

## Employment and Training Administration, Labor

## § 633.104

AUTHORITY: Job Training Partnership Act, sec.169 (29 U.S.C. 1501 *et seq.*, Pub. L. 97-300, 96 Stat. 1322), unless otherwise noted.

SOURCE: 48 FR 48771, Oct. 20, 1983, unless otherwise noted.

### Subpart A—Introductory Provisions

#### § 633.102 Scope and purpose of title IV, section 402 programs.

(a) It is the purpose of title IV, section 402, of the Act to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry. These conditions have been substantially aggravated by continual advancements in technology and mechanization resulting in displacement and contribute significantly to the Nation's rural employment problem. These factors substantially affect the entire national economy.

(b) Because of farmworker employment and training problems, such programs shall be centrally administered at the national level. Programs and activities supported under this section shall in accordance with section 402(c)(3) of the Act:

- (1) Enable farmworkers and their dependents to obtain or retain employment;
- (2) Allow participation in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment;
- (3) Allow activities leading to stabilization in agricultural employment; and
- (4) Include related assistance and supportive services.

#### § 633.103 Format for these regulations.

(a) Regulations promulgated by the Department to implement the provisions of title IV section 402 of the Act are set forth in 20 CFR part 633 and part 636. These parts contain all the regulations under the Act applicable to migrant and other seasonally employed farmworker programs.

(b) Should the regulations at this part conflict with regulations at other parts of this title of the Code of Federal Regulations, the regulations at this part shall prevail with respect to

programs and activities governed by this part.

#### § 633.104 Definitions.

The following definitions are applicable to section 402 programs.

*Accrued expenditures* shall mean total costs incurred during the reporting period for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees and other payees; and (c) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

*Act* shall mean the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

*Allocation* shall mean the amount of funds calculated in accordance with § 633.105(b)(1) for section 402 programs in each State and distributed in accordance with the requirements of this part.

*Chief, DFREP* shall mean the Chief of the Division of Farmworker and Rural Employment Programs in the Employment and Training Administration, Department of Labor.

*Construction* shall mean the erection, installation, assembly, or painting of a new structure or a major addition, expansion, or extension of an existing structure, and the related site preparation, excavation, filling and landscaping or other land improvements.

*Department* shall mean the United States Department of Labor (DOL), including its agencies and organizational units.

*DOL* shall mean the United States Department of Labor.

*Employment* shall mean the situation wherein a person(s) provides work or services for an employer for wages or salary. This includes self-employment. The satisfaction of workfare requirements does not constitute employment.

*Entered employment* shall mean the act of securing unsubsidized employment for or by a participant. Seasonal agricultural placements will not be considered as unsubsidized employment secured for or by a participant for purposes of this definition unless it can be substantiated that the placement represents an upgraded position

within agriculture and will not result in the continued underemployment of the individual.

*Entered employment, direct* shall mean unsubsidized employment secured for or by a participant after receiving direct placement services not associated with training or subsidized employment.

*Entered employment, indirect* shall mean unsubsidized employment secured for or by a participant after participation in training or subsidized employment.

*Family* (a) shall mean one or more persons related by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage.

(b)(1) For purposes of paragraph (a) of this definition, a person claimed as a dependent on another person's Federal Income Tax return for the previous year is presumed to be part of the other person's family.

(2) A handicapped individual may be considered a family of one when applying for programs under the Act.

(3) An individual 18 years of age or older, except as provided in (a) or (b) above, who receives less than 50 percent of support from the family, and who is not the principal earner nor the spouse of the principal earner, is not considered a member of the family. Such an individual is considered a family of one.

*Family income* shall mean all income received from all sources for the eligibility determination period by persons who are family members at the time of eligibility determination.

(a) For the purpose of determining eligibility (and not for allocations), family income includes:

(1) Gross wages and salaries (before deductions);

(2) Net self-employment income (gross receipts minus operating expenses); and

(3) Other money income received from sources such as net rents, Old Age and Survivors Insurance, Social Security benefits, pensions, alimony, periodic income from insurance policy annuities, and other sources of income.

(b) Earned family income does not include:

(1) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(2) Rental value of owner-occupied property;

(3) Public assistance payments;

(4) Cash payments received pursuant to a State plan approved under titles I, IV, X or XVI of the Social Security Act, or disability insurance payments received under title II of the Social Security Act;

(5) Federal, State or local unemployment benefits;

(6) Payments made to participants in employment and training programs;

(7) Capital gains and losses;

(8) One-time unearned income, such as, but not limited to:

(i) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(ii) One-time or fixed-term scholarship and fellowship grants;

(iii) Accident, health, and casualty insurance proceeds;

(iv) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(v) One-time awards and gifts;

(vi) Inheritance, including fixed term annuities;

(vii) Fixed-term workers' compensation awards;

(viii) Terminal leave pay;

(ix) Soil bank payments; and

(x) Agriculture crop stabilization payments.

(9) Pay or allowances received by any veteran while he/she was serving on active duty in the Armed Forces;

(10) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36 of title 38, United States Code;

(11) Payments received under the Trade Act of 1974 as amended;

(12) Black Lung payments received under the Benefits Reform Act of 1977, Pub. L. 95-239, 30 USC 901; and

(13) Child support payments.

*Farmwork* shall mean, for eligibility purposes, work performed for wages in agricultural production or agricultural services as defined in the most recent

edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01—Agricultural Production—Crops; 02—Agricultural Production—Livestock excluding 027—Animal Specialties; 07—Agricultural Services excluding 074—Veterinary Services, 0752—Animal Speciality Services, and 078—Landscape and Horticultural Services.

*Grantee* shall mean any person, organization or other entity which receives JTPA funds directly from the Department.

*JTPA* shall mean the Job Training Partnership Act.

*Migrant farmworker* shall mean a seasonal farmworker who performs or has performed farmwork during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

*Participant* shall mean an individual who is:

- (a) Eligible for participation; and
- (b) Enrolled within 45 days of eligibility determination; and
- (c) Enrolled and receiving employment, training or services (except post-termination services) funded under the Act.

*Planning estimates* shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

*Program income* shall mean net income earned from grant or agreement supported activities. Such earnings include, but are not limited to: income from service fees, sale of commodities, usage or rental fees, and royalties on patents or copyrights.

*Poverty level* shall mean the annual income level at, or below which families are considered to live in poverty, as annually determined by HHS.

*Seasonal farmworker* shall mean a person who during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) was employed at least 25 days in farmwork or earned at least \$400 in farmwork; and who has been primarily employed in farmwork on a seasonal

basis, without a constant year round salary.

*Section 402 programs* shall mean the Migrant and Seasonal Farmworker Program, under section 402 of title IV of the Job Training Partnership Act.

The term *subsidized employment* shall mean employment created in the private or public sector and in private nonprofit agencies financed by the recipient's program funds or by other DOL funded programs, e.g., work experience and tryout employment.

*Supplemental funds* shall mean any funds allocated in excess of that amount announced as a "planning estimate."

*Target area* shall mean a geographic area to be served by a section 402 grantee. Such an area may be a county, multicounty area, a State, or a multistate area.

*Target population* shall mean farmworkers and their dependents who meet the requirements of § 633.107.

*Underemployed persons* shall mean:

- (a) Persons who are working part-time but seeking full-time work; or
- (b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:
  - (1) The poverty level, or
  - (2) 70 percent of the lower living standard income level.

*Unemployed individuals* shall mean individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department in defining individuals as unemployed.

**§ 633.105 Allocation of funds.**

(a) *National Account.* (1) Up to 6 percent of the statutory reserves for section 402 activities may be set aside for the National Account to be used for technical assistance and for special projects funded at the discretion of the Department.

(2) Funds from the National Account may be obligated by the Department by means of either contracts or grants to private nonprofit agencies, to private profitmaking organizations, to