apply to WIA adult and youth allocations?

(a)(1) For the first two fiscal years after the date on which a local area is designated under section 116 of WIA, the State may elect to apply the ''hold harmless'' provisions specified in paragraph (b) of this section to local area allocations of WIA youth funds under § 667.130(c) and to allocations of WIA adult funds under § 667.130(d).

(2) Effective at the end of the second full fiscal year after the date on which a local area is designated under section 116 of WIA the State must apply the ''hold harmless'' specified in paragraph (b) of this section to local area allocations of WIA youth funds under § 667.130(c) and to allocations of WIA adult funds under § 667.130(d).

(3) There are no ''hold harmless'' provisions that apply to local area allocations of WIA dislocated worker funds.

(b)(1) If a State elects to apply a ''hold-harmless'' under paragraph (a)(1) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(2) In applying the ''hold harmless'' under paragraph (a)(2) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(3) Amounts necessary to increase allocations to local areas must be obtained by ratably reducing the allocations to be made to other local areas.

(4) If the amounts of WIA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (b)(1) of this section to all local areas, the amounts allocated to each local area mustbe ratably reduced. (WIA secs. 128(b)(2)(A)(ii), 133(b)(2)(A)(ii), 506.)

§ 667.140 Does a Local Board have the authority to transfer funds between programs?

(a) A Local Board may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor's approval.

(c) Local Boards may not transfer funds to or from the youth program.

§ 667.150 What reallotment procedures does the Secretary use?

(a) The first reallotment of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year, as separately determined for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(d) The term ''obligation'' is defined at 20 CFR 660.300. For purposes of this section, the Secretary will also treat as State obligations:

(1) Amounts allocated by the State, under WIA sections 128(b) and 133(b), to the single State local area if the State has been designated as a single local area under WIA section 116(b) or to a balance of State local area administered by a unit of the State government, and

(2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

§ 667.160 What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

(a) Before final selection as a potential grantee, we conduct a review of the

available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, we may consider any information that has come to our attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies that we identify, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

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

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

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

(11) Failure to ensure that a subrecipient complies with its OMB Circular A–133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.

Subpart B—Administrative Rules, Costs and Limitations

§ 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?

(a) *Uniform fiscal and administrative requirements.* (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' which is codified at 29 CFR part 97.

(2) Except as provided in paragraphs (a)(3) through (7) of this section, institutions of higher education, hospitals, other non-profit organizations, and commercial organizations must the follow the common rule implementing OMB Circular A–110 which is codified at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed. (WIA sec. 184(a)(3)(B).)

(4) In addition to the requirements at 29 CFR 95.42 or 29 CFR 97.36(b)(3) (as appropriate), which address codes of conduct and conflict of interest issues related to employees:

(i) A State Board member or a Local Board member or a Youth Council member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the State Board, the Local Board, the Youth Council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), must be used for the all program income earned under WIA title I grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program.

(6) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income. (WIA sec. 195(7)(A) and (B).)

(7) Interest income earned on funds received under WIA title I must be included in program income. (WIA sec. 195(7)(B)(iii).)

(8) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(b) *Audit requirements.* (1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A–133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(2)(i) We are responsible for audits of commercial organizations which are direct recipients of Federal financial assistance under WIA title I.

(ii) Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A–133 ($300,000 as of August 11, 2000) must have either an organization-wide audit conducted in accordance with A–133 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are described in

paragraphs (c)(1) through (5) of this section; all recipients must comply with paragraphs (c)(6) and (c)(7) of this section. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor for programs funded under sections 127 or 132 of the Act.

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

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

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

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

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

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

(7) In addition to the allowable cost provisions identified in paragraphs (c)(1) through (6) of this section, the cost of information technology—computer hardware and software—will only be allowable under WIA title I grants when such computer technology is ''Year 2000 compliant.'' To meet this requirement, information technology must be able to accurately process date/time (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, ''Year 2000 compliant'' information technology, when used in combination with other information technology, must accurately process date/time data if the other information technology properly exchanges date/time with it.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIA title I grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace, codified at 29 CFR part 98.

(e) *Restrictions on lobbying.* All WIA title I grant recipients and subrecipients must comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WIA title I recipients, as the term is defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations found at 29 CFR part 37. Information on the handling of discrimination complaints by participants and other interested parties may be found in 29 CFR 37.70 through 37.80, and in § 667.600(g).

(g) *Nepotism.* (1) No individual may be placed in a WIA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

§ 667.210 What administrative cost limits apply to Workforce Investment Act title I grants?

(a) Formula grants to States:

(1) As part of the 15 percent that a State may reserve for Statewide activities, the State may spend up to five percent (5%) of the amount allotted under sections 127(b)(1), 132(b)(1) and 132(b)(2) of the Act for the administrative costs of Statewide workforce investment activities.

(2) Local area expenditures for administrative purposes under WIA formula grants are limited to no more than ten percent (10%) of the amount allocated to the local area under sections 128(b) and 133(b) of the Act.

(3) Neither the five percent (5%) of the amount allotted that may be reserved for Statewide administrative costs nor the ten percent (10%) of the amount allotted that may be reserved for local administrative costs needs to be allocated back to the individual funding streams.

(b) Limits on administrative costs for programs operated under subtitle D of title I will be identified in the grant or contract award document.

(c) In a One-Stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities area chargeable to its own grant and subject to its own administrative cost limitations.

§ 667.220 What Workforce Investment Act title I functions and activities constitute the costs of administration subject to the administrative cost limit?

(a) The costs of administration are that allocable portion of necessary and reasonable allowable costs of State and local workforce investment boards, direct recipients, including State grant recipients under subtitle B of title I and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

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

(1) Performing the following overall general administrative functions and coordination of those functions under WIA title I:

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

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

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

(vii) Audit functions;

(viii) General legal services functions; and

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

(2) Performing oversight and monitoring responsibilities related to WIA administrative functions;

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

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

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems

development and operating costs of such systems.

(c)(1) Awards to subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs.

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

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

(4) Except as provided at paragraph (c)(1), all costs incurred for functions and activities of subrecipients and vendors are program costs.

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

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

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

(iii) Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants;

(6) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

§ 667.250 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIA section 189(h).

§ 667.255 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded. This applies when determining if a person is a ''low-income individual'' for eligibility purposes, (for example, in the WIA youth, Job Corps, or NFJP programs) and applies if income is used as a factor in applying the priority provision, under 20 CFR 663.600, when WIA adult funds are limited. Questions regarding the application of 38 U.S.C. 4213 should be directed to the Veterans Employment and Training Service.

§ 667.260 May WIA title I funds be spent for construction?

WIA title I funds must not be spent on construction or purchase of facilities or buildings except:

(a) To meet a recipient's, as the term is defined in 29 CFR 37.4, obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended;

(b) To fund repairs, renovations, alterations and capital improvements of property, including:

(1) SESA real property, identified at WIA section 193, using a formula that assesses costs proportionate to space utilized;

(2) JTPA owned property which is transferred to WIA title I programs;

(c) Job Corps facilities, as authorized by WIA section 160(3)(B); and

(d) To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area. (WIA sec. 173(d).)

§ 667.262 Are employment generating activities, or similar activities, allowable under WIA title I?

(a) Under WIA section 181(e), WIA title I funds may not be spent on employment generating activities, economic development, and other similar activities, unless they are directly related to training for eligible individuals. For purposes of this section, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities include:

(1) Contacts with potential employers for the purpose of placement of WIA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIA staff participation on economic development boards and commissions, and work with economic development agencies, to:

(i) Provide information about WIA programs,

(ii) Assist in making informed decisions about community job training needs, and

(iii) Promote the use of first source hiring agreements and enterprise zone vouchering services,

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small and new business to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIA activities in the private sector. (WIA sec. 181(e).)

§ 667.264 What other activities are prohibited under title I of WIA?

(a) WIA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system, (WIA sec. 181(b)(1).);

(2) Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA, (WIA sec. 195(10));

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(b) WIA formula funds available to States and local areas under subtitle B, title I of WIA must not be used for foreign travel. (WIA sec. 181(e).)

§ 667.266 What are the limitations related to sectarian activities?

(a) Limitations related to sectarian activities are set forth at WIA section 188(a)(3) and 29 CFR 37.6(f).

(b) Under these limitations:

(1) WIA title I financial assistance may not be spent on the employment or training of participants in sectarian activities. This limitation is more fully described at 29 CFR 37.6(f)(1).

(2) Under 29 CFR 37.6(f)(1), participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance

of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship. However, as discussed in 29 CFR 37.6(f)(2), WIA financial assistance may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

§ 667.268 What prohibitions apply to the use of WIA title I funds to encourage business relocation?

(a) WIA funds may not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) *Pre-award review.* To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area with the establishment as a prerequisite to WIA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s). (WIA sec. 181(d).)

§ 667.269 What procedures and sanctions apply to violations of §§ 667.260 through 667.268?

(a) We will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Employment generating activities (§ 667.262);

(2) Other prohibited activities (§ 667.264);

(3) The limitation related to sectarian activities (§ 667.266);

(4) The use of WIA title I funds to encourage business relocation (§ 667.268).

(b) Procedures for the investigation and resolution of the violations are provided for under the Grant Officer's resolution process at § 667.510. Sanctions and remedies are provided for under WIA section 184(c) for violations of the provisions relating to:

(1) Construction (§ 667.260);

(2) Employment generating activities (§ 667.262);

(3) Other prohibited activities (§ 667.264); and

(4) The limitation related to sectarian activities (§ 667.266(b)(1)).

(c) Sanctions and remedies are provided for in WIA section 181(d)(3) for violations of § 667.268, which addresses business relocation.

(d) Violations of § 667.266(b)(2) will be handled in accordance with the DOL nondiscrimination regulations implementing WIA section 188, codified at 29 CFR part 37.

§ 667.270 What safeguards are there to ensure that participants in Workforce Investment Act employment and training activities do not displace other employees?

(a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 667.600. (WIA sec. 181.)

§ 667.272 What wage and labor standards apply to participants in activities under title I of WIA?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) Individuals in on-the-job training or individuals employed in programs and activities under Title I of WIA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(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 *et seq.*). (WIA sec. 181(a)(2).)

§ 667.274 What health and safety standards apply to the working conditions of participants in activities under title I of WIA?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under Title I of WIA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under Title I of WIA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers'

compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in sectarian activities?

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIA section 188 and its implementing regulations, codified at 29 CFR part 37. Under that definition, the term ''recipients'' includes State and Local Workforce Investment Boards, One-Stop operators, service providers, vendors, and subrecipients, as well as other types of individuals and entitites.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIA section 188, codified at 29 CFR part 37, and are administered and enforced by the DOL Civil Rights Center.

(3) As described in § 667.260(a), financial assistance provided under WIA title I may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, section 188 of WIA, and the regulations implementing these statutory provisions.

(b) Under 29 CFR 37.6(f), the employment or training of participants in sectarian activities is prohibited, except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.

Subpart C—Reporting Requirements

§ 667.300 What are the reporting requirements for Workforce Investment Act programs?

(a) *General.* All States and other direct grant recipients must report financial, participant, and performance data in accordance with instructions issued by DOL. Required reports must be submitted no more frequently than quarterly within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL.

(2) If a State intends to impose different reporting requirements, it must describe those reporting requirements in its State WIA plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports.

(2) Reports must include any income or profits earned, including such income or profits earned by subrecipients, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. (WIA sec. 185(f)(2))

(3) Reported expenditures and program income, including any profits earned, must be on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports and participant data reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) *Annual performance progress report.* An annual performance progress report for each of the three programs under title I, subpart B is required by WIA section 136(d).

(1) A State failing to submit any of these annual performance progress reports within 45 days of the due date may have its grant (for that program or all title I, subpart B programs) for the succeeding year reduced by as much as five percent, as provided by WIA section 136(g)(1)(B).

(2) States submitting annual performance progress reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions, may be treated as failing to submit annual reports, and be subject to sanction. Sanctions related to State performance or failure to submit these reports timely cannot result in a total grant reduction of more than five percent. Any sanction would be in addition to having to repay the amount of any incentive funds granted based on the invalid report.

Subpart D—Oversight and Monitoring

§ 667.400 Who is responsible for oversight and monitoring of WIA title I grants?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all grants awarded and funds expended under WIA title I to determine compliance with the Act and the WIA regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) In each fiscal year, we will also conduct in-depth reviews in several States, including financial and performance audits, to assure that funds are spent in accordance with the Act. Priority for such in-depth reviews will be given to States not meeting annual adjusted levels of performance.

(c)(1) Each recipient and subrecipient must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97, as applicable, including the applicable cost principles indicated at 29 CFR 97.22(b) or 29 CFR 95.27, for all entities receiving WIA title I funds. For governmental units, the applicable requirements are at 29 CFR part 97. For non-profit organizations, the applicable requirements are at 29 CFR part 95.

(2) In the case of grants under WIA sections 127 and 132, the Governor must develop a State monitoring system that meets the requirements of § 667.410(b). The Governor must monitor Local Boards annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with the uniform administrative requirements.

§ 667.410 What are the oversight roles and responsibilities of recipients and subrecipients?

(a) *Roles and responsibilities for all recipients and subrecipients of funds under WIA title I in general.* Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to:

(1) Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and the regulations in this part;

(2) Determine whether or not there is compliance with other provisions of the Act and the WIA regulations and other applicable laws and regulations; and

(3) Provide technical assistance as necessary and appropriate.

(b) *State roles and responsibilities for grants under WIA sections 127 and 132.*

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, as required by WIA section 184(a)(4);

(ii) Ensure that established policies to achieve program quality and outcomes meet the objectives of the Act and the WIA regulations, including policies relating to: the provision of services by One-Stop Centers; eligible providers of training services; and eligible providers of youth activities;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIA requirements; and

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in WIA section 118(d)(1).

(v) Enable the Governor to ensure compliance with the nondiscrimination and equal opportunity requirements of WIA section 188 and 29 CFR part 37. Requirements for these aspects of the monitoring system are set forth in 29 CFR 37.54(d)(2)(ii).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with DOL uniform administrative requirements, including the appropriate administrative requirements for subrecipients and the applicable cost principles indicated at § 667.200 for all entities receiving WIA title I funds.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraphs (b) (2) or (3) of this section is found. (WIA sec. 184(a)(5).)

(5) The Governor must impose the sanctions provided in WIA section 184 (b) and (c) in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every two years that:

(i) The State has implemented uniform administrative requirements;

(ii) The State has monitored local areas to ensure compliance with uniform administrative requirements; and

(iii) The State has taken appropriate corrective action to secure such compliance. (WIA sec. 184(a)(6)(A), (B), and (C).)

Subpart E—Resolution of Findings from Monitoring and Oversight Reviews

§ 667.500 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?

(a) *Resolution of subrecipient-level findings.* (1) The Governor is responsible for resolving findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State must utilize the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State does not have such procedures, it must prescribe standards and procedures to be used for this grant program.

(b) *Resolution of State and other direct recipient level findings.* (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A–133 audits.

(2) The Secretary uses the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133, and Grant Officer Resolution provisions of § 667.510, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 667.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIA section 188 and the Department of Labor nondiscrimination regulations implementing WIA section 188, codified at 29 CFR part 37.

§ 667.505 How do we resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit or other monitoring, we notify the recipient of the findings of the investigation and gives the recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(b) The Grant Officer reviews the complete file of the investigation or monitoring report and the recipient's actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of WIA section 184(b) and (c). If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(c) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer proceeds under § 667.510.

§ 667.510 What is the Grant Officer resolution process?

(a) *General.* When the Grant Officer is dissatisfied with the State's disposition of an audit or other resolution of violations (including those arising out of incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring report, the initial and final determination process, set forth in this section, is used to resolve the matter.

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

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in WIA section 184(e), the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.* (1) If the matter is not fully resolved informally, the Grant Officer provides each party with a written final determination by certified

mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIA funds directly from DOL, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

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

(i) Indicate whether efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 667.800 of this part.

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

(e) Nothing in this subpart precludes the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of this action.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 667.600 What local area, State and direct recipient grievance procedures must be established?

(a) Each local area, State and direct recipient of funds under title I of WIA, except for Job Corps, must establish and maintain a procedure for grievances and complaints according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 670.990.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers;

(2) Require that every entity to which it awards Title I funds must provide the information referred to in paragraph (b)(1) of this section to participants receiving Title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Investment Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Investment Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State and direct recipient grievance procedures are enumerated at WIA section 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIA section 188 and/or 29 CFR part 37. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIA section 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State or local law.

§ 667.610 What processes do we use to review State and local grievances and complaints?

(a) We investigate allegations arising through the grievance procedures described in § 667.600 when:

(1) A decision on a grievance or complaint under § 667.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 667.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) We must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIA section 184(f) or section 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless we notify the parties that the Department of Labor will investigate the grievance under the procedures at § 667.505. Discrimination complaints brought under WIA section 188 or 29 CFR part 37 will be referred to the Director of the Civil Rights Center.

§ 667.630 How are complaints and reports of criminal fraud and abuse addressed under WIA?

Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, D.C. 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. Complaints of a non-criminal nature are handled under the procedures set forth in § 667.505 or through the Department's Incident Reporting System.

§ 667.640 What additional appeal processes or systems must a State have for the WIA program?

(a) *Non-designation of local areas:* (1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State Board for a unit or combination of units of general local government or a rural concentrated employment program grant recipient (as described at WIA section 116(a)(2)(B)) that requests, but is not granted, automatic or temporary and subsequent designation as a local workforce investment area under WIA section 116(a)(2) or 116(a)(3).

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State Board does not result in designation, the appellant may request review by the Secretary under § 667.645.

(4) If the Secretary determines that the appellant was not accorded procedural rights under the appeal process established in paragraph (a)(1) of this section, or that the area meets the requirements for designation at WIA section 116(a)(2) or 116(a)(3), the Secretary may require that the area be designated as a workforce investment area.

(b) *Denial or termination of eligibility as a training provider.* (1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local Board or the designated State agency under WIA section 122 (b), (c) or (e);

(ii) Termination of eligibility or other action by a Local Board or State agency under WIA section 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a One-Stop operator under WIA section 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) *Testing and sanctioning for use of controlled substances.* (1) A State must establish due process procedures which provide expeditious appeal for:

(i) WIA participants subject to testing for use of controlled substances, imposed under a State policy established under WIA section 181(f); and

(ii) WIA participants who are sanctioned after testing positive for the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 667.645 What procedures apply to the appeals of non-designation of local areas?

(a) A unit or combination of units of general local government or rural concentrated employment program grant recipient (as described in WIA section 116(a)(2)(B)) whose appeal of the denial of a request for automatic or temporary and subsequent designation as a local workforce investment area to the State Board has not resulted in designation may appeal the denial of local area designation to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State Board.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIA section 116(a)(2) or (a)(3). The Secretary may consider any comments submitted in response by the State Board.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIA section 116(a)(2) or (a)(3), the Secretary may require that the area be designated as a local workforce investment area.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 667.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIA section 184(b). The sanctions do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(b) A local area which has failed to meet local performance measures for two consecutive years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal such sanctions to the Secretary under WIA section 136(h)(1)(B).

(c) Appeals made under paragraph (a) or (b) of this section must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(d) The Secretary may consider any comments submitted in response by the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (b) of this section within 30 days after receipt of the appeal.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 667.700 What procedure do we use to impose sanctions and corrective actions on recipients and subrecipients of WIA grant funds?

(a)(1) Except for actions under WIA section 188(a) or 29 CFR part 37 (relating to nondiscrimination requirements), the Grant Officer uses the initial and final determination procedures outlined in § 667.510 to impose a sanction or corrective action.

(2) To impose a sanction or corrective action for a violation of WIA section 188(a) or 29 CFR part 37, the Department will use the procedures set forth in that regulatory part.

(b) To impose a sanction or corrective action for noncompliance with the uniform administrative requirements set forth at section 184(a)(3) of WIA, and § 667.200(a), when the Grant Officer determines that the Governor has not taken corrective action to remedy the violation as required by WIA section 184(a)(5), the Grant Officer, under the authority of WIA section 184(a)(7) and § 667.710(c), must require the Governor to impose any of the corrective actions set forth at WIA section 184(b)(1). If the Governor fails to impose the corrective actions required by the Grant Officer, the Secretary may immediately suspend or terminate financial assistance in accordance with WIA section 184(e).

(c) For substantial violations of WIA statutory and regulatory requirements, if the Governor fails to promptly take the actions specified in WIA section 184(b)(1), the Grant Officer may impose such actions directly against the local area.

(d) The Grant Officer may also impose a sanction directly against a subrecipient, as authorized in section 184(d)(3) of the Act. In such a case, the Grant Officer will inform the recipient of the action.

§ 667.705 Who is responsible for funds provided under title I of WIA?

(a) The recipient is responsible for all funds under its grant(s).

(b) The political jurisdiction(s) of the chief elected official(s) in a local workforce investment area is liable for any misuse of the WIA grant funds allocated to the local area under WIA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(c) When a local workforce area is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

§ 667.710 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with the uniform administrative requirements found at 29 CFR part 95 or part 97, as appropriate, the Governor must:

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

(2) Impose the sanctions provided for at section 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the recipient to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 667.650, and will not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued a decision.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements, under WIA section 184(a), or that the Governor has failed to promptly take the actions required upon a determination under paragraph (a) of this section that a local area is not in compliance with the uniform administrative requirements, the Secretary will require the Governor to take corrective actions against the State recipient or the local area, as appropriate to ensure prompt compliance.

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIA section 184(e).

§ 667.720 How do we handle a recipient's request for waiver of liability under WIA section 184(d)(2)?

(a) A recipient may request a waiver of liability, as described in WIA section 184(d)(2), and a Grant Officer may approve such a waiver under WIA section 184(d)(3).

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 667.510(c).

(c) A waiver of the recipient's liability shall be considered by the Grant Officer only when:

(1) The misexpenditure of WIA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of the Act, gross negligence, failure to observe accepted standards of administration, or did not constitute fraud;

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

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

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

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 184(d)(2) of the Act, and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by section 184(d) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipients, would be inappropriate or would prove futile.

§ 667.730 What is the procedure to handle a recipient's request for advance approval of contemplated corrective actions?

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

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

(1) The subrecipient meets the criteria set forth in section 184(d)(2) of the Act;

(2) The misexpenditure of funds:

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

(ii) Was not a violation of section 184(d)(1) of the Act, and did not constitute fraud; or

(iii) If fraud did exist,

(A) It was perpetrated against the subrecipient; and:

(B) The subrecipient discovered, investigated, reported, and cooperated

in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

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

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

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

§ 667.740 What procedure must be used for administering the offset/deduction provisions at section 184(c) of the Act?

(a)(1) For recipient level misexpenditures, we may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, we will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient level misexpenditures that were not due to willful disregard of the requirements of the Act and regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if we have required the State to repay such amount the State may deduct an amount equal to the misexpenditure from its subsequent year's allocations to the local area from funds available for the administrative costs of the local programs involved.

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

(d) A State may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIA which is dissatisfied because we have issued a determination not to award financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a vendor against which the Grant Officer has directly imposed a sanction or corrective action, including a sanction against a State under 20 CFR part 666, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

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

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

(e) The procedures in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 667.840 within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 667.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 667.810 What rules of procedure apply to hearings conducted under this subpart?

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

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

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in section 183(c) of the Act, incorporating 15 U.S.C. 49.

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

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. To this end, the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 667.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

In ordering relief, the ALJ has the full authority of the Secretary under the Act.

§ 667.825 What special rules apply to reviews of NFJP and WIA INA grant selections?

(a) An applicant whose application for funding as a WIA INA grantee under 20 CFR part 668 or as an NFJP grantee under 20 CFR part 669 is denied in whole or in part may request an administrative review under § 667.800(a) with to determine whether there is a basis in the record to support the decision. This appeal will not in any way interfere with the designation and funding of another organization to serve the area in question during the appeal period. The available remedy in such an appeal is the right to be designated in the future as the WIA INA or NFJP

grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section.

(b) If the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of 20 CFR part 668 or part 669, we will select and fund the organization within 90 days of the ALJ's decision unless the end of the 90-day period is within six (6) months of the end of the funding period. An applicant so selected is not entitled to the full grant amount, but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout.

(c) Any organization selected and/or funded as a WIA INA or NFJP grantee is subject to being removed as grantee in the event an ALJ decision so orders. The Grant Officer provides instructions on transition and close-out to a grantee which is removed. All parties must agree to the provisions of this paragraph as a condition for WIA INA or NFJP funding.

(d) A successful appellant which has not been awarded relief because of the application of paragraph (b) of this section is eligible to compete for funds in the immediately subsequent two-year grant cycle. In such a situation, we will not issue a waiver of competition and for the area and will select a grantee through the normal competitive process.

§ 667.830 When will the Administrative Law Judge issue a decision?

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

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

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

(a) Parties to a complaint which has been filed according to the requirements of § 667.800 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

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

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under section 186(b) of the Act.

§ 667.850 Is there judicial review of a final order of the Secretary issued under section 186 of the Act?

(a) Any party to a proceeding which resulted in a Secretary's final order under section 186 of the Act may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

§ 667.860 Are there other remedies available outside of the Act?

Nothing contained in this subpart prejudices the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

Subpart I—Transition Planning

§ 667.900 What special rules apply during the JTPA/WIA transition?

(a)(1) To facilitate planning for the implementation of WIA, a Governor may reserve an amount equal to no more than 2 percent of the total amount of JTPA formula funds allotted to the State for fiscal years 1998 and 1999 for expenditure on transition planning activities. The funds may be from any one or more of the JTPA titles and subparts, that is, funds do not have to be drawn proportionately from all titles and subparts. The Governor must report the expenditure of these funds for transition planning separately in accordance with instructions we issued, but the expenditure is not required to be allocated to the various titles and subparts;

(2) These reserved transition funds may be excluded from any calculation of compliance with JTPA cost limitations.

(b) Not less than 50 percent of the funds reserved by the Governor in paragraph (a) of this section must be made available to local entities.

(c) We will issue such other transition guidance as is necessary and appropriate.

§ 667.910 Are JTPA participants to be grandfathered into WIA?

Yes, all JTPA participants who are enrolled in JTPA must be grandfathered into WIA. These participants can complete the JTPA services specified in their individual service strategy, even if that service strategy is not allowable under WIA, or if the participant is not eligible to receive these services under WIA.

PART 668—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purposes and Policies

Sec.

668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under section166 of the Workforce Investment Act?
668.120 How must INA programs be administered?
668.130 What obligation do we have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?
668.140 What WIA regulations apply to the INA program?
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Subpart B—Service Delivery Systems Applicable to Section 166 Programs

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Authority: Secs. 506(c) and 166(h)(2), Pub. L. 105–220; 20 U.S.C. 9276(c); 29 U.S.C. 2911(h)(2).

Subpart A—Purposes and Policies

§ 668.100 What is the purpose of the programs established to serve Native American peoples (INA programs) under section 166 of the Workforce Investment Act?

(a) The purpose of WIA INA programs is to support comprehensive employment and training activities for Indian, Alaska Native and Native Hawaiian individuals in order to:

(1) Develop more fully their academic, occupational, and literacy skills;

(2) Make them more competitive in the workforce;

(3) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities according to the goals and values of such communities; and

(4) Help them achieve personal and economic self-sufficiency.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment and training services to Native American peoples and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of Indian self-determination. (WIA sec. 166(a)(1).)

§ 668.120 How must INA programs be administered?

(a) We will administer INA programs to maximize the Federal commitment to support the growth and development of Native American people and communities as determined by representatives of such communities.

(b) In administering these programs, we will observe the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. section 450a, as well as the Department of Labor's ''American Indian and Alaska Native Policy,'' dated July 29, 1998.

(c) The regulations in this part are not intended to abrogate the trust responsibilities of the Federal Government to Native American bands, tribes, or groups in any way.

(d) We will administer INA programs through a single organizational unit and consistent with the requirements in section 166(h) of the Act. We have designated the Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) as this single organizational unit required by WIA section 166(h)(1).

(e) We will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of Native American

employment and training programs authorized under this Act. We will utilize staff who have a particular competence in this field to administer these programs. (WIA sec. 166(h).)

§ 668.130 What obligation do we have to consult with the INA grantee community in developing rules, regulations, and standards of accountability for INA programs?

We will consult with the Native American grantee community as a full partner in developing policies for the INA programs. We will actively seek and consider the views of all INA grantees, and will discuss options with the grantee community prior to establishing policies and program regulations. The primary consultation vehicle is the Native American Employment and Training Council. (WIA sec. 166(h)(2).)

§ 668.140 What WIA regulations apply to the INA program?

(a) The regulations found in this subpart.

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H.

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars which generally apply to Federal programs carried out by Indian tribal governments and nonprofit organizations, at 29 CFR parts 95, 96, 97, and 99 as applicable.

(d) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188, apply to recipients of financial assistance under WIA section 166.

§ 668.150 What definitions apply to terms used in the regulations in this part?

In addition to the definitions found in WIA sections 101 and 166 and 20 CFR 660.300, the following definitions apply:

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the Department.

Governing body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a Department of Labor official authorized to obligate Federal funds. Indian or Native American (INA) *Grantee* means an entity which is formally designated under subpart B of this part to operate an INA program and which has a grant agreement under § 668.292.

NEW means the Native Employment Works Program, the tribal work program authorized under section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104–193).

Underemployed means an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 668.200 What are the requirements for designation as an ''Indian or Native American (INA) grantee''?

(a) To be designated as an INA grantee, an entity must have:

(1) A legal status as a government or as an agency of a government, private non-profit corporation, or a consortium which contains at least one of these entities;

(2) The ability to administer INA program funds, as defined at § 668.220; and

(3) A new (non-incumbent) entity must have a population within the designated geographic service area which would provide funding under the funding formula found at § 668.296(b) in the amount of at least $100,000, including any amounts received for supplemental youth services under the funding formula at § 668.440(a). Incumbent grantees which do not meet this dollar threshold for Program Year (PY) 2000 and beyond will be grandfathered in. We will make an exception for grantees wishing to participate in the demonstration program under Public Law 102–477 if all resources to be consolidated under the Public Law 102–477 plan total at least $100,000, with at least $20,000 derived from section 166 funds as determined by the most recent Census data. Exceptions to this $20,000 limit may be made for those entities which are close to the limit and which have demonstrated the capacity to administer Federal funds and operate a successful employment and training program.

(b) To be designated as a Native American grantee, a consortium or its members must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but they may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(c) Entities potentially eligible for designation under paragraph (a)(1) or (b)(1) of this section are:

(1) Federally-recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act;

(4) Native Hawaiian-controlled entities;

(5) Native American-controlled organizations serving Indians; and

(6) Consortia of eligible entities which individually meets the legal requirements for a consortium described in paragraph (c) of this section.

(d) Under WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, remain eligible to participate under section 166 of WIA. State-recognized tribal organizations serving such individuals are considered to be ''Native American controlled'' for WIA section 166 purposes.

§ 668.210 What priority for designation is given to eligible organizations?

(a) Federally-recognized Indian tribes, Alaska Native entities, or consortia that include a tribe or entity will have the highest priority for designation. To be designated, the organizations must meet the requirements in this subpart. These organizations will be designated for those geographic areas and/or populations over which they have legal jurisdiction. (WIA sec. 166(c)(1).)

(b) If we decide not to designate Indian tribes or Alaska Native entities to serve their service areas, we will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve.

(c) In geographic areas not served by Indian tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation.

§ 668.220 What is meant by the ''ability to administer funds'' for designation purposes?

An organization has the ''ability to administer funds'' if it:

(a) Is in compliance with Departmental debt management procedures, if applicable;

(b) Has not been found guilty of fraud or criminal activity which would affect the entity's ability to safeguard Federal funds or deliver program services;

(c) Can demonstrate that it has or can acquire the necessary program and financial management personnel to safeguard Federal funds and effectively deliver program services; and

(d) Can demonstrate that it has successfully carried out, or has the capacity to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment.

§ 668.230 How will we determine an entity's ''ability to administer funds''?

(a) Before determining which entity to designate for a particular service area, we will conduct a review of the entity's ability to administer funds.

(b) The review for an entity that has served as a grantee in either of the two designation periods before the one under consideration, also will consider the extent of compliance with the WIA regulations or the JTPA regulations at 20 CFR part 632. Evidence of the ability to administer funds may be established by a satisfactory Federal audit record. It may also be established by a recent record showing substantial compliance with Federal record keeping, reporting, program performance standards, or similar standards imposed on grantees by this or other public sector supported programs.

(c) For other entities, the review includes the experience of the entity's management in administering funds for services to Native American people. This review also includes an assessment of the relationship between the entity and the Native American community or communities to be served.

§ 668.240 What is the process for applying for designation as an INA grantee?

(a) Every entity seeking designation must submit a Notice of Intent (NOI) which complies with the requirements of the Solicitation for Grant Application (SGA). An SGA will be issued every two years, covering all areas except for those for which competition is waived for the incumbent grantee under WIA section 166(c)(2).

(b) NOI's must be submitted to the Chief of DINAP, bearing a U.S. Postal Service postmark indicating its submission no later than October 1st of the year which precedes the first year of a new designation cycle (unless the SGA provides a later date). For NOI's received after October 1, only a timely official U.S. Postal Service postmark is acceptable as proof of timely submission. Dates indicating submission by private express delivery services or metered mail are unacceptable as proof of the timely submission of designation documents.

(c) NOI's must include the following:

(1) Documentation of the legal status of the entity, as described in § 668.200(a)(1);

(2) A Standard Form (SF) 424b;

(3) The assurances required by 29 CFR 37.20;

(4) A specific description, by State, county, reservation or similar area, or service population, of the geographic area for which the entity requests designation;

(5) A brief summary of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period;

(6) A description of the planning process used by the entity, including the involvement of the governing body and local employers;

(7) Evidence to establish an entity's ability to administer funds under §§ 668.220 through 668.230.

§ 668.250 What happens if two or more entities apply for the same area?

(a) Every two years, unless there has been a waiver of competition for the area, we issue a Solicitation for Grant Application (SGA) seeking applicants for INA program grants.

(b) If two or more entities apply for grants for the same service area, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the following additional procedures apply:

(1) The Grant Officer will follow the regulations for priority designation at § 668.210.

(2) If no applicant is entitled to priority designation, DINAP will inform each entity which submitted a NOI, including the incumbent grantee, in writing, of all the competing Notices of Intent no later than November 15 of the year the NOI's are received.

(3) Each entity will have an opportunity to describe its service plan, and may submit additional information addressing the requirements of § 668.240(c) or such other information as the applicant determines is appropriate. Revised Notices must be received or contain an official U.S. Postal Service postmark, no later than January 5th (unless a later date is provided in DINAP's information notice).

(4) The Grant Officer selects the entity that demonstrates the ability to produce the best outcomes for its customers.

§ 668.260 How are INA grantees designated?

(a) On March 1 of each designation year, we designate or conditionally designate Native American grantees for the coming two program years. The Grant Officer informs, in writing, each entity which submitted a Notice of Intent that the entity has been:

(1) Designated;

(2) Conditionally designated;

(3) Designated for only a portion of its requested area or population; or

(4) Denied designation.

(b) Designated Native American entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services.

§ 668.270 What appeal rights are available to entities that are denied designation?

Any entity that is denied designation in whole or in part for the area or population that it requested may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 667.800 or the alternative dispute resolution procedures at 20 CFR 667.840. The Grant Officer will provide an entity whose request for designation was denied, in whole or in part, with a copy of the appeal procedures.

§ 668.280 Are there any other ways in which an entity may be designated as an INA grantee?

Yes, for an area which would otherwise go unserved. The Grant Officer may designate an entity, which has not submitted an NOI, but which meets the qualifications for designation, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of Native American leaders in the area involved about the decision to designate the entity to serve that community. DINAP will inform the Grant Officer of their views. The Grant Officer will accommodate their views to the extent possible.

§ 668.290 Can an INA grantee's designation be terminated?

(a) Yes, the Grant Officer can terminate a grantee's designation for cause, or the Secretary or another DOL

official confirmed by the Senate can terminate a grantee's designation in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. (WIA sec. 184(e).)

(b) The Grant Officer may terminate a grantee's designation for cause only if there is a substantial or persistent violation of the requirements in the Act or the WIA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at 20 CFR 667.800 apply.

(c) The Secretary must give a grantee terminated in emergency circumstances prompt notice of the termination and an opportunity for a hearing within 30 days of the termination.

§ 668.292 How does a designated entity become an INA grantee?

A designated entity becomes a grantee on the effective date of an executed grant agreement, signed by the authorized official of the grantee organization and the Grant Officer. The grant agreement includes a set of certifications and assurances that the grantee will comply with the terms of the Act, the WIA regulations, and other appropriate requirements. Funds are released to the grantee upon approval of the required planning documents, as described in §§ 668.710 through 668.740.

§ 668.294 Do we have to designate an INA grantee for every part of the country?

No, beginning with the PY 2000 grant awards, if there are no entities meeting the requirements for designation in a particular area, or willing to serve that area, we will not allocate funds for that service area. The funds allocated to that area will be distributed to the remaining INA grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for technical assistance and training are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e). Areas which are unserved by the INA program may be restored during a subsequent designation cycle, when and if a current grantee or other eligible entity applies for and is designated to serve that area.

§ 668.296 How are WIA funds allocated to INA grantees?

(a) Except for reserved funds described in paragraph (e) of this section and funds used for program purposes under § 668.294, all funds available for WIA section 166(d)(2)(A)(i) comprehensive workforce investment services program at the beginning of a Program Year will be allocated to Native American grantees for their designated geographic service areas.

(b) Each INA grantee will receive the sum of the funds calculated under the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed Native American persons in the grantee's designated INA service area(s) compared to all such persons in all such areas in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of Native American persons in poverty in the grantee's designated INA service area(s) as compared to all such persons in all such areas in the United States.

(3) The data and definitions used to implement these formulas is provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the SGA, we may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) We may reallocate funds from one INA grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, or lack of ability or interest. Funds may also be reallocated if a grantee has carry-in excess of 20 percent of the total funds available to it. Carry-in amounts greater than 20 percent but less than 25 percent of total funds available may be allowed under an approved waiver issued by DINAP.

(e) We may reserve up to one percent (1 percent) of the funds appropriated under WIA section 166(d)(2)(A)(i) for any Program Year for TAT purposes. Technical assistance will be provided in consultation with the Native American Employment and Training Council.

Subpart C—Services to Customers

§ 668.300 Who is eligible to receive services under the INA program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the Native American grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in section 3(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(b); or

(3) A Native Hawaiian, as defined in WIA section 166(b)(3).

(b) The person must also be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 668.150; or

(3) A low-income individual, as defined in WIA section 101(25); or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last six months or will take effect in the following six month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants must also register or be registered for the Selective Service.

(d) For purposes of determining whether a person is a low-income individual under paragraph (b)(3) of this section, we will issue guidance for the determination of family income. (WIA sec. 189(h).)

§ 668.340 What are INA grantee allowable activities?

(a) The INA grantee may provide any services consistent with the purposes of this section that are necessary to meet the needs of Native Americans preparing to enter, reenter, or retain unsubsidized employment. (WIA sec. 166(d)(1)(B).) Comprehensive workforce investment activities authorized under WIA section 166(d)(2) include:

(b) Core services, which must be delivered in partnership with the One-Stop delivery system, include:

(1) Outreach;

(2) Intake;

(3) Orientation to services available;

(4) Initial assessment of skill levels, aptitudes, abilities and supportive service needs;

(5) Eligibility certification;

(6) Job Search and placement assistance;

(7) Career counseling;

(8) Provision of employment statistics information and local, regional, and national Labor Market Information;

(9) Provision of information about filing of Unemployment Insurance claims;

(10) Assistance in establishing eligibility for Welfare-to-Work programs;

(11) Assistance in establishing eligibility for financial assistance for training;

(12) Provision of information about supportive services;

(13) Provision of performance and cost information relating to training providers and training services; and

(14) Follow-up services.

(c) Allowable intensive services which include:

(1) Comprehensive and specialized testing and assessment;

(2) Development of an individual employment plan;

(3) Group counseling;

(4) Individual counseling and career planning;

(5) Case Management for seeking training services;

(6) Short term pre-vocational services;

(7) Work experience in the public or private sector;

(8) Tryout employment;

(9) Dropout prevention activities;

(10) Supportive services; and

(11) Other services identified in the approved Two Year Plan.

(d) Allowable training services which include:

(1) Occupational skill training;

(2) On-the-job training;

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

(4) Training programs operated by the private sector;

(5) Skill upgrading and retraining;

(6) Entrepreneurial and small business development technical assistance and training;

(7) Job readiness training;

(8) Adult basic education, GED attainment, literacy training, and English language training, provided alone or in combination with training or intensive services described paragraphs (c)(1) through (11) and (d)(1) through (10) of this section;

(9) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training; and

(10) Educational and tuition assistance.

(e) Allowable activities specifically designed for youth are identified in section 129 of the Act and include:

(1) Improving educational and skill competencies;

(2) Adult mentoring;

(3) Training opportunities;

(4) Supportive services, as defined in WIA section 101(46);

(5) Incentive programs for recognition and achievement;

(6) Opportunities for leadership development, decision-making, citizenship and community service;

(7) Preparation for postsecondary education, academic and occupational learning, unsubsidized employment opportunities, and other effective connections to intermediaries with strong links to the job market and local and regional employers;

(8) Tutoring, study skills training, and other drop-out prevention strategies;

(9) Alternative secondary school services;

(10) Summer employment opportunities that are directly linked to academic and occupational learning;

(11) Paid and unpaid work experiences, including internships and job shadowing;

(12) Occupational skill training;

(13) Leadership development opportunities, as defined in 20 CFR 664.420;

(14) Follow-up services, as defined in 20 CFR 664.450;

(15) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral; and

(16) Information and referral.

(f) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as Adult Basic Education (ABE), basic literacy training, and English-as-a-second-language (ESL) training programs, as necessary.

(g) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(h) INA grantees may provide any services which may be carried out by fund recipients under any provisions of the Act. (WIA sec. 166(d).)

(i) In addition, INA grantees must develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment. (WIA sec. 195(1).)

§ 668.350 Are there any restrictions on allowable activities?

(a) All occupational training must be for occupations for which there are employment opportunities in the local area or another area to which the participant is willing to relocate. (WIA sec. 134(d)(4)(A)(iii).)

(b) INA grantees must provide OJT services consistent with the definition provided in WIA section 101(31) and other limitations in the Act. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills (WIA sec. 181(a)(1)); and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work. (WIA sec. 181(b)(5).)

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same work; or

(2) Who have violated paragraphs (b)(1) and/or (2) of this section. (WIA sec. 195(4).)

(d) INA grantees are prohibited from using funds to encourage the relocation of a business, as described in WIA section 181(d) and 20 CFR 667.268.

(e) INA grantees must only use WIA funds for activities which are in addition to those that would otherwise be available to the Native American population in the area in the absence of such funds. (WIA sec. 195(2).)

(f) INA grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under 20 CFR 667.266, sectarian activities involving WIA financial assistance or participants are limited in accordance with the provisions of 29 CFR 37.6(f). (WIA sec. 181(b).)

§ 668.360 What is the role of INA grantees in the One-Stop system?

(a) In those local workforce investment areas where an INA grantee conducts field operations or provides substantial services, the INA grantee is a required partner in the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA grantee and the Local Board over the operation of the One-

Stop Center(s) in the Local Board's workforce investment area also must be executed. Where the Local Board is an alternative entity under 20 CFR 661.330, the INA grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 661.310(b)(2). In local areas with a large concentration of potentially eligible INA participants, which are in an INA grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA grantee should encourage such individuals to participate in the One-Stop system in that area in order to receive WIA services.

(b) At a minimum, the MOU must contain provisions related to:

(1) The services to be provided through the One-Stop Service System;

(2) The methods for referral of individuals between the One-Stop operator and the INA grantee which take into account the services provided by the INA grantee and the other One-Stop partners;

(3) The exchange of information on the services available and accessible through the One-Stop system and the INA program;

(4) As necessary to provide referrals and case management services, the exchange of information on Native American participants in the One-Stop system and the INA program;

(5) Arrangements for the funding of services provided by the One-Stop(s), consistent with the requirements at 20 CFR 662.280 that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c) The INA grantee's Two Year Plan must describe the efforts the grantee has made to negotiate MOU's consistent with paragraph (b) of this section, for each planning cycle during which Local Boards are operating under the terms of WIA.

§ 668.370 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State or local minimum wage. (WIA sec. 181(a)(1).)

(d) In accordance with the policy described in the two-year plan, INA grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA grantees must comply with other restrictions listed in WIA sections 181 through 199, which apply to all programs funded under title I of WIA.

(f) INA grantees must comply with the provisions on labor standards in WIA section 181(b).

§ 668.380 What will we do to strengthen the capacity of INA grantees to deliver effective services?

We will provide appropriate TAT, as necessary, to INA grantees. This TAT will assist INA grantees to improve program performance and enhance services to the target population(s), as resources permit. (WIA sec. 166(h)(5).)

Subpart D—Supplemental Youth Services

§ 668.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to Native American youth on or near Indian reservations, or in Oklahoma, Alaska, and Hawaii. (WIA sec. 166(d)(2)(A)(ii).)

§ 668.410 What entities are eligible to receive supplemental youth services funding?

Eligible recipients for supplemental youth services funding are limited to those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIA section 166(d)(2)(A)(i), or other grantees serving those areas and/or populations specified in § 668.400, that received funding under title II–B of the Job Training Partnership Act, or that are designated to serve an eligible area as specified in WIA section 166(d)(2)(A)(ii).

§ 668.420 What are the planning requirements for receiving supplemental youth services funding?

Beginning with PY 2000, eligible INA grantees must describe the supplemental youth services which they intend to provide in their Two Year Plan (described more fully in §§ 668.710 and 668.720). This Plan includes the target population the grantee intends to serve, for example, drop-outs, juvenile offenders, and/or college students. It also includes the performance measures/standards to be utilized to measure program progress.

§ 668.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be Native Americans, as determined by the INA grantee according to § 668.300(a), and must meet the definition of Eligible Youth, as defined in WIA section 101(13).

(b)Youth participants must be low-income individuals, except that not more than five percent (5%) who do not meet the minimum income criteria, may be considered eligible youth if they meet one or more of the following categories:

(1) School dropouts;

(2) Basic skills deficient as defined in WIA section 101(4);

(3) Have educational attainment that is one or more grade levels below the grade level appropriate to their age group;

(4) Pregnant or parenting;

(5) Have disabilities, including learning disabilities;

(6) Homeless or runaway youth;

(7) Offenders; or

(8) Other eligible youth who face serious barriers to employment as identified by the grantee in its Plan. (WIA sec. 129(c)(5).)

§ 668.440 How is funding for supplemental youth services determined?

(a) Beginning with PY 2000, supplemental youth funding will be allocated to eligible INA grantees on the basis of the relative number of Native American youth between the ages of 14 and 21, inclusive, in the grantee's designated INA service area as compared to the number of Native American youth in other eligible INA service areas. We reserve the right to redetermine this youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula is provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 668.296(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee

community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 668.296(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 668.296(e), as described in § 668.294. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 668.296(e).

§ 668.450 How will supplemental youth services be provided?

(a) INA grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion;

(b) We encourage INA grantees to work with Local Educational Agencies to provide academic credit for youth activities whenever possible;

(c) INA grantees may provide participating youth with the activities listed in 20 CFR 668.340(e).

§ 668.460 Are there performance measures and standards applicable to the supplemental youth services program?

Yes, WIA section 166(e)(5) requires that the program plan contain a description of the performance measures to be used to assess the performance of grantees in carrying out the activities assisted under this section. We will develop specific indicators of performance and levels of performance for supplemental youth services activities in partnership with the Native American Employment and Training Council, and will transmit them to INA grantees as an administrative issuance.

Subpart E—Services to Communities

§ 668.500 What services may INA grantees provide to or for employers under section 166?

(a) INA grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) On-the-Job training (OJT);

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites;

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's Two Year Plan) which are intended to assist eligible participants to obtain or retain employment may also be provided to or for employers.

§ 668.510 What services may INA grantees provide to the community at large under section 166?

(a) INA grantees may provide services to the Native American communities in their designated service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Native American-controlled institutions to provide education and work-based learning services to Native American youth and adults, whether directly or through other Native American institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of Native American communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA grantee's Two Year Plan.

(b) INA grantees should develop their Two Year Plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 668.520 Must INA grantees give preference to Indian/Native American entities in the selection of contractors or service providers?

Yes, INA grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

§ 668.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA grantees must follow the rules of OMB Circulars A–102 (for tribes) or A–110 (for private non-profits) when awarding contracts and/or subgrants under WIA section 166. The common rules implementing those circulars are codified for DOL-funded programs at 29 CFR part 97 (A–102) or 29 CFR part 95 (A–110), and covered in the WIA regulations at 20 CFR 667.200. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 668.600 To whom is the INA grantee accountable for the provision of services and the expenditure of INA funds?

(a) The INA grantee is responsible to the Native American community to be served by INA funds.

(b) The INA grantee is also responsible to the Department of Labor, which is charged by law with ensuring that all WIA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified Native American client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

§ 668.610 How is this accountability documented and fulfilled?

(a) Each INA grantee must establish its own internal policies and procedures to ensure accountability to the INA grantee's governing body, as the representative of the Native American community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 668.850 and program reviews, accountability to the Department is documented and fulfilled by the submission of reports. For the purposes of report submission, a postmark or date indicating receipt by a private express delivery service is acceptable proof of timely submission. These report requirements are as follows:

(1) Each INA grantee must submit an annual report on program participants and activities. This report must be received no later than 90 days after the end of the Program Year, and may be combined with the report on program expenditures. The reporting format is developed by DINAP, in consultation with the Native American Advisory Council, and published in the **Federal Register**.

(2) Each INA grantee must submit an annual report on program expenditures. This report must be received no later

than 90 days after the end of the Program Year, and may be combined with the report on program participants and activities.

(3) INA grantees are encouraged, but not required, to submit a descriptive narrative with their annual reports describing the barriers to successful plan implementation they have encountered. This narrative should also discuss program successes and other notable occurrences that effected the INA grantee's overall performance that year.

(4) Each INA grantee may be required to submit interim reports on program participants and activities and/or program expenditures during the Program Year. Interim reports must be received no later than 45 days after the end of the reporting period.

§ 668.620 What performance measures are in place for the INA program?

Indicators of performance measures and levels of performance in use for INA program will be those indicators and standards proposed in individual grantee plans and approved by us, in accordance with guidelines we will develop in consultation with INA grantees under WIA section 166(h)(2)(A).

§ 668.630 What are the requirements for preventing fraud and abuse under section 166?

(a) Each INA grantee must implement program and financial management procedures to prevent fraud and abuse. Such procedures must include a process which enables the grantee to take action against contractors or subgrantees to prevent any misuse of funds. (WIA sec. 184.)

(b) Each INA grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with 20 CFR 667.200(a)(4) and 29 CFR 97.36(b) or 29 CFR 95.42.

(c) Officers or agents of the INA grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor or participant. This rule must also apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount or similar incentive provided by a vendor to its customers as a regular feature of its business;

(2) Items of nominal monetary value distributed consistent with the cultural practices of the Native American community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's husband, wife, father, mother, brother, sister, son, or daughter unless:

(1)(i) The participant involved is a low income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 Native American people; and

(2) The INA grantee has adopted and implemented the policy described in the Two Year Plan to prevent favoritism on behalf of such relatives.

(e) INA grantees are subject to the provisions of 41 U.S.C. 53 relating to kickbacks.

(f) No assistance provided under this Act may involve political activities. (WIA sec. 195(6).)

(g) INA grantees may not use funds under this Act for lobbying, as provided in 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIA.

(i) Recipients of financial assistance under WIA section 168 are prohibited from discriminatory practices as outlined at WIA section 188, and the regulations implementing WIA section 188, at 29 CFR part 37. However, this does not affect the legal requirement that all INA participants be Native American. Also, INA grantees are not obligated to serve populations other than those for which they were designated.

§ 668.640 What grievance systems must a section 166 program provide?

INA grantees must establish grievance procedures consistent with the requirements of WIA section 181(c) and 20 CFR 667.600.

§ 668.650 Can INA grantees exclude segments of the eligible population?

(a) No, INA grantees cannot exclude segments of the eligible population. INA grantees must document in their Two Year Plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIA services and activities.

(b) Nothing in this section restricts the ability of INA grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved Two Year Plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIA section 188 and 29 CFR part 37, including tribal affilitation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

Subpart G—Section 166 Planning/ Funding Process

§ 668.700 What process must an INA grantee use to plan its employment and training services?

(a) An INA grantee may utilize the planning procedures it uses to plan other activities and services.

(b) However, in the process of preparing its Two Year Plan for Native American WIA services, the INA grantee must consult with:

(1) Customers or prospective customers of such services;

(2) Prospective employers of program participants or their representatives;

(3) Service providers, including local educational agencies, which can provide services which support or are complementary to the grantee's own services; and

(4) Tribal or other community officials responsible for the development and administration of strategic community development efforts.

§ 668.710 What planning documents must an INA grantee submit?

Each grantee receiving funds under WIA section 166 must submit to DINAP a comprehensive services plan and a projection of participant services and expenditures covering the two-year planning cycle. We will, in consultation with the Native American Advisory Council, issue budget and planning instructions which grantees must use when preparing their plan.

§ 668.720 What information must these planning documents contain?

(a) The comprehensive services plan must cover the two Program Years included within a designation cycle. According to planning instructions issued by the Department, the comprehensive services plan must describe in narrative form:

(1) The specific goals of the INA grantee's program for the two Program Years involved;

(2) The method the INA grantee will use to target its services to specific segments of its service population;

(3) The array of services which the INA grantee intends to make available;

(4) The system the INA grantee will use to be accountable for the results of its program services. Such results must be judged in terms of the outcomes for individual participants and/or the benefits the program provides to the Native American community(ies) which the INA grantee serves. Plans must include the performance information required by § 668.620;

(5) The ways in which the INA grantee will seek to integrate or coordinate and ensure nonduplication of its employment and training services with:

(i) The One-Stop delivery system in its local workforce investment area, including a description of any MOU's which affect the grantee's participation;

(ii) Other services provided by Local Workforce Investment Boards;

(iii) Other program operators;

(iv) Other services available within the grantee organization; and

(v) Other services which are available to Native Americans in the community, including planned participation in the One-Stop system.

(b) Eligible INA grantees must include in their plan narratives a description of activities planned under the supplemental youth program, including items described in paragraphs (a)(1) through (5) of this section.

(c) INA grantees must be prepared to justify the amount of proposed Administrative Costs, utilizing the definition at 20 CFR 667.220.

(d) INA grantees' plans must contain a projection of participant services and expenditures for each Program Year, consistent with guidance issued by the Department.

§ 668.730 When must these plans be submitted?

(a) The two-year plans are due at a date specified by DINAP in the year in which the two-year designation cycle begins. We will announce exact submission dates in the biennial planning instructions.

(b) Plans from INA grantees who are eligible for supplemental youth services funds must include their supplemental youth plans as part of their regular Two Year Plan.

(c) INA grantees must submit modifications for the second year reflecting exact funding amounts, after the individual allotments have been determined. We will announce the time for their submission, which will be no later than June 1 prior to the beginning of the second year of the designation cycle.

§ 668.740 How will we review and approve such plans?

(a) We will approve a grantee's planning documents before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and Departmental planning guidance; or

(2) The services which the INA grantee proposes are not permitted under WIA or applicable regulations.

(b) We may approve a portion of the plan, and disapprove other portions. The grantee also has the right to appeal the decision to the Office of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840. While the INA grantee exercises its right to appeal, the grantee must implement the approved portions of the plan.

(c) If we disapprove all or part of an INA grantee's plan, and that disapproval is sustained in the appeal process, the INA grantee will be given the opportunity to amend its plan so that it can be approved.

(d) If an INA grantee's plan is amended but is still disapproved, the grantee will have the right to appeal the decision to the Offices of the Administrative Law Judges under the procedures at 20 CFR 667.800 or 667.840.

§ 668.750 Under what circumstances can we or the INA grantee modify the terms of the grantee's plan(s)?

(a) We may unilaterally modify the INA grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA grantee may request approval to modify its plan to add, expand, delete, or diminish any service allowable under the regulations in this part. The INA grantee may modify its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

(c) We will act upon any modification within thirty (30) calendar days of receipt of the proposed modification. In the event that further clarification or modification is required, we may extend the thirty (30) day time frame to conclude appropriate negotiations.

Subpart H—Administrative Requirements

§ 668.800 What systems must an INA grantee have in place to administer an INA program?

(a) Each INA grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in section 181(c) of WIA and 20 CFR 667.600; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 668.810 What types of costs are allowable expenditures under the INA program?

Rules relating to allowable costs under WIA are covered in 20 CFR 667.200 through 667.220.

§ 668.820 What rules apply to administrative costs under the INA program?

The definition and treatment of administrative costs are covered in 20 CFR 667.210(b) and 667.220.

§ 668.825 Does the WIA administrative cost limit for States and local areas apply to section 166 grants?

No, under 20 CFR 667.210(b), limits on administrative costs for section 166 grants will be negotiated with the grantee and identified in the grant award document.

§ 668.830 How should INA program grantees classify costs?

Cost classification is covered in the WIA regulations at 20 CFR 667.200 through 667.220. For purposes of the INA program, program costs also include costs associated with other activities such as Tribal Employment Rights Office (TERO), and supportive services, as defined in WIA section 101(46).

§ 668.840 What cost principles apply to INA funds?

The cost principles described in OMB Circulars A–87 (for tribal governments),

A–122 (for private non-profits), and A–21 (for educational institutions), and the regulations at 20 CFR 667.200(c), apply to INA grantees, depending on the nature of the grantee organization.

§ 668.850 What audit requirements apply to INA grants?

The audit requirements established under the Department's regulations at 29 CFR part 99, which implement OMB Circular A–133, apply to all Native American WIA grants. These regulations, for all of WIA title I, are cited at 20 CFR 667.200(b). Audit resolution procedures are covered at 20 CFR 667.500 and 667.510.

§ 668.860 What cash management procedures apply to INA grant funds?

INA grantees must draw down funds only as they actually need them. The U.S. Department of Treasury regulations which implement the Cash Management Improvement Act, found at 31 CFR part 205, apply by law to most recipients of Federal funds. Special rules may apply to those grantees required to keep their funds in interest-bearing accounts, and to grantees participating in the demonstration under Public Law 102–477.

§ 668.870 What is ''program income'' and how is it regulated in the INA program?

(a) Program income is defined and regulated by WIA section 195(7), 20 CFR 667.200(a)(5) and the applicable rules in 29 CFR parts 95 and 97.

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an Indian tribe or Alaska Native entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 668.900 Does WIA provide regulatory and/or statutory waiver authority?

Yes, WIA section 166(h)(3) permits waivers of any statutory or regulatory requirement imposed upon INA grantees (except for the areas cited in § 668.920). Such waivers may include those necessary to facilitate WIA support of long term community development goals.

§ 668.910 What information is required to document a requested waiver?

To request a waiver, an INA grantee must submit a plan indicating how the waiver will improve the grantee's WIA program activities. We will provide further guidance on the waiver process, consistent with the provisions of WIA section 166(h)(3).

§ 668.920 What provisions of law or regulations may not be waived?

Requirements relating to:

(a) Wage and labor standards;

(b) Worker rights;

(c) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review; and

(f) Non-discrimination may not be waived. (WIA sec. 166(h)(3)(A).)

§ 668.930 May INA grantees combine or consolidate their employment and training funds?

Yes, INA grantees may consolidate their employment and training funds under WIA with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (Public Law 102–477) (25 U.S.C. 3401 *et seq.*). Also, Federally-recognized tribes that administer INA funds and funds provided by more than one State under other sections of WIA title I may enter into an agreement with the Governors to transfer the State funds to the INA program. (WIA sec. 166(f) and (h)(6).)

§ 668.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on all aspects of Native American employment and training program implementation. WIA section 166(h)(4) continues the Council essentially as it is currently constituted, with the exception that all the Council members no longer have to be Native American. However, the nature of the consultative process remains essentially unchanged. We continue to support the Council.

PART 669—NATIONAL FARMWORKERS JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Subpart A—Purpose and Definitions

Sec.

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Authority: Section 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Purpose and Definitions

§ 669.100 What is the purpose of the National Farmworker Jobs Program (NFJP) and the other services and activities established under WIA section 167?

The purpose of the NFJP, and the other services and activities established under WIA section 167, is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency. This part provides the regulatory requirements applicable to the expenditure of WIA section 167 funds for such programs, services and activities.

669.110 What definitions apply to this program?

In addition to the definitions found in WIA sections 101 and 167 and in 20 CFR 660.300, the following definitions apply to programs under this part:

Allowances means direct payments, which must not exceed the higher of the State or Federal minimum wage, made to NFJP participants during their enrollment to enable them to participate in intensive or training services.

Capacity enhancement means the technical assistance we provide to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to NFJP participants.

Dependent means an individual who:

(1) Was claimed as a dependent on the qualifying farmworker's federal income tax return for the previous year; or

(2) Is the spouse of the qualifying farmworker; or

(3) If not claimed as a dependent for federal income tax purposes, is able to establish:

(i) A relationship as the farmworker's

(A) Child, grandchild, great grandchild, including legally adopted children;

(B) Stepchild;

(C) Brother, sister, half brother, half sister, stepbrother, or stepsister;

(D) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible farmworker's family during the eligibility determination period.

Disadvantaged means a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level, adjusted for the farmworker's family size and including the income of all wage earners, except when its inclusion would be unjust due to unstable conditions of the family unit.

DSFP means the Division of Seasonal Farmworker Programs within the Employment and Training Administration of the Department, or a successor organizational unit.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the NFJP by the applicant farmworker.

Emergency Assistance means assistance that addresses immediate needs of farmworkers and their families, provided by NFJP grantees. Except for evidence to support legal working status in the United States and Selective Service registration, where applicable, the applicant's self-attestation is accepted as eligibility for emergency assistance.

Farmwork means those occupations and industries within agricultural production and agricultural services that we identify for the National Farmworker Jobs Program.

Housing development assistance within the NFJP, is a type of related assistance consisting of an organized program of education and on-site demonstrations about the basic elements of family housing and may include financing, site selection, permits and construction skills, leading towards home ownership.

MOU means Memorandum of Understanding.

MSFW means a Migrant or Seasonal Farmworker under WIA section 167.

MSFW program grantee means an entity to which we directly award a WIA grant to carry out the MSFW program in one or more designated States or substate areas.

National Farmworker Jobs Program (NFJP) is the nationally administered workforce investment program for farmworkers established by WIA section 167 as a required partner of the One-Stop system.

Related Assistance means short-term forms of direct assistance designed to assist farmworkers and their families to retain or stabilize their agricultural employment or enrollment in the NFJP.

Self-certification means a farmworker's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

Service area means the geographical jurisdiction in which a WIA section 167 grantee is designated to operate.

Work experience means a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate.

§ 669.120 How do we administer the NFJP program?

This program is centrally administered by the Department of Labor in a manner consistent with the requirements of WIA section 167. As described in § 669.210, we designate grantees using procedures consistent with standard Federal government competitive procedures. We award other grants and contracts using similar competitive procedures.

§ 669.130 What unit within the Department administers the National Farmworker Jobs Program funded under WIA section 167?

We have designated the Division of Seasonal Farmworker Programs (DSFP),

or its successor organization, within the Employment and Training Administration, as the organizational unit that administers the NFJP and other MSFW programs at the Federal level.

§ 669.140 How does the Division of Seasonal Farmworker Programs (DSFP) assist the MSFW grantee organizations to serve farmworker customers?

We provide technical assistance and training to MSFW grantees for the purposes of program implementation and program performance management leading to enhancement of services to and continuous improvement in the employment outcomes of farmworkers.

§ 669.150 How are regulations established for this program?

In developing regulations for WIA section 167, we consult with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee. The regulations and program guidance consider the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

§ 669.160 How do we consult with NFJP organizations in developing rules, regulations and standards of accountability, and other policy guidance for the NFJP?

(a) We consider the NFJP grantee community as a full partner in the development of policies for the NFJPs under the Act.

(b) We have established and continue to support the Federal MSFW Employment and Training Advisory Committee. Through the Advisory Committee, we actively seek and consider the views of the grantee community before establishing policies and/or program regulations, according to the requirements of WIA section 167.

§ 669.170 What WIA regulations apply to the programs funded under WIA section 167?

(a) The regulations found in this part;

(b) The general administrative requirements found in 20 CFR part 667, including the regulations concerning Complaints, Investigations and Hearings found at 20 CFR part 667, subpart E through subpart H, which cover programs under WIA section 167;

(c) The Department's regulations codifying the common rules implementing Office of Management and Budget (OMB) Circulars, which generally apply to Federal programs carried out by State and local governments and nonprofit organizations at 29 CFR parts 95, 96, 97, and 99, as applicable.

(d) The regulations on partnership responsibilities contained in 20 CFR parts 661 (Statewide and Local Governance) and 662 (the One-Stop System).

(e) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188, apply to recipients of financial assistance under WIA section 167.

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

§ 669.200 Who is eligible to receive a NFJP grant?

(a) To be eligible to receive a grant under this section, an entity must have:

(1) An understanding of the problems of eligible migrant and seasonal farmworkers and their dependents;

(2) A familiarity with the agricultural industry and the labor market needs of the geographic area to be served;

(3) The capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers (including farmworker youth) as described in paragraph (b) of this section;

(4) The capacity to work effectively as a One-Stop partner.

(b) For purposes of paragraph (a)(3) of this section, an entity's ''capacity to effectively administer'' a program may be demonstrated by:

(1) Organizational experience; or

(2) Significant experience of its key staff in administering similar programs.

(c) For purposes of paragraph (a)(4) of this section, an applicant may demonstrate its capacity to work effectively as a One-Stop partner through its existing relationships with Local Workforce Investment Boards and other One-Stop partners, as evidenced through One-Stop system participation and successful MOU negotiations.

(d) As part of the evaluation of the applicant's capacity to work effectively as a One-Stop partner under paragraph (a)(4) of this section:

(1) The Grant Officer must determine whether the policies or actions of any Local Board established under the authorty of the alternative entity provision of WIA section 117(i) and 20 CFR 661.330:

(i) Preclude One-Stop system participation by the applicant or existing NFJP grantee; or

(ii) For the prior program year, contributed to a failure to reach agreement on the terms of the MOU required under § 669.220; and

(2) If the Grant Officer's determinations under paragraph (d)(1) of this section are affirmative, then the Grant Officer may consider this fact when weighing the capacity of the competitors.

§ 669.210 How does an eligible entity become an NFJP grantee?

To become an NFJP grantee and receive a grant under this subpart, an applicant must respond to a Solicitation for Grant Applications (SGA). The SGA may contain additional requirements for the grant application or the grantee's two-year plan. Under the SGA, grantees will be selected using standard Federal Government competitive procedures. The entity's proposal must describe a two-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the geographic area the entity seeks to serve.

§ 669.220 What is the role of the NFJP grantee in the One-Stop delivery system?

(a) In those local workforce investment areas where the grantee operates its NFJP, the grantee is a required partner of the local One-Stop delivery system and is subject to the provisions relating to such partners described in 20 CFR part 662. Consistent with those provisions, the grantee and the Local Board must negotiate an MOU which meets the requirements of 20 CFR 662.300 and sets forth their respective responsibilities for making the full range of services available through the One-Stop system available to farmworkers. Where the Local Board is an alternative entity under 20 CFR 661.330, the NFJP grantee must negotiate with the Board on the terms of its MOU and the scope of its on-going role in the local workforce investment system, as specified in 20 CFR 661.310(b)(2). In local areas where the grantee does not operate its NFJP and there is a large concentration of MSFW's, the grantee may consider the availability of electronic connections and other means to participate in the One-stop system in that area, in order to serve those individuals.

(b) The MOU must provide for appropriate and equitable services to MSFW's, and may include costs of services to MSFW's incurred by the One-Stop that extend beyond Wagner-Peyser funded services and activities.

§ 669.230 Can an NFJP grantee's designation be terminated?

Yes, a grantee's designation may be terminated for cause:

(a) By the Secretary, in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. Any grantee so terminated will be provided with

written notice and an opportunity for a hearing within 30 days after the termination (WIA sec. 184(e)); or

(b) By the Grant Officer, if there is a substantial or persistent violation of the requirements in the Act or the WIA regulations. In such a case, the Grant Officer must provide the grantee with 60 days prior written notice, stating the reasons why termination is proposed, and the applicable appeal procedures.

§ 669.240 How do we use funds appropriated under WIA section 167 for the NFJP?

(a) At least 94 percent of the funds appropriated each year for WIA section 167 activities must be allocated to State service areas, based on the distribution of the eligible MSFW population determined under a formula which has been published in the **Federal Register**. Grants are awarded under a competitive process for the provision of services to eligible farmworkers within each service area.

(b) The balance, up to 6 percent of the appropriated funds, will be used for discretionary purposes, for such activities as grantee technical assistance and support of farmworker housing activities.

Subpart C—The National Farmworker Jobs Program Customers and Available Program Services

§ 669.300 What are the general responsibilities of the NFJP grantees?

Each grantee is responsible for providing needed services in accordance with a service delivery strategy described in its approved grant plan. These services must reflect the needs of the MSFW population in the service area and include the services and training activities that are necessary to achieve each participant's employment goals.

§ 669.310 What are the basic components of an NFJP service delivery strategy?

The NFJP service delivery strategy must include:

(a) A customer-centered case management approach;

(b) The provision of workforce investment activities, which include core services, intensive services, and training services, as described in WIA section 134, as appropriate;

(c) The arrangements under the MOU's with the applicable Local Workforce Investment Boards for the delivery of the services available through the One-Stop system to MSFW's; and

(d) Related assistance services.

§ 669.320 Who is eligible to receive services under the NFJP?

Disadvantaged migrant and seasonal farmworkers, as defined in § 669.110, and their dependents are eligible for services funded by the NFJP.

§ 669.330 How are services delivered to the customer?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach and may include: Core, intensive and training services; and related assistance, which includes emergency assistance and supportive services. The basic services and delivery of case-management activities are further described at §§ 669.340 through 669.410. Consistent with 20 CFR part 663, before receiving intensive services, a participant must receive at least one core service, and, prior to receiving training services, a participant must receive at least one intensive service.

§ 669.340 What core services are available to eligible MSFW's?

The core services identified in WIA section 134(d)(2) are available to eligible MSFW's.

§ 669.350 How are core services delivered to MSFW's?

(a) The full range of core services are available to MSFW's, as well as other individuals, at One-Stop Centers, as described in 20 CFR part 662.

(b) Core services must be made available through the One-Stop delivery system. The delivery of core services to MSFW's, by the NFJP grantee and through the One-Stop system, must be discussed in the required MOU between the Local Board and the NFJP grantee.

§ 669.360 May grantees provide emergency assistance to MSFW's?

(a) Yes, Emergency Assistance (as defined in § 669.110) is a form of the related assistance that is authorized under WIA section 167(d) and may be provided by a grantee as described in the grant plan.

(b) In providing emergency assistance, the NFJP grantee may use an abbreviated eligibility determination process that accepts the applicant's self-attestation as final evidence of eligibility, except that self-attestation may not be used to establish the requirements of legal working status in the United States, and Selective Service registration, where applicable.

§ 669.370 What intensive services may be provided to eligible MSFW's?

(a) Intensive services available to farmworkers include those described in WIA section 134(d)(3)(C).

(b) Intensive services may also include:

(1) Dropout prevention activities;

(2) Allowance payments;

(3) Work experience, which:

(i) Is designed to promote the development of good work habits and basic work skills at the work-site (work experience may be conducted with the public and private non-profit sectors and with the private for-profit sector when the design for this service is described in the approved grant plan); and which:

(ii)(A) May be paid. Paid work experience must compensate participants at no less than the higher of the applicable State or Federal minimum wage; or

(B) May be unpaid. Unpaid work experience must provide tangible benefits, in lieu of wages, to those who participate in unpaid work experience and the strategy for ensuring that tangible benefits are received must be described in the approved grant plan. The benefits to the participant must be commensurate with the participant's contribution to the hosting organization;

(4) Literacy and English-as-a-Second language; and

(5) Other services identified in the approved grant plan.

§ 669.380 What is the objective assessment that is authorized as an intensive service?

(a) An objective assessment is a procedure designed to comprehensively assess the skills, abilities, and interests of each employment and training participant through the use of diagnostic testing and other assessment tools. The methods used by the grantee in conducting the objective assessment may include:

(1) Structured in-depth interviews;

(2) Skills and aptitude assessments;

(3) Performance assessments (for example, skills or work samples, including those that measure interest and capability to train in nontraditional employment);

(4) Interest or attitude inventories;

(5) Career guidance instruments;

(6) Aptitude tests; and

(7) Basic skills tests.

(b) The objective assessment is an ongoing process that requires the grantee staff to remain in close consultation with each participant to continuously obtain current information about the participant's progress that may be relevant to his/her Individual Employment Plan (IEP).

§ 669.400 What are the elements of the Individual Employment Plan that is authorized as an intensive service?

The elements of the Individual Employment Plan (IEP) are:

(a) Joint development: The grantee develops the IEP in partnership with the participant;

(b) Customer focus: The combination of services chosen with the participant must be consistent with the results of any objective assessment, responsive to the expressed goals of the participant, and must include periodic evaluation of planned goals and a record of accomplishments in consultation with the participant;

(c) Length/type of service: The type and duration of intensive or training services must be based upon:

(1) The employment/career goal;

(2) Referrals to other programs for specified activities; and

(3) The delivery agents and schedules for intensive services, training and training-related supportive services; and

(d) Privacy: As a customer-centered case management tool, an IEP is a personal record and must receive confidential treatment.

§ 669.410 What training services may be provided to eligible MSFW's?

(a) Training services include those described in WIA sections 134(d)(4)(D) and 167(d), and may be described in the IEP and may include:

(1) On-the-job training activities under a contract between the participating employer and the grantee;

(2) Training-related supportive services; and

(b) Other training activities identified in the approved grant plan such as training in self-employment skills and micro-enterprise development.

§ 669.420 What must be included in an on-the-job training contract?

At a minimum, an on-the-job training contract must comply with the requirements of WIA sections 195(4) and 101(31) and must include:

(a) The occupation(s) for which training is to be provided;

(b) The duration of training;

(c) The wage rate to be paid to the trainee;

(d) The rate of reimbursement;

(e) The maximum amount of reimbursement;

(f) A training outline that reflects the work skills required for the position;

(g) An outline of any other separate classroom training that may be provided by the employer; and

(h) The employer's agreement to maintain and make available time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the OJT contract.

§ 669.430 What Related Assistance services may be provided to eligible farmworkers?

Related Assistance may include such services and activities as:

(a) Emergency Assistance;

(b) Workplace safety and farmworker pesticide safety instruction;

(c) Housing development assistance;

(d) Other supportive services described in the grant plan; and

(e) English language classes and basic education classes for participants not enrolled in intensive or training services.

§ 669.440 When may farmworkers receive related assistance?

Farmworkers may receive related assistance services when the need for the related assistance is documented for any eligible farmworker or dependent in a determination made by the grantee or in a statement by the farmworker.

Subpart D—Performance Accountability, Planning and Waiver Provision

§ 669.500 What performance measures and standards apply to the NFJP?

(a) The NFJP will use the core indicators of performance common to the adult and youth programs, described in 20 CFR part 666. The levels of performance for the farmworker indicators will be established in a negotiation between the Department and the grantee. The levels must take into account the characteristics of the population to be served and the economic conditions in the service area. Proposed levels of performance must be included in the grantee plan submission, and the agreed-upon levels must be included in the approved plan.

(b) We may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve farmworkers and which reflect the State service area economy and local demographics of eligible MSFW's. The levels of performance for these additional indicators must be negotiated with the grantee and included in the approved plan.

§ 669.510 What planning documents must a NFJP grantee submit?

Each grantee receiving WIA section 167 program funds must submit to DSFP a comprehensive service delivery plan and a projection of participant services and expenditures covering the two-year designation cycle.

§ 669.520 What information is required in the NFJP grant plans?

An NFJP grantee's biennial plan must describe:

(a) The employment and education needs of the farmworker population to be served;

(b) The manner in which proposed services to farmworkers and their families will strengthen their ability to obtain or retain employment or stabilize their agricultural employment;

(c) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be coordinated with other available services;

(d) The performance indicators and proposed levels of performance used to assess the performance of such entity, including the specific goals of the grantee's program for the two Program Years involved;

(e) The method the grantee will use to target its services on specific segments of the eligible population, as appropriate;

(f) The array of services which the grantee intends to make available, with costs specified on forms we prescribe. These forms will indicate how many participants the grantee expects to serve, by activity, the results expected under the grantee's plan, and the anticipated expenditures by cost category; and

(g) Its response to any other requirements set forth in the SGA issued under § 669.210.

§ 669.530 What are the submission dates for these plans?

We will announce plan submission dates in the SGA issued under § 669.220.

§ 669.540 Under what circumstances are the terms of the grantee's plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for the second year of the designation cycle. We will provide instructions for when to submit modifications for second year funding, which will generally be no later than June 1 prior to the beginning of the second year of the designation cycle.

(b) We may unilaterally modify the grantee's plan to add funds or, if the total amount of funds available for allotment is reduced by Congress, to reduce each grantee's grant amount.

(c) The grantee may modify its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. Such modifications may be made by the grantee without our approval except where the modification reduces the total number of participants to be served annually under intensive

and/or training services by 15 percent or more, in which case the plan may only be modified with Grant Officer approval.

(d) If the grantee is approved for a regulatory waiver under §§ 669.560 and 669.570, the grantee must submit a modification of its service delivery plan to reflect the effect of the waiver.

§ 669.550 How are costs classified under the NFJP?

(a) Costs are classified as follows:

(1) Administrative costs, as defined in 20 CFR 667.220; and

(2) Program costs, which are all other costs not defined as administrative.

(b) Program costs must be classified and reported in the following categories:

(1) Related assistance, including emergency assistance and supportive services, including allocated staff costs; and

(2) All other program services, including allocated staff costs.

§ 669.555 Do the WIA administrative cost limits for States and local areas apply to NFJP grants?

No, under 20 CFR 667.210(b), limits on administrative costs for NFJP grants will be negotiated with the grantee and identified in the grant award document.

§ 669.560 Are there regulatory and/or statutory waiver provisions that apply to WIA section 167?

(a) The statutory waiver provision at WIA section 189(i) does not apply to WIA section 167.

(b) NFJP grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIA;

(2) Not related to wage and labor standards, nondisplacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the key reform principles embodied in WIA, described in 20 CFR 661.400.

§ 669.570 What information is required to document a requested waiver?

To request a waiver, a grantee must submit a waiver plan that:

(a) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of WIA activities;

(b) Is consistent with guidelines we establish and the waiver provisions at 20 CFR 661.400 through 661.420; and

(c) Includes a modified service delivery plan reflecting the effect of requested waiver.

Subpart E—The MSFW Youth Program

§ 669.600 What is the purpose of the WIA section 167 MSFW Youth Program?

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

§ 669.610 What is the relationship between the MSFW youth program and the NFJP authorized at WIA section 167?

The MSFW youth program is funded under WIA section 127(b)(1)(A)(iii) to provide farmworker youth activities under the auspices of WIA section 167. These funds are specifically earmarked for MSFW youth. Funds provided for the section 167 program may also be used for youth, but are not limited to this age group.

§ 669.620 How do the MSFW youth program regulations apply to the NFJP program authorized under WIA section 167?

(a) This subpart applies only to the administration of grants for MSFW youth programs funded under WIA section 127(b)(1)(A)(iii).

(b) The regulations for the NFJP in this part apply to the administration of the MSFW youth program, except as modified in this subpart.

§ 669.630 What are the requirements for designation as an ''MSFW youth program grantee''?

Any entity that meets the requirements described in the SGA may apply for designation as an ''MSFW youth program grantee'' consistent with requirements described in the SGA. The Department gives special consideration to an entity in any service area for which the entity has been designated as a WIA section 167 NFJP program grantee.

§ 669.640 What is the process for applying for designation as an MSFW youth program grantee?

(a) To apply for designation as an MSFW youth program grantee, entities must respond to an SGA by submitting a plan that meets the requirements of WIA section 167(c)(2) and describes a two-year strategy for meeting the needs of eligible MSFW youth in the service area the entity seeks to serve.

(b) The designation process is conducted competitively (subject to § 669.210) through a selection process distinct from the one used to select WIA section 167 NFJP grantees.

§ 669.650 How are MSFW youth funds allocated to section 167 youth grantees?

The allocation of funds among entities designated as WIA section 167 MSFW Youth Program grantees is based on the comparative merits of the applications, in accordance with criteria set forth in the SGA. However, we may include criteria in the SGA that promote a geographical distribution of funds and that encourages both large- and small-scale programs.

§ 669.660 What planning documents and information are required in the application for MSFW youth grants and when must they be filed?

The required planning documents and other required information and the submission dates for filing are described in the SGA.

§ 669.670 Who is eligible to receive services under the section 167 MSFW youth program?

Disadvantaged youth, ages 14 through 21, who are individually eligible or are members of eligible families under the WIA section 167 NFJP may receive these services.

§ 669.680 What activities and services may be provided under the MSFW youth program?

(a) Based on an evaluation and assessment of the needs of MSFW youth participants, grantees may provide activities and services to MSFW youth that include:

(1) Intensive services and training services, as described in §§ 669.400 and 669.410;

(2) Life skills activities which may include self and interpersonal skills development;

(3) Community service projects;

(4) Small business development technical assistance and training in conjunction with entrepreneurial training;

(5) Supportive services including the related assistance services, described in § 669.430; and

(b) Other activities and services that conform to the use of funds for youth activities described in 20 CFR part 664.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

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Sec.

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Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

Subpart A—Scope and Purpose

§ 670.100 What is the scope of this part?

The regulations in this part are an outline of the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, phrases like ''according to instructions (procedures) issued by the Secretary'' refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 670.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, local Workforce Investment Boards, youth councils, One-Stop Centers and partners, and other youth programs to provide education and training, primarily in a residential setting, for low income young people. The objective of Job Corps is to provide young people with the skills they need to obtain and hold a job, enter the Armed Forces, or enroll in advanced training or further education.

§ 670.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable local board means a local Workforce Investment Board that:

(1) Works with a Job Corps center and provides information on local demand occupations, employment opportunities, and the job skills needed to obtain the opportunities, and

(2) Serves communities in which the graduates of the Job Corps seek employment when they leave the program.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a ''fixed asset;'' and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center.

Center operator means a Federal, State or local agency, or a contractor that runs a center under an agreement or contract with DOL.

Civilian conservation center (CCC) means a center operated on public land under an agreement between DOL and another Federal agency, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with DOL.

Contracting officer means the Regional Director or other official authorized to enter into contracts or agreements on behalf of DOL.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees are also referred to as ''students'' in this part.

Enrollment means the process by which individual formally becomes a student in the Job Corps program.

Graduate means an enrollee who has:

(1) Completed the requirements of a vocational training program, or received a secondary school diploma or its equivalent as a result of participating in the Job Corps program; and

(2) Achieved job readiness and employment skills as a result of participating in the Job Corps program.

Individual with a disability means an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between DOL and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the agency of the Department established by section 143 of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. 9201 *et seq.*) to perform those functions of the Secretary of Labor set forth in subtitle C of WIA Title I.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low income individual means an individual who meets the definition in WIA section 101(25).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association or a combination of such organizations, which has a contract with the national office to provide vocational training, placement, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted vocational training and off-center training;

(3) Placement services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Outreach and admissions agency means an organization that performs outreach, and screens and enrolls youth under a contract or other agreement with Job Corps.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Placement agency means an organization acting under a contract or other agreement with Job Corps to provide placement services for graduates and, to the extent possible, for former students.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional Office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the DOL Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives with blades longer than 2 inches;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the center operator in a student handbook.

§ 670.130 What is the role of the Job Corps Director?

The Job Corps Director has been delegated the authority to carry out the responsibilities of the Secretary under Subtitle I–C of the Act. Where the term ''Secretary'' is used in this part 670 to refer to establishment or issuance of guidelines and standards directly relating to the operation of the Job Corps program, the Job Corps Director has that responsibility.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 670.200 Who decides where Job Corps centers will be located?

(a) The Secretary must approve the location and size of all Job Corps centers.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

§ 670.210 How are center facility improvements and new construction handled?

The Secretary issues procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 670.220 Are we responsible for the protection and maintenance of center facilities?

(a) Yes, the Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with Federal Property Management Regulations at 41 CFR Chapter 101.

(b) Federal agencies operating civilian conservation centers (CCC's) on public land are responsible for protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Service Providers

§ 670.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area vocational education or residential vocational schools. (WIA sec. 147(a)(1)(A) and (d)).

(b) Entities eligible to receive funds to provide outreach and admissions, placement and other operational support services include:

(1) One-Stop Centers and partners;

(2) Community action agencies;

(3) Business organizations;

(4) Labor organizations;

(5) Private for-profit and non-profit corporations; and

(6) Other agencies, and individuals that have experience and contact with youth. (WIA sec. 145(a)(3)).

§ 670.310 How are entities selected to receive funding?

(a) The Secretary selects eligible entities to operate contract centers and operational support service providers on a competitive basis in accordance with the Federal Property and Administrative Services Act of 1949 unless section 303 (c) and (d) of that Act apply. In selecting an entity, Job Corps issues requests for proposals (RFP) for the operation of all contract centers and for provision of operational support services according to Federal Acquisition Regulation (48 CFR Chapter 1) and DOL Acquisition Regulation (48 CFR Chapter 29). Job Corps develops RFP's for center operators in consultation with the Governor, the center industry council (if established), and the Local Board for the workforce investment area in which the center is located.

(b) The RFP for each contract center and each operational support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center or to the specific required operational support services.

(c) The Contracting Officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The degree to which the offeror proposes vocational training that reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror is familiar with the surrounding community, including the applicable One-Stop Centers, and the State and region in which the center is located; and

(4) The offeror's past performance.

(d) The Contracting Officer selects and funds operational support service contractors on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP.

(e) The Secretary enters into interagency agreements with Federal agencies for the funding, establishment, and operation of CCC's which include provisions to ensure that the Federal agencies comply with the regulations under this part.

§ 670.320 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR Chapter 1); and the DOL Acquisition Regulation (48 CFR Chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCC's are made by a transfer of obligational authority from DOL to the respective operating agency.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

§ 670.400 Who is eligible to participate in the Job Corps program?

To be eligible to participate in the Job Corps, an individual must be:

(a) At least 16 and not more than 24 years of age at the time of enrollment, except

(1) There is no upper age limit for an otherwise eligible individual with a disability; and

(2) Not more than 20% of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(b) A low-income individual;

(c) An individual who is facing one or more of the following barriers to education and employement:

(1) Is basic skills deficient, as defined in WIA sec. 101(4); or

(2) Is a school dropout; or

(3) Is homeless, or a runaway, or a foster child; or

(4) Is a parent; or

(5) Requires additional education, vocational training, or intensive counseling and related assistance in order to participate successfully in regular schoolwork or to secure and hold meaningful employment; and

(d) Meets the requirements of § 670.420, if applicable.

§ 670.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment, only if:

(a) A determination is made, based on information relating to the background, needs and interests of the applicant, that the applicant's educational and vocational needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities;

(c) The applicant is made aware of the center's rules and what the consequences are for failure to observe the rules, as described in procedures issued by the Secretary;

(d) The applicant passes a background check conducted according to procedures established by the Secretary. The background check must find that the applicant is not on probation, parole, under a suspended sentence or under the supervision of any agency as a result of court action or institutionalization, unless the court or appropriate agency certifies in writing that it will approve of the applicant's release from its supervision and that the applicant's release does not violate applicable laws and regulations. No one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. (WIA secs. 145(b)(1)(C) and 145(b)(2));

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 670.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes, each male applicant 18 years of age or older must present evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq*).

§ 670.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Regional Director makes arrangements with outreach and admissions agencies to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. One-Stop Centers or partners, community action organizations, private for-profit and non-profit businesses, labor organizations, or other entities that have contact with youth over substantial periods of time and are able to offer reliable information about the needs of youth, conduct outreach and admissions activities. The Regional Director awards contracts for provision of outreach and screening services on a competitive basis in accordance with the requirements in § 670.310.

§ 670.440 What are the responsibilities of outreach and admissions agencies?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions agencies are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 670.400 and 670.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the Regional Director.

§ 670.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of §§ 670.400 and 670.410 is assigned to a center based on an assignment plan developed by the Secretary. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions; and

(3) The size and enrollment level of the center.

(b) Eligible applicants are assigned to centers closest to their homes, unless it is determined, based on the special needs of applicants, including vocational interests and English literacy needs, the unavailability of openings in the closest center, or parent or guardian concerns, that another center is more appropriate.

(c) A student who is under the age of 18 must not be assigned to a center other than the center closest to home if a parent or guardian objects to the assignment.

§ 670.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

(a) No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

(b) In enrolling individuals who are to be nonresidential students, priority is given to those eligible individuals who are single parents with dependent children. (WIA sec 147(b).)

§ 670.470 May a person who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 670.400 or a person who is not selected for enrollment under § 670.410 may appeal the determination to the outreach and admissions agency or to the center within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 670.990 and 670.991. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by WIA section 188, the individual may proceed under the applicable DOL nondiscrimination regulations implementing WIA section 188. These regulations may be found at 29 CFR part 37.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate One-Stop Center or other local service provider.

§ 670.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To become enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 670.490 How long may a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than two years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary; and

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed one year.

Subpart E—Program Activities and Center Operations

§ 670.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide:

(1) Academic, vocational, employability and social skills training;

(2) Work-based learning; and

(3) Recreation, counseling and other residential support services.

(b) In addition, centers must provide students with access to the core services described in WIA section 134(d)(2) and the intensive services described in WIA section 134(d)(3).

§ 670.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide basic education, vocational and social skills training. The Secretary provides curriculum standards and guidelines.

(b) Each center must provide students with competency-based or individualized training in an occupational area that will best contribute to the students' opportunities for permanent long-term employment.

(1) Specific vocational training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(2) Center industry councils described in § 670.800 must review appropriate labor market information, identify employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's vocational training program to the Secretary.

(c) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(d) Each center must develop a training plan that must be available for review and approval by the appropriate Regional Director.

§ 670.510 Are Job Corps center operators responsible for providing all vocational training?

No, in order to facilitate students' entry into the workforce, the Secretary may contract with national business, union, or union-affiliated organizations for vocational training programs at specific centers. Contractors providing such vocational training will be selected in accordance with the requirements of § 670.310.

§ 670.515 What responsibilities do the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including vocational skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' vocational training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 670.935.

§ 670.520 Are students permitted to hold jobs other than work-based learning opportunities?

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 670.525 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, seven days a week, 24 hours a day;

(b) An ongoing, structured counseling program for students;

(c) Food service, which includes provision of nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds which come from sources such as snack bars, vending machines, disciplinary fines, and donations, and is run by an elected student government, with the help of a staff advisor.

§ 670.530 Are Job Corps centers required to maintain a student accountability system?

Yes, each Job Corps center must establish and operate an effective system to account for and document the whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 670.535 Are Job Corps centers required to establish behavior management systems?

(a) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, according to procedures established by the Secretary. The behavior management system must include a zero tolerance policy for violence and drugs policy as described in § 670.540.

§ 670.540 What is Job Corps' zero tolerance policy?

(a) Each Job Corps center must have a zero tolerance policy for:

(1) An act of violence, as defined in procedures issued by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of enrollment. (WIA sec. 145(a)(1) and 152(b)(2).)

(c) According to procedures issued by the Secretary, the policy must specify the offenses that result in the automatic separation of a student from the Job Corps. The center director is responsible for determining when there is a violation of a specified offense.

§ 670.545 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include, at a minimum, center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps might be imposed, and procedures for students to appeal a center's decision to discharge them involuntarily from Job Corps to a regional appeal board.

§ 670.550 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist students with making arrangements for child care for their dependent children.

(b) Job Corps centers may operate on center child development programs with the approval of the Secretary.

§ 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Religious services may not be held on center unless the center is so isolated that transportation to and from community religious facilities is impractical.

(c) If religious services are held on center, no Federal funds may be paid to those who conduct services. Services may not be confined to one religious denomination, and centers may not require students to attend services.

(d) Students who believe their religious rights have been violated may file complaints under the procedures set forth in 29 CFR part 37.

§ 670.560 Is Job Corps authorized to conduct pilot and demonstration projects?

(a) Yes, the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIA section 156.

(b) The Secretary establishes policies and procedures for conducting such projects.

(c) All studies and evaluations produced or developed with Federal funds become the property of the United States.

Subpart F—Student Support

§ 670.600 Is government-paid transportation provided to Job Corps students?

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 670.610 When are students authorized to take leaves of absence from their Job Corps centers?

Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 670.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents, and graduates receive post-separation readjustment allowances and placement bonuses. The Secretary may provide former students with post-separation allowances.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence and related matters.

§ 670.630 Are student allowances subject to Federal Payroll Taxes?

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes. (WIA sec. 157(a)(2).)

§ 670.640 Are students provided with clothing?

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

Subpart G—Placement and Continued Services

§ 670.700 What are Job Corps centers' responsibilities in preparing students for placement services?

Job Corps centers must test and counsel students to assess their competencies and capabilities and determine their readiness for placement.

§ 670.710 What placement services are provided for Job Corps students?

(a) Job Corps placement services focus on placing program graduates in:

(1) Full-time jobs that are related to their vocational training and that pay wages that allow for self-sufficiency;

(2) Higher education; or

(3) Advanced training programs, including apprenticeship programs.

(b) Placement service levels for students may vary, depending on whether the student is a graduate or a former student.

(c) Procedures relating to placement service levels are issued by the Secretary.

§ 670.720 Who provides placement services?

The One-Stop system must be used to the fullest extent possible in placing graduates and former students in jobs. Job Corps placement agencies provide placement services under a contract or other agreement with the Department of Labor.

§ 670.730 What are the responsibilities of placement agencies?

(a) Placement agencies are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with local Workforce Investment Boards, One-Stop operators and partners, employers, unions and industry organizations; and

(4) Placing graduates in jobs, apprenticeship, the Armed Forces, or higher education or training, or referring former students for additional services in their local communities as appropriate. Placement services may be provided for former students according to procedures issued by the Secretary.

(b) Placement agencies must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 670.740 Must continued services be provided for graduates?

Yes, according to procedures issued by the Secretary, continued services,

including transition support and workplace counseling, must be provided to program graduates for 12 months after graduation.

§ 670.750 Who may provide continued services for graduates?

Placement agencies, centers or other agencies, including One-Stop partners, may provide post-program services under a contract or other agreement with the Regional Director. In selecting a provider for continued services, priority is given to One-Stop partners. (WIA sec. 148(d)).

§ 670.760 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the National Office, Regional Offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the One-Stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under this title. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

Subpart H—Community Connections

§ 670.800 How do Job Corps centers and service providers become involved in their local communities?

(a) Job Corps representatives serve on Youth Councils operating under applicable Local Boards wherever geographically feasible.

(b) Each Job Corps center must have a Business and Community Liaison designated by the director of the center to establish relationships with local and distant employers, applicable One-Stop centers and local boards, and members of the community according to procedures established by the Secretary. (WIA sec. 153(a).)

(c) Each Job Corps center must implement an active community relations program.

(d) Each Job Corps center must establish an industry advisory council, according to procedures established by the Secretary. The industry advisory council must include:

(1) Distant and local employers;

(2) Representatives of labor organizations (where present) and employees; and

(3) Job Corps students and graduates.

(e) A majority of the council members must be local and distant business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas to which students will return.

(f) The council must work with Local Boards and must review labor market information to provide recommendations to the Secretary regarding the center's vocational training offerings, including identification of emerging occupations suitable for training. (WIA sec.154(b)(1).)

(g) Job Corps is identified as a required One-Stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with One-Stop centers and other One-Stop partners, Local Boards, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 670.900 Are damages caused by students eligible for reimbursement under the Tort Claims Act?

Yes, Students are considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 *et seq.*). If a student is alleged to be involved in the damage, loss, or destruction of the property of others, or in causing personal injury to or the death of another individual(s), the injured person(s), or their agent may file a claim with the Center Director. The Director must investigate all of the facts, including accident and medical reports, and interview witnesses, and submit the claim for a decision to the Regional Solicitor's Office. All tort claims for $25,000 or more must be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

§ 670.905 Are damages that occur to private parties at Job Corps Centers eligible for reimbursement under the Tort Claims Act?

(a) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, the owner(s) of the property, the injured person(s), or their agent may submit a claim for the damage to the Regional Solicitor. Claims must be filed no later than two years from the date of loss or damage. The Regional Solicitor will determine if the claim is valid under the Tort Claims Act. If the Regional Solicitor determines a claim is not valid under the Tort Claims Act, the Regional Solicitor must consider the facts and may still settle the claim, in an amount not to exceed $1,500.

(b) The Job Corps may pay students for valid claims under the Tort Claims Act for lost, damaged, or stolen property, up to a maximum amount set by the Secretary, when the loss is not due to the negligence of the student. Students must file claims no later than six months from the date of loss. Students are compensated for losses including those that result from a natural disaster or those that occur when the student's property is in the protective custody of the Job Corps, such as when the student is AWOL. Claims must be filed with Job Corps regional offices. The regional office will promptly notify the student and the center of its determination.

§ 670.910 Are students entitled to Federal Employees Compensation Benefits (FECB)?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees Compensation Act (FECA). (WIA sec. 157(a)(3).)

(b) Job Corps students may be entitled to Federal Employees Compensation Benefits as specified in WIA section 157.

(c) Job Corps students must meet the same eligibility tests for FECA payments that apply to all other Federal employees. One of those tests is that the injury must occur ''in the performance of duty.'' This test is described in § 670.915.

§ 670.915 When are residential students considered to be in the performance of duty?

Residential students will be considered to be in the ''performance of duty'' at all times while:

(a) They are on center under the supervision and control of Job Corps officials;

(b) They are engaged in any authorized Job Corps activity;

(c) They are in authorized travel status; or

(d) They are engaged in any authorized offsite activity.

§ 670.920 When are non-resident students considered to be in the performance of duty?

Non-resident students are considered ''in performance of duty'' as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

§ 670.925 When are students considered to be not in the performance of duty?

Students are considered to be not in the performance of duty when:

(a) They are AWOL;

(b) They are at home, whether on pass or on leave

(c) They are engaged in an unauthorized offsite activity; or

(d) They are injured or ill due to their own:

(1) Willful misconduct;

(2) Intent to cause injury or death to oneself or another; or

(3) Intoxication or illegal use of drugs.

§ 670.930 How are FECA benefits computed?

(a) FECA benefits for disability or death are computed using the entrance salary for a grade GS–2 as the student's monthly pay.

(b) The provisions of 5 U.S.C. 8113 (a) and (b), relating to compensation for work injuries apply to students. Compensation for disability will not begin to accrue until the day following the date on which the injured student completes his or her Job Corps separation.

(c) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures in the DOL Employment Standards Administration regulations, at 20 CFR Chapter 1, must be followed. A thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the DOL Office of Workers' Compensation Programs.

§ 670.935 How are students protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations.

§ 670.940 What are the requirements for criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 670.945 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a nonprofit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (WIA sec. 158(d).)

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 670.950 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 670.955 Are center operators and service providers subject to Federal audits?

(a) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every three years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits. (WIA sec. 159(b)(2).)

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators. (WIA sec. 159(b)(1).)

§ 670.960 What are the procedures for management of student records?

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

§ 670.965 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) DOL disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to DOL regulations at 29 CFR part 70.

(c) Job Corps contractors are not ''agencies'' for Freedom of Information

Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by DOL or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or placement agency on behalf of the Job Corps.

§ 670.970 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 670.975 How is the performance of the Job Corps program assessed?

The performance of the Job Corps program as a whole, and the performance of individual program components, is assessed on an ongoing basis, in accordance with the regulations in this part and procedures and standards, including a national performance measurement system, issued by the Secretary. Annual performance assessments are done for each center operator and other service providers, including screening and admissions and placement agencies.

§ 670.980 What are the indicators of performance for Job Corps?

(a) At a minimum, the performance assessment system established under § 670.975 will include expected levels of performance established for each of the indicators of performance contained in WIA section 159(c). These are:

(1) The number of graduates and rate of graduation, analyzed by the type of vocational training received and the training provider;

(2) The job placement rate of graduates into unsubsidized employment, analyzed by the vocational training received, whether or not the job placement is related to the training received, the vocational training provider, and whether the placement is made by a local or national service provider;

(3) The average placement wage of graduates in training-related and non-training related unsubsidized jobs;

(4) The average wage of graduates on the first day of employment and at 6 and 12 months following placement, analyzed by the type of vocational training received;

(5) The number of and retention rate of graduates in unsubsidized employment after 6 and 12 months;

(6) The number of graduates who entered unsubsidized employment for 32 hours per week or more, for 20 to 32 hours per week, and for less than 20 hours per week.

(7) The number of graduates placed in higher education or advanced training; and

(8) The number of graduates who attained job readiness and employment skills.

(b) The Secretary issues the expected levels of performance for each indicator. To the extent practicable, the levels of performance will be continuous and consistent from year to year.

§ 670.985 What happens if a center operator, screening and admissions contractor or other service provider fails to meet the expected levels of performance?

(a) The Secretary takes appropriate action to address performance issues through a specific performance plan.

(b) The plan may include the following actions:

(1) Providing technical assistance to a Job Corps center operator or support service provider, including a screening and admissions contractor;

(2) Changing the management staff of a center;

(3) Changing the vocational training offered at a center;

(4) Contracting out or recompeting the contract for a center or operational support service provider;

(5) Reducing the capacity of a Job Corps center;

(6) Relocating a Job Corps center; or

(7) Closing a Job Corps center. (WIA sec. 159 (f).)

§ 670.990 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 670.470 or complaints alleging fraud or other criminal activity, complaints may be filed within one year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of WIA section 188, consistent with DOL nondiscrimination regulations implementing WIA section 188 at 29 CFR part 37 and § 670.995.

§ 670.991 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 670.990, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that the Act or regulations for this part of the Act have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of the Act or the WIA regulations. If the Regional Director determines that there has been a violation of the Act or Regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating the Act or regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the DOL Office of Administrative Law Judges under 20 CFR 667.800 or 667.840.

§ 670.992 How does Job Corps ensure that centers or other service providers comply with the Act and the WIA regulations?

(a) If DOL receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of the Act or regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 670.990; or

(2) Investigate and determine whether the center operator or service provider is in compliance with the Act and regulations. If the Regional Director determines that the center or service provider is not in compliance with the Act or regulations, the Regional Director may take action to resolve the complaint under § 670.991(b), or will report the incident to the DOL Office of the Inspector General, as described in 20 CFR 667.630.

§ 670.993 How does Job Corps ensure that contract disputes will be resolved?

A dispute between DOL and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 670.994 How does Job Corps resolve disputes between DOL and other Federal Agencies?

Disputes between DOL and a Federal Agency operating a center will be handled according to the interagency agreement with the agency which is operating the center.

§ 670.995 What DOL equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing WIA section 188 for programs receiving Federal financial assistance under WIA found at 29 CFR part 37.

(b) 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) 41 CFR Chapter 60 for entities that have a Federal government contract.

PART 671—NATIONAL EMERGENCY GRANTS FOR DISLOCATED WORKERS

Sec.

671.100 What is the purpose of national emergency grants under WIA section 173?
671.105 What funds are available for national emergency grants?
671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?
671.120 Who is eligible to apply for national emergency grants?
671.125 What are the requirements for submitting applications for national emergency grants?
671.130 When should applications for national emergency grants be submitted to the Department?
671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?
671.150 How do statutory and workflex waivers apply to national emergency grants?
671.160 What rapid response activities are required before a national emergency grant application is submitted?
671.170 What are the program and administrative requirements that apply to national emergency grants?

Authority: Sec. 506(c), Pub. L. 105–220; 20 U.S.C. 9276(c).

§ 671.100 What is the purpose of national emergency grants under WIA section 173?

The purpose of national emergency grants is to provide supplemental dislocated worker funds to States, Local Boards and other eligible entities in order to respond to the needs of dislocated workers and communities affected by major economic dislocations and other worker dislocation events which cannot be met with formula allotments.

§ 671.105 What funds are available for national emergency grants?

We use funds reserved under WIA section 132(a)(2)(A) to provide financial assistance to eligible applicant for grants under WIA section 173.

§ 671.110 What are major economic dislocations or other events which may qualify for a national emergency grant?

These include:

(a) Plant closures;

(b) Mass layoffs affecting 50 or more workers at a single site of employment;

(c) Closures and realignments of military installations;

(d) Multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in a community;

(e) Emergencies or natural disasters, as defined in paragraphs (1) and (2) respectively, of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and

(f) Other events, as determined by the Secretary.

§ 671.120 Who is eligible to apply for national emergency grants?

(a) *For projects within a State.* A State, a Local Board or another entity determined to be appropriate by the Governor of the State in which the project is located may apply for a national emergency grant. Also, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations which are recipients of funds under section 166 of the Act (Indian and Native American Programs) may apply for a national emergency grant.

(b) *For inter-State projects.* Consortia of States and/or Local Boards may apply. Other private entities which can demonstrate, in the application for assistance, that they possess unique capabilities to effectively respond to the circumstances of the major economic dislocation(s) covered in the application may apply.

(c) *Other entities.* The Secretary may consider applications from other entities, to ensure that appropriate assistance is provided in response to major economic dislocations.

§ 671.125 What are the requirements for submitting applications for national emergency grants?

We publish instructions for submitting applications for National Emergency Grants in the **Federal Register**. The instructions specify application procedures, selection criteria and the approval process.

§ 671.130 When should applications for national emergency grants be submitted to the Department?

(a) Applications for national emergency grants to respond to mass layoffs and plant closures may be submitted to the Department as soon as:

(1) The State receives a notification of a mass layoff or a closure as a result of a WARN notice, a general announcement or some other means determined by the Governor to be sufficient to respond;

(2) Rapid response assistance has been initiated; and

(3) A determination has been made, in collaboration with the applicable Local Board(s) and chief elected official(s), that State and local formula dislocated worker funds are inadequate to provide the level of services needed by the workers being laid off.

(b) An eligible entity may apply for a national emergency grant at any time during the year.

(c) Applications for national emergency grants to respond to a declared emergency or natural disaster as described in § 671.110(e), cannot be considered until FEMA has declared that the affected area is eligible for disaster-related public assistance.

§ 671.140 What are the allowable activities and what dislocated workers may be served under national emergency grants?

(a) National emergency grants may provide adjustment assistance for

eligible dislocated workers, described at WIA section 173(c)(2) or (d)(2).

(b) Adjustment assistance includes the core, intensive, and training services authorized at WIA sections 134(d) and 173. The scope of services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant. The scope of services may be changed through grant modifications, if necessary.

(c) National emergency grants may provide for supportive services to help workers who require such assistance to participate in activities provided for in the grant. Needs-related payments, in support of other employment and training assistance, may be available for the purpose of enabling dislocated workers who are eligible for such payments to participate in programs of training services. Generally, the terms of a grant must be consistent with Local Board policies governing such financial assistance with formula funds (including the payment levels and duration of payments). However, the terms of the grant agreement may diverge from established Local Board policies, in the following instances:

(1) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement at WIA section 134(e)(3)(B) because of the lack of formula or emergency grant funds in the State or local area at the time of dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the emergency grant award;

(2) Trade-impacted workers who are not eligible for trade readjustment assistance under NAFTA–TAA may be eligible for needs-related payments under a national emergency grant if the worker is enrolled in training by the end of the 16th week following layoff; and

(3) Under other circumstances as specified in the national emergency grant application guidelines.

(d) A national emergency grant to respond to a declared emergency or natural disaster, as defined at § 671.110(e), may provide short-term disaster relief employment for:

(1) Individuals who are temporarily or permanently laid off as a consequence of the disaster;

(2) Dislocated workers; and

(3) Long-term unemployed individuals.

(e) Temporary employment assistance is authorized on disaster projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects that perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the disaster area. For such temporary jobs, each eligible worker is limited to no more than six months of employment for each single disaster. The amounts, duration and other limitations on wages will be negotiated for each grant.

(f) Additional requirements that apply to national emergency grants, including natural disaster grants, are contained in the application instructions.

§ 671.150 How do statutory and workflex waivers apply to national emergency grants?

(a) State and Local Board grantees may request and we may approve the application of existing general statutory or regulatory waivers and workflex waivers to a National Emergency Grant award. The application for grant funds must describe any statutory waivers which the applicant wishes to apply to the project that the State and/or Local Board, as applicable, have been granted under its waiver plan, or that the State has approved for implementation in the applicable local area under workflex waivers. We will consider such requests as part of the overall application review and decision process.

(b) If, during the operation of the project, the grantee wishes to apply a waiver not identified in the application, the grantee must request a modification which includes the provision to be waived, the operational barrier to be removed and the effect upon the outcome of the project.

§ 671.160 What rapid response activities are required before a national emergency grant application is submitted?

(a) Rapid response is a required Statewide activity under WIA section 134(a)(2)(A), to be carried out by the State or its designee in collaboration with the Local Board(s) and chief elected official(s). Under 20 CFR 665.310, rapid response encompasses, among other activities, an assessment of the general needs of the affected workers and the resources available to them.

(b) In accordance with national emergency grant application guidelines published by the Department, each applicant must demonstrate that:

(1) The rapid response activities described in 20 CFR 665.310 have been initiated and carried out, or are in the process of being carried out;

(2) State and local funds, including those made available under section 132(b)(2)(B) of the Act, have been used to initiate appropriate services to the eligible workers;

(3) There is a need for additional funds to effectively respond to the assistance needs of the workers and, in the case of declared emergencies and natural disasters, the community; and

(4) The application has been developed by or in conjunction with the Local Board(s) and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 671.170 What are the program and administrative requirements that apply to national emergency grants?

(a) In general, the program requirements and administrative standards set forth at 20 CFR parts 663 and 667 will apply.

(b) Exceptions include:

(1) Funds provided in response to a natural disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, subject to the limitations of WIA section 173(d), this part and the application guidelines issued by the Department;

(2) National emergency grant funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. We will negotiate administration costs with the applicant as part of the application review and grant award and modification processes;

(3) The period of availability for expenditure of funds under a national emergency grant is specified in the grant agreement.

(4) We may establish supplemental reporting, monitoring and oversight requirements for national emergency grants. The requirements will be identified in the grant application instructions or the grant document.

(5) We may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

1. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. 49k.

2. The subpart heading to subpart A is revised to read as follows:

Subpart A—Employment Service Operations.

§ 652.1 [Amended]

3. In § 652.1, the definition of *State Job Training Coordinating Council (SJTCC)* is removed.

4. Section 652.5 is revised to read as follows:

§ 652.5 Services authorized.

The sums allotted to each State under section 6 of the Act must be expended consistent with an approved plan under 20 CFR 661.220 through 661.240 and §§ 652.211 through 652.214. At a minimum, each State shall provide the basic labor exchange elements at § 652.3.

5. Section 652.8 is amended as follows:

a. in paragraph (a) remove the citation ''41 CFR part 29–70'' and add in its place the citation ''29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'', and remove the citation ''41 CFR. part 1–15.7'' and add in its place the citation ''OMB Circular A–87 (Revised)''.;

b. in paragraph (d)(2) remove the citation ''41 CFR part 29–70'' and add in its place the citation ''29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'', and remove the citation ''41 CFR 1–15.7'' and add in its place the citation ''OMB Circular A–87 (Revised)'', and remove the citation ''41 CFR 29–70.215'' and add in its place the citation ''29 CFR 97.32(g)';

c. in paragraph (d)(6) introductory text, remove the citation ''41 CFR 1–15.711–13 and 711–10'' and add in its place the citation ''OMB Circular A–87 (Revised)'';

d. in paragraph (d)(6)(ii) remove the citation ''41 CFR 1–15.711–13 and 711–10'' and add in its place the citation ''OMB Circular A–87 (Revised)'';

e. in paragraph (d)(6)(iii) remove the citation ''41 CFR 1–15.711–13 and 1–15.711–10'' and add in its place the citation ''OMB Circular A–87 (Revised)'';

f. in paragraph (d)(6)(iv) remove the citation ''41 CFR 1–15.711–13 and 1–15.711–10'' and add in its place the citation ''OMB Circular A–87 (Revised)'';

g. in paragraph (j)(4) remove the citation ''29 CFR parts 1627 and 32'' and add in its place the citation ''29 CFR part 32 and 29 CFR 1627.3(b)(iv).''

h. paragraph (j)(1) is revised to read as follows:

§ 652.8 Administrative provisions.

* * * * *

(j) * * *

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination shall be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

* * * * *

6. Subpart C is revised to read as follows:

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

Sec.

652.200 What is the purpose of this subpart?
652.201 What is the role of the State agency in the One-Stop delivery system?
652.202 May local Employment Service Offices exist outside of the One-Stop service delivery system?
652.203 Who is responsible for funds authorized under the Act in the workforce investment system?
652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?
652.205 May funds authorized under the Act be used to supplement funding for labor exchange programs authorized under separate legislation?
652.206 May a State use funds authorized under the Act to provide ''core services'' and ''intensive services'' as defined in WIA?
652.207 How does a State meet the requirement for universal access to services provided under the Act?
652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?
652.209 What are the requirements under the Act for providing reemployment services and other activities to referred UI claimants?
652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?
652.211 What are State planning requirements under the Act?
652.212 When should a State submit modifications to the five-year plan?
652.213 What information must a State include when the plan is modified?
652.214 How often may a State submit modifications to the plan?
652.215 Do any provisions in WIA change the requirement that State merit-staff employees must deliver services provided under the Act?
652.216 May the One-Stop operator provide guidance to State merit-staff employees in accordance with the Act?

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

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Act, as amended by WIA, in a One-Stop delivery system environment.

(b) Except as otherwise provided, the definitions contained at subpart A of this part and section 2 of the Act apply to this subpart.

§ 652.201 What is the role of the State agency in the One-Stop delivery system?

(a) The role of the State agency in the One-Stop delivery system is to ensure the delivery of services authorized under section 7(a) of the Act. The State agency is a required One-Stop partner in each local One-Stop delivery system and is subject to the provisions relating to such partners that are described at 20 CFR part 662.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the One-Stop delivery system in accordance with section 7(e) of the Act;

(2) Be represented on the Workforce Investment Boards that oversee the local and State One-Stop delivery system and be a party to the Memorandum of Understanding, described at 20 CFR 662.300, addressing the operation of the One-Stop delivery system; and

(3) Provide these services as part of the One-Stop delivery system.

§ 652.202 May local Employment Service Offices exist outside of the One-Stop service delivery system?

(a) No, local Employment Service Offices may not exist outside of the One-Stop service delivery system.

(b) However, local Employment Service Offices may operate as affiliated sites, or through electronically or technologically linked access points as part of the One-Stop delivery system, provided the following conditions are met:

(1) All labor exchange services are delivered as a part of the local One-Stop delivery system in accordance with section 7(e) of the Act and § 652.207(b);

(2) The services described in paragraph (b)(1) of this section are available in at least one comprehensive physical center, as specified in 20 CFR 662.100, from which job seekers and employers can access them; and

(3) The Memorandum of Understanding between the State agency local One-Stop partner and the Local Workforce Investment Board meets the requirements of 20 CFR 662.300.

§ 652.203 Who is responsible for funds authorized under the Act in the workforce investment system?

The State agency retains responsibility for all funds authorized under the Act, including those funds authorized under section 7(a) required for providing the services and activities delivered as part of the One-Stop delivery system.

§ 652.204 Must funds authorized under section 7(b) of the Act (the Governor's reserve) flow through the One-Stop delivery system?

No, these funds are reserved for use by the Governor for the three categories of activities specified in section 7(b) of the Act. However, these funds may flow through the One-Stop delivery system.

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

(a) Section 7(c) of the Act enables States to use funds authorized under sections 7(a) or 7(b) of the Act to supplement funding of any workforce activity carried out under WIA.

(b) Funds authorized under the Act may be used under section 7(c) to provide additional funding to other activities authorized under WIA if:

(1) The activity meets the requirements of the Act, and its own requirements;

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

(3) The activity provides services that are coordinated with services under the Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Act to provide ''core services'' and ''intensive services'' as defined in WIA?

Yes, funds authorized under section 7(a) of the Act must be used to provide core services, as defined at section 134(d)(2) of WIA and discussed at 20 CFR 663.150, and may be used to provide intensive services as defined at WIA section 134(d)(3)(C) and discussed at 20 CFR 663.200. Funds authorized under section 7(b) of the Act may be used to provide core or intensive services. Core and intensive services must be provided consistent with the requirements of the Act.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Act. In exercising this discretion, a State must meet the Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Act, on a Statewide basis through:

(i) Self-service;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local workforce investment area, in at least one comprehensive physical center, staff funded under the Act must provide core and applicable intensive services including staff-assisted labor exchange services; and

(4) Those labor exchange services provided under the Act in a local workforce investment area must be described in the Memorandum of Understanding (MOU).

§ 652.208 How are core services and intensive services related to the methods of service delivery described in § 652.207(b)(2)?

Core services and intensive services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service;

(b) Facilitated self-help service; and

(c) Staff-assisted service.

§ 652.209 What are the requirements under the Act for providing reemployment services and other activities to referred UI claimants?

(a) In accordance with section 3(c)(3) of the Act, the State agency, as part of the One-Stop delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be provided to the extent that funds are available and must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The State agency must also provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by section 5(b)(2) of the Act;

(2) Administration of the work test and provision of job finding and placement services as required by section 7(a)(3)(F) of the Act.

§ 652.210 What are the Act's requirements for administration of the work test and assistance to UI claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Act that are necessary and appropriate to facilitate their earliest return to work;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) UI program staff receive information about UI claimants' ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Act?

The State agency designated to administer funds authorized under the Act must prepare for submission by the Governor, the portion of the five-year State Workforce Investment Plan describing the delivery of services provided under the Act in accordance with WIA regulations at 20 CFR 661.220. The State Plan must contain a detailed description of services that will be provided under the Act, which are adequate and reasonably appropriate for carrying out the provisions of the Act, including the requirements of section 8(b) of the Act.

§ 652.212 When should a State submit modifications to the five-year plan?

(a) A State may submit modifications to the five-year plan as necessary during the five-year period, and must do so in accordance with the same collaboration, notification, and other requirements that apply to the original plan. Modifications are likely to be needed to keep the strategic plan a viable and living document over its five-year life.

(b) That portion of the plan addressing the Act must be updated to reflect any reorganization of the State agency designated to deliver services under the Act, any change in service delivery strategy, any change in levels of performance when performance goals are not met, or any change in services delivered by State merit-staff employees.

§ 652.213 What information must a State include when the plan is modified?

A State must follow the instructions for modifying the strategic five-year plan in 20 CFR 661.230.

§ 652.214 How often may a State submit modifications to the plan?

A State may modify its plan, as often as needed, as changes occur in Federal or State law or policies, Statewide vision or strategy, or if changes in economic conditions occur.

§ 652.215 Do any provisions in WIA change the requirement that State merit-staff employees must deliver services provided under the Act?

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

§ 652.216 May the One-Stop operator provide guidance to State merit-staff employees in accordance with the Act?

Yes, the One-Stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a One-Stop setting. As part of the local Memorandum of Understanding, the State agency, as a One-Stop partner, may agree to have staff receive guidance from the One-Stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit-staff employees funded under the Act, remain under the authority of the State agency. The guidance given to employees must be consistent with the provisions of the Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

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