State appointed by the Governor under section 111 of the Workforce Investment Act.

WIA means the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*).

[48 FR 50665, Nov. 2, 1983, as amended at 64 FR 18761, Apr. 15, 1999; 65 FR 49462, Aug. 11, 2000]

§ 652.2 Scope and purpose of the employment service system.

The basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Basic labor exchange system.

At a minimum, each State shall administer a labor exchange system which has the capacity:

(a) To assist jobseekers in finding employment;

(b) To assist employers in filling jobs;

(c) To facilitate the match between jobseekers and employers;

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary, under section 15 of the Act; and.

(e) To meet the work test requirements of the State unemployment compensation system.

[48 FR 50665, Nov. 2, 1983, as amended at 64 FR 18762, Apr. 15, 1999]

§ 652.4 Allotment of funds and grant agreement.

(a) *Allotments.* The Secretary shall provide planning estimates in accordance with section 6(b)(5) of the Act. Within 30 days of receipt of planning estimates from the Secretary, the State shall make public the substate resource distributions, and describe the process and schedule under which these resources will be issued, planned and committed. This notification shall include a description of the procedures by which the public may review and comment on the substate distributions, including a process by which the State will resolve any complaints.

(b) *Grant Agreement.* To establish a continuing relationship under the Act, the Governor and the Secretary shall sign a Governor/Secretary Agreement, including a statement assuring that the State shall comply with the Act and all applicable rules and regulations. Consistent with this Agreement and section 6 of the Act, State allotments will be obligated through a Notification of Obligation.

(Approved by the Office of Management and Budget under control number 1205–0209)

§ 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.

[65 FR 49462, Aug. 11, 2000]

§§ 652.6–652.7 [Reserved]

§ 652.8 Administrative provisions.

(a) *Administrative requirements.* The Employment Security Manual shall not be applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part 652 are as specified in 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and OMB Circular A–87 (Revised).

(b) *Management systems, reporting and recordkeeping.* (1) The State shall ensure that financial systems provide fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds (section 10(a)).

(2) The financial management system and the program information system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes (section 10(c)).

(c) *Reports required.* (1) Each State shall make reports pursuant to instructions issued by the Secretary and in

such format as the Secretary shall prescribe.

(2) The Secretary is authorized to monitor and investigate pursuant to section 10 of the Act.

(d) *Special administrative and cost provisions.* (1) Neither the Department nor the State is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority, as described in various sections of 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and OMB Circular A–87 (Revised), is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 29 CFR 97.32(g). The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements shall be as specified under this part.

(4) Cost of promotional and informational activities consistent with the provisions of the Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State shall retain basic documents for the minimum period specified below:

(i) Work Application: One year.

(ii) Job Order: One Year.

(6) Costs of employer contributions and expenses incurred for State agency fringe benefit plans that do not meet the requirements in OMB Circular A–87 (Revised) are allowable, provided that:

(i) For retirement plans, on behalf of individuals employed before the effective date of this part, the plan is authorized by State law and previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan; and any dividends or similar credits due to participation in the plan are credited against the next premium falling due under the contract;

(ii) For retirement plans on behalf of individuals employed after the effective date of this part, and for fringe benefit plans other than retirement, the Secretary grants a time extension to cover an interim period if State legislative action is required for such employees to be covered by plans which meet the requirements of OMB Circular A–87 (Revised). During this interim period, State agency employees may be enrolled in plans open to State agency employees only. No such extension may continue beyond the 60th day following the completion of the next full session of the State legislature which begins after the effective date of this part;

(iii) For fringe benefit plans other than retirement, the Secretary grants a time extension which may continue until such time as they are comparable in cost to those fringe benefit plans available to other similarly employed employees of the State on the condition that there are no benefit improvements. The Secretary may grant this time extension if the State agency can demonstrate that the extension is necessary to prevent loss of benefits to current States agency employees, retireees and/or their fringe benefit plan beneficiaries, or that it is necessary to avoid unreasonable expenditures on behalf of the employee or employer to maintain such fringe benefits for current employees and retirees. At such time as the cost of these fringe benefit plans becomes equitable with those available to other similarly employed State employees, the time extension will cease and the requirements of OMB Circular A–87 (Revised) will apply;

(iv) Requests for time extensions under this section will include an opinion of the State Attorney General, that either legislative action is required to accomplish compliance with OMB Circular A–87 (Revised) or, for (d)(6)(iii) of this section that such compliance would result in either loss of current benefits to State agency employees and retirees or unreasonable expenditures to maintain these benefits. Such requests will be filed with the Secretary no later than 30 days after the effective date of this part; and

(v) Time extensions granted relative to (d)(6)(iii) of this section require a signed statement by the State agency Administrator, that no improvements have been made to fringe benefits under the extension and that the plan(s) is (are) not consistent with those available to other similarly employed State employees, for each year of the extension. Documentation supporting the affidavit shall be maintained for audit purposes.

(7) Payments from the State's Wagner-Peyser allotment made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (section 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(7)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act Funds used for administrative expenditures.

(e) *Disclosure of information.* (1) The State shall assure the proper disclosure of information pursuant to section 3(b) of the Act.

(2) The information specified in section 3(b) and other sections of the Act, shall also be provided to officers or any employee of the Federal Government of a State government lawfully charged with administration of unemployment compensation laws, employment service activities under the Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) *Audits,* (1) At least once every 2 years, the State shall prepare or have prepared an independent financial and compliance audit covering each full program year not covered in the previous audit, except that funds expended pursuant to section 7(b) of the Act shall be audited annually.

(2) The Comptroller General and the Inspector General of the Department shall have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under sections 9(b)(1) and 9(b)(2), respectively, of the Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (f)(2) of this section, shall be submitted to the Secretary who shall make an initial determination. Such determinations shall be based on the requirements of the Act, regulations, and State plan.

(i) The initial determination shall identify the audit findings, state the Secretary's proposed determination of the allowability of questioned costs and activities, and provide for informal resolution of those matters in controversy contained in the initial determination.

(ii) The Secretary shall not impose sanctions and corrective actions without first providing the State with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. The informal resolution period shall be at least 60 days from issuance of the initial determination and no more that 170 days from the receipt by the Secretary of the final approved audit report. If the matters are resolved informally, the Secretary shall issue a final determination pursuant to paragraph (f)(3)(iii) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(iii) If the matter is not resolved informally, the Secretary shall provide each party with a final written determination by certified mail, return receipt requested. In the case of audits, the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report. The final determination shall:

(A) Indicate that efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(B) List those matters upon which the parties continue to disagree;

(C) List any modifications to the factual findings and conclusions set forth in the initial determination;

(D) Establish a debt if appropriate;

(E) Determine liability, method of restitution of funds and sanctions;

(F) Offer an opportunity for a hearing in accordance with 20 CFR 658.707 through 658.711 in the case of a final determination imposing a sanction or corrective action; and

(G) Constitute final agency action unless a hearing is requested.

(g) *Sanctions for violation of the Act.* (1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Act, regulations, or State plan, including the following:

(i) Requiring repayment, for debts owed the Government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Act, provided that debts arising from gross negligence or willful misuse of funds shall not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt shall be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt;

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

(2) To impose a sanction or corrective action, the Secretary shall utilize the initial and final determination procedures outlined in (f)(3) of this section.

(h) *Other violations.* Violations or alleged violations of the Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination shall be determined and handled in accordance with 20 CFR part 658, subpart H.

(i) *Fraud and abuse.* Any persons having knowledge of fraud, criminal activity or other abuse shall report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately.

(j) *Nondiscrimination and affirmative action requirements.* States shall:

(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.

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable DOL nondiscrimination regulations.

[48 FR 50665, Nov. 2, 1983, as amended at 64 FR 18762, Apr. 15, 1999; 65 FR 49462, Aug. 11, 2000]

§ 652.9 Labor disputes.

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to