

§ 640.9

considering application of the provisions of § 640.2:

(1) Initiate informal discussion with State agency officials pursuant to § 601.5(b) of this chapter.

(2) Conduct an evaluation of the State's benefit payment processes and analyze the reasons for the State's failure to meet the standard.

(3) Recommend specific actions for the State to take to improve its benefit payment performance.

(4) Request the State to submit a plan for complying with the standard by a prescribed date.

(5) Initiate special reporting requirements for a specified period of time.

(6) Consult with the Governor of the State regarding the consequences of the State's noncompliance with the standard.

(7) Propose to the Governor of the State and on an agreed upon basis arrange for the use of expert Federal staff to furnish technical assistance to the State agency with respect to its payment operations.

(b) *Action by the Assistant Secretary.* If, after all remedial steps have been exhausted, a State fails to take appropriate action, or otherwise fails to meet the standard specified in § 640.4, the Assistant Secretary for Employment and Training shall, after taking all factors into consideration, recommend to the Secretary of Labor that appropriate notice be sent to the State agency and that an opportunity for a hearing be extended in accordance with section 303(b) of the Social Security Act.

§ 640.9 Information, reports and studies.

A State shall furnish to the Secretary of Labor such information and reports and make such studies as the Secretary decides are necessary or appropriate to carry out this part.

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Subpart A—Purpose and Definitions

Sec.

641.100 What does this part cover?

20 CFR Ch. V (4–1–20 Edition)

641.110 What is the SCSEP?

641.120 What are the purposes of the SCSEP?

641.130 What is the scope of this part?

641.140 What definitions apply to this part?

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?

641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?

641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

Subpart C—The State Plan

641.300 What is the State Plan?

641.302 What is a four-year strategy?

641.305 Who is responsible for developing and submitting the State Plan?

641.310 May the Governor, or the highest government official, delegate responsibility for developing and submitting the State Plan?

641.315 Who participates in developing the State Plan?

641.320 Must all national grantees operating within a State participate in the State planning process?

641.325 What information must be provided in the State Plan?

641.330 How should the State Plan reflect community service needs?

641.335 How should the Governor, or the highest government official, address the coordination of SCSEP services with activities funded under title I of WIOA?

641.340 How often must the Governor, or the highest government official, update the State Plan?

641.345 What are the requirements for modifying the State Plan?

641.350 How should public comments be solicited and collected?

641.355 Who may comment on the State Plan?

641.360 How does the State Plan relate to the equitable distribution report?

- 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?
- 641.370 May a State incorporate its 4-year plan for SCSEP into a Combined State Plan under WIOA?

Subpart D—Grant Application and Responsibility Review Requirements for State and National SCSEP Grants

- 641.400 What entities are eligible to apply to the Department for funds to administer SCSEP projects?
- 641.410 How does an eligible entity apply?
- 641.420 What are the eligibility criteria that each applicant must meet?
- 641.430 What are the responsibility conditions that an applicant must meet?
- 641.440 Are there responsibility conditions that alone will disqualify an applicant?
- 641.450 How will the Department examine the responsibility of eligible entities?
- 641.460 What factors will the Department consider in selecting national grantees?
- 641.465 Under what circumstances may the Department reject an application?
- 641.470 What happens if an applicant’s application is rejected?
- 641.480 May the Governor, or the highest government official, make recommendations to the Department on national grant applications?
- 641.490 When will the Department compete SCSEP grant awards?
- 641.495 When must a State compete its SCSEP award?

Subpart E—Services to Participants

- 641.500 Who is eligible to participate in the SCSEP?
- 641.505 When is eligibility determined?
- 641.507 How is applicant income computed?
- 641.510 What types of income are included and excluded for participant eligibility determinations?
- 641.512 May grantees and sub-recipients enroll otherwise eligible job ready individuals and place them directly into unsubsidized employment?
- 641.515 How must grantees and sub-recipients recruit and select eligible individuals for participation in the SCSEP?
- 641.520 Are there any priorities that grantees and sub-recipients must use in selecting eligible individuals for participation in the SCSEP?
- 641.535 What services must grantees and sub-recipients provide to participants?
- 641.540 What types of training may grantees and sub-recipients provide to SCSEP participants in addition to the training received at the community service assignment?

- 641.545 What supportive services may grantees and sub-recipients provide to participants?
- 641.550 What responsibility do grantees and sub-recipients have to place participants in unsubsidized employment?
- 641.565 What policies govern the provision of wages and benefits to participants?
- 641.570 Is there a time limit for participation in the program?
- 641.575 May a grantee or sub-recipient establish a limit on the amount of time its participants may spend at a host agency?
- 641.577 Is there a limit on community service assignment hours?
- 641.580 Under what circumstances may a grantee or sub-recipient terminate a participant?
- 641.585 What is the employment status of SCSEP participants?

Subpart F—Pilot, Demonstration, and Evaluation Projects

- 641.600 What is the purpose of the pilot, demonstration, and evaluation projects authorized under §502(e) of the OAA?
- 641.610 How are pilot, demonstration, and evaluation projects administered?
- 641.620 How may an organization apply for pilot, demonstration, and evaluation project funding?
- 641.630 What pilot, demonstration, and evaluation project activities are allowable under the Older Americans Act?
- 641.640 Should pilot, demonstration, and evaluation project entities coordinate with SCSEP grantees and sub-recipients, including area agencies on aging?

Subpart G—Performance Accountability

- 641.700 What performance measures apply to Senior Community Service Employment Program grantees?
- 641.710 How are the performance measures defined?
- 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?
- 641.730 How will the Department assist grantees in the transition to the new core performance measures?
- 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?
- 641.750 Will there be performance-related incentives?

Subpart H—Administrative Requirements

- 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

§ 641.100

- 641.803 What is program income?
- 641.806 How must SCSEP program income be used?
- 641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?
- 641.812 What is the period of availability of SCSEP funds?
- 641.815 May the period of availability be extended?
- 641.821 What audit requirements apply to the use of SCSEP funds?
- 641.824 What lobbying requirements apply to the use of SCSEP funds?
- 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?
- 641.833 What policies govern political patronage?
- 641.836 What policies govern political activities?
- 641.839 What policies govern union organizing activities?
- 641.841 What policies govern nepotism?
- 641.844 What maintenance of effort requirements apply to the use of SCSEP funds?
- 641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?
- 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?
- 641.853 How are costs classified?
- 641.856 What functions and activities constitute administrative costs?
- 641.859 What other special rules govern the classification of costs as administrative costs or programmatic activity costs?
- 641.861 Must SCSEP recipients provide funding for the administrative costs of sub-recipients?
- 641.864 What functions and activities constitute programmatic activity costs?
- 641.867 What are the limitations on the amount of SCSEP administrative costs?
- 641.870 Under what circumstances may the administrative cost limitation be increased?
- 641.873 What minimum expenditure levels are required for participant wages and benefits?
- 641.874 What conditions apply to a SCSEP grantee request to use additional funds for training and supportive service costs?
- 641.876 How will compliance with cost limitations and minimum expenditure levels be determined?
- 641.879 What are the financial and performance reporting requirements for recipients?
- 641.881 What are the SCSEP recipient's responsibilities relating to awards to sub-recipients?
- 641.884 What are the grant closeout procedures?

20 CFR Ch. V (4–1–20 Edition)

Subpart I—Grievance Procedures and Appeals Process

- 641.900 What appeal process is available to an applicant that does not receive a grant?
- 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?
- 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?
- 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

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SOURCE: 75 FR 53812, Sept. 1, 2010, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 641.100 What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under title V of the Older Americans Act (OAA), 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Reauthorization Act of 2016, Public Law 114–144 (Apr. 19, 2016). This part and other pertinent regulations set forth the regulations applicable to the SCSEP.

(a) Subpart A of this part contains introductory provisions and definitions that apply to this part.

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128 (July 22, 2014). These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop delivery system.

(c) Subpart C of this part sets forth the requirements for the State Plan, such as the four-year strategy, required coordination efforts, public comments, and equitable distribution.

(d) Subpart D of this part establishes grant planning and application requirements, including grantee eligibility and responsibility review provisions that apply to the Department's award of SCSEP funding for State and national grants.

(e) Subpart E of this part details SCSEP participant services.

(f) Subpart F of this part provides the rules for pilot, demonstration, and evaluation projects.

(g) Subpart G of this part outlines the performance accountability requirements. This subpart establishes requirements for performance measures, defines such measures, and establishes corrective actions for failure to meet core performance measures.

(h) Subpart H of this part sets forth the administrative requirements for SCSEP funds.

(i) Subpart I of this part describes the grievance and appeals processes and requirements.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56880, Dec. 1, 2017]

§ 641.110 What is the SCSEP?

The Senior Community Service Employment Program (SCSEP) is a program administered by the Department of Labor that serves unemployed low-income persons who are 55 years of age and older and who have poor employment prospects by training them in part-time community service assignments and by assisting them in developing skills and experience to facilitate their transition to unsubsidized employment.

§ 641.120 What are the purposes of the SCSEP?

The purposes of the SCSEP are to foster individual economic self-sufficiency and promote useful part-time opportunities in community service assignments for unemployed low-income persons who are 55 years of age or older, particularly persons who have poor employment prospects, and to increase the number of older persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors. (OAA § 502(a)(1)).

§ 641.130 What is the scope of this part?

The regulations in this part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this part, phrases such as, “according to instructions

(procedures) issued by the Department” or “additional guidance will be provided through administrative issuance” refer to the documents issued under the Secretary’s authority to administer the SCSEP, such as Training and Employment Guidance Letters (TEGLs), Training and Employment Notices (TENs), previously issued SCSEP Older Worker Bulletins that are still in effect, technical assistance guides, and other SCSEP guidance.

§ 641.140 What definitions apply to this part?

The following definitions apply to this part:

At risk for homelessness means an individual is likely to become homeless and the individual lacks the resources and support networks needed to obtain housing.

Authorized position level means the number of SCSEP enrollment opportunities that can be supported for a 12-month period based on the average national unit cost. The authorized position level is derived by dividing the total amount of funds appropriated for a Program Year by the national average unit cost per participant for that Program Year as determined by the Department. The national average unit cost includes all costs of administration, other participant costs, and participant wage and benefit costs as defined in § 506(g) of the OAA.

Career services means those services described in sec. 134(c)(2) of WIOA.

Co-enrollment applies to any individual who meets the qualifications for SCSEP participation and is also enrolled as a participant in WIOA or another employment and training program, as provided in the Individual Employment Plan (IEP).

Community service means:

(1) Social, health, welfare, and educational services (including literacy tutoring), legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services;

(2) Conservation, maintenance, or restoration of natural resources;

(3) Community betterment or beautification;

- (4) Antipollution and environmental quality efforts;
- (5) Weatherization activities;
- (6) Economic development; and
- (7) Other such services essential and necessary to the community as the Secretary determines by rule to be appropriate. (OAA § 518(a)(1)).

Community service assignment means part-time, temporary employment paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (OAA § 518(a)(2)).

Community Service Employment means part-time, temporary employment paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment. (OAA sec. 518(a)(2).) The term community service assignment is used interchangeably with community service employment.

Core measures means hours (in the aggregate) of community service employment; the percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project; the percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project; the median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project; indicators of effectiveness in serving employers, host agencies, and project participants; the number of eligible individuals served; and most-in-need (the number of individuals described in sec. 518(a)(3)(B)(ii) or (b)(2) of the OAA). (OAA sec. 513(b)(1).)

Department or DOL means the United States Department of Labor, including its agencies and organizational units.

Disability means a disability attributable to a mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

- (1) Self-care;

- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency;
- (8) Cognitive functioning; and
- (9) Emotional adjustment. (42 U.S.C. 3002(13)).

Equitable distribution report means a report based on the latest available Census or other reliable data, which lists the optimum number of participant positions in each designated area in the State, and the number of authorized participant positions each grantee serves in that area, taking into account the needs of underserved counties and incorporated cities as necessary. This report provides a basis for improving the distribution of SCSEP positions.

Frail means an individual 55 years of age or older who is determined to be functionally impaired because the individual—

- (1)(i) Is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or
- (ii) At the option of the State, is unable to perform at least three such activities without such assistance; or

(2) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual. (42 U.S.C. 3002(22)).

Grant period means the time period between the effective date of the grant award and the ending date of the award, which includes any modifications extending the period of performance, whether by the Department's exercise of options contained in the grant agreement or otherwise. This is also referred to as "project period" or "award period."

Grantee means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the

SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include public and nonprofit private agencies and organizations, agencies of a State, tribal organizations, and Territories, that receive SCSEP grants from the Department. (OAA §§502(b)(1), 506(a)(2)). As used here, “grantee” includes “grantee” as defined in 29 CFR 97.3 and “recipient” as defined in 29 CFR 95.2(gg).

Greatest economic need means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget (OMB). (42 U.S.C. 3002(23)).

Greatest social need means the need caused by non-economic factors, which include: Physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, which restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently. (42 U.S.C. 3002(24)).

Homeless includes:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings. (42 U.S.C. 11302(a)).

Host agency means a public agency or a private nonprofit organization exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1986 which provides a training work site and supervision for one or more participants. Political parties cannot be host agencies. A host agency may be a religious organization as long as the projects in which participants are

being trained do not involve the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship. (OAA §502(b)(1)(D)).

Indian means a person who is a member of an Indian tribe. (42 U.S.C. 3002(26)).

Indian tribe means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*) which: (1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (2) is located on, or in proximity to, a Federal or State reservation or Rancheria. (42 U.S.C. 3002(27)).

Individual employment plan (IEP) means a plan for a participant that is based on an assessment of that participant conducted by the grantee or sub-recipient, or a recent assessment or plan developed by another employment and training program, and a related service strategy. The IEP must include an appropriate employment goal (except that after the first IEP, subsequent IEPs need not contain an employment goal if such a goal is not feasible), objectives that lead to the goal, a timeline for the achievement of the objectives; and be jointly agreed upon with the participant. (OAA §502(b)(1)(N)).

Jobs for Veterans Act means Public Law 107-288 (2002). Section 2(a) of the Jobs for Veterans Act, codified at 38 U.S.C. 4215(a), provides a priority of service for Department of Labor employment and training programs for veterans, and certain spouses of veterans, who otherwise meet the eligibility requirements for participation. Priority is extended to veterans. Priority is also extended to the spouse of a veteran who died of a service-connected disability; the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power; the spouse of any veteran who has a total disability

resulting from a service-connected disability; and the spouse of any veteran who died while a disability so evaluated was in existence. (See § 641.520(b)).

Job ready refers to individuals who do not require further education or training to perform work that is available in their labor market.

Limited English proficiency means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Local Board means a Local Workforce Development Board established under sec. 107 of the Workforce Innovation and Opportunity Act.

Local Workforce Development Area or *local area* means an area designated by the Governor of a State under sec. 106 of the Workforce Innovation and Opportunity Act.

Low employment prospects means the likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with low employment prospects have a significant barrier to employment. Significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Low literacy skills means the individual computes or solves problems, reads, writes, or speaks at or below the 8th grade level or is unable to compute or solve problems, read, write, or speak at a level necessary to function on the job, in the individual's family, or in society.

Most-in-need means participants with one or more of the following characteristics: Have a severe disability; are frail; are age 75 or older; are age-eligible but not receiving benefits under title II of the Social Security Act; reside in an area with persistent unemployment and have severely limited employment prospects; have limited English proficiency; have low literacy skills; have a disability; reside in a rural area; are veterans; have low em-

ployment prospects; have failed to find employment after using services provided under title I of the Workforce Innovation and Opportunity Act; or are homeless or at risk for homelessness. (OAA sec. 513(b)(1)(F).)

National grantee means a public or non-profit private agency or organization, or Tribal organization, that receives a grant under title V of the OAA (42 U.S.C. 3056 *et seq.*) to administer a SCSEP project. (See OAA § 506(g)(5)).

OAA means the Older Americans Act, 42 U.S.C. 3001 *et seq.*, as amended.

One-Stop Center means the One-Stop Center system in a WIOA local area, which must include a comprehensive One-Stop Center through which One-Stop partners provide applicable career services and which provides access to other programs and services carried out by the One-Stop partners. (See WIOA sec. 121(e)(2).)

One-Stop delivery system means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to career services are available regardless of where the individuals initially enter the workforce development system. (See WIOA sec. 121(e)(2).)

One-Stop partner means an entity described in sec. 121(b)(1) of the Workforce Innovation and Opportunity Act, *i.e.*, required partners, or an entity described in sec. 121(b)(2) of the Workforce Innovation and Opportunity Act, *i.e.*, additional partners.

Other participant (enrollee) costs means the costs of participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided before or during a community service assignment, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to enable a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes,

badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection, intake orientation, and assessments. (OAA §502(c)(6)(A)(ii)-(v)).

Pacific Island and Asian Americans means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA sec. 518(a)(6).)

Participant means an individual who is determined to be eligible for the SCSEP, is given a community service assignment, and is receiving any service funded by the program as described in subpart E.

Persistent unemployment means that the annual average unemployment rate for a county or city is more than 20 percent higher than the national average for two out of the last three years.

Poor employment prospects means the significant likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with poor employment prospects have a significant barrier to employment; significant barriers to employment include but are not limited to: lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program operator means a grantee or sub-recipient that receives SCSEP funds from a SCSEP grantee or a higher-tier SCSEP sub-recipient and performs the following activities for all its participants: Eligibility determination, participant assessment, and development of and placement into community service assignments.

Program Year means the one-year period beginning on July 1 and ending on June 30.

Project means an undertaking by a grantee or sub-recipient in accordance with a grant or contract agreement that provides service to communities and training and employment opportunities to eligible individuals.

Recipient means grantee. As used here, "recipient" includes "recipient" as defined in 29 CFR 95.2(gg) and "grantee" as defined in 29 CFR 97.3.

Residence means an individual's declared dwelling place or address as demonstrated by appropriate documentation.

Rural means an area not designated as a metropolitan statistical area by the Census Bureau; segments within metropolitan counties identified by codes 4 through 10 in the Rural Urban Commuting Area (RUCA) system; and RUCA codes 2 and 3 for census tracts that are larger than 400 square miles and have population density of less than 30 people per square mile.

SCSEP means the Senior Community Service Employment Program authorized under title V of the OAA.

Secretary means the Secretary of the U.S. Department of Labor.

Service area means the geographic area served by a local SCSEP project in accordance with a grant agreement.

Severe disability means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that—

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in 3 or more of the following areas of major life activity:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction;
- (vi) Capacity for independent living;
- (vii) Economic self-sufficiency. (42 U.S.C. 3002(48)).

Severely limited employment prospects means the substantial likelihood that an individual will not obtain employment without the assistance of the SCSEP or another workforce development program. Persons with severely limited employment prospects have more than one significant barrier to employment; significant barriers to employment may include but are not limited to: Lacking a substantial employment history, basic skills, and/or English-language proficiency; lacking

a high school diploma or the equivalent; having a disability; being homeless; or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

State Board means a State Workforce Development Board established under WIOA sec. 101.

State grantee means the entity designated by the Governor, or the highest government official, to enter into a grant with the Department to administer a State or Territory SCSEP project under the OAA. Except as applied to funding distributions under § 506 of the OAA, this definition applies to the 50 States, Puerto Rico, the District of Columbia and the following Territories: Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Plan means a plan that the Governor, or the highest government official, of a State must submit to the Secretary that outlines a four-year strategy, and describes the planning and implementation process, for the statewide provision of community service employment and other authorized activities for eligible individuals under SCSEP. (See § 641.300).

Sub-recipient means the legal entity to which a sub-award of financial assistance is made by the grantee (or by a higher-tier sub-recipient), and that is accountable to the grantee for the use of the funds provided. As used here, “sub-recipient” includes “sub-grantee” as defined in 29 CFR 97.3 and “sub-recipient” as defined in 29 CFR 95.2(kk).

Supportive services means services, such as transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, housing, including temporary shelter, follow-up services, and needs-related payments, which are necessary to enable an individual to participate in activities authorized under the SCSEP. (OAA secs. 502(c)(6)(A)(iv) and 518(a)(8).)

Title V of the OAA means 42 U.S.C. 3056 *et seq.*, as amended.

Training services means those services authorized by WIOA sec. 134(c)(3).

Tribal organization means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (42 U.S.C. 3002(54)).

Unemployed means an individual who is without a job and who wants and is available for work, including an individual who may have occasional employment that does not result in a constant source of income. (OAA sec. 518(a)(9).)

Veteran means an individual who is a “covered person” for purposes of the Jobs for Veterans Act, 38 U.S.C. 4215(a)(1).

Workforce Innovation and Opportunity Act (WIOA) means the Workforce Innovation and Opportunity Act, Public Law 113-128 (July 22, 2014), as amended.

Workforce Innovation and Opportunity Act (WIOA) regulations means the regulations in parts 675 through 688 of this chapter, the Wagner-Peyser Act regulations in parts 651 through 654 and part 658 of this chapter, and the regulations implementing WIOA sec. 188 in 29 CFR part 38.

[75 FR 53812, Sept. 1, 2010, as amended at 77 FR 4661, Jan. 31, 2012; 82 FR 56880, Dec. 1, 2017]

Subpart B—Coordination With the Workforce Innovation and Opportunity Act

SOURCE: 82 FR 56881, Dec. 1, 2017, unless otherwise noted.

§ 641.200 What is the relationship between the SCSEP and the Workforce Innovation and Opportunity Act?

The SCSEP is a required partner under the Workforce Innovation and Opportunity Act. As such, it is a part of the One-Stop delivery system. When acting in their capacity as WIOA partners, SCSEP grantees and sub-recipients are required to follow all applicable rules under WIOA and its regulations. See WIOA sec. 121(b)(1)(B)(v) and 20 CFR 678.400 through 678.440.

§ 641.210 What services, in addition to the applicable career services, must SCSEP grantees and sub-recipients provide through the One-Stop delivery system?

In addition to providing career services, as defined at 20 CFR 678.430, SCSEP grantees and sub-recipients must make arrangements through the One-Stop delivery system to provide eligible and ineligible individuals with referrals to WIOA career and training services and access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIOA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. OAA title V resources may not be used to serve individuals who are not SCSEP-eligible. The Workforce Innovation and Opportunity Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop delivery system. Although the overall effect is to provide universal access to career services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. Note, however, that one allowable SCSEP cost is a SCSEP project's proportionate share of One-Stop costs. See § 641.850(d). Title V funds can be used to pay wages to SCSEP participants receiving career and training services under title I of WIOA provided that the SCSEP participants have each received a community service assignment. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIOA or other appropriate partner programs. WIOA sec. 121(b)(1). These arrangements should be negotiated in the Memorandum of Understanding (MOU), which is an agreement developed and executed between the Local Workforce Development Board, with the agreement of the chief local elected official, and the One-Stop partners relating to the operation of the One-Stop delivery system in the

local area. The MOU is further described in the WIOA regulations at 20 CFR 678.500 through 678.510.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee or sub-recipient and the assessment performed by the One-Stop delivery system be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I, subtitle B of WIOA?

Yes, sec. 502(b)(3) of the OAA provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. (OAA sec. 502(b)(3).) These reciprocal arrangements and the contents of the SCSEP IEP and WIOA IEP should be negotiated in the MOU.

§ 641.240 Are SCSEP participants eligible for career and training services under title I of WIOA?

(a) Although SCSEP participants are not automatically eligible for career and training services under title I of WIOA, local boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult career and training services under title I of WIOA.

(b) SCSEP participants who have been assessed and for whom an IEP has been developed have received a career service under 20 CFR 680.220(a) of the WIOA regulations. In order to enhance skill development related to the IEP, it may be necessary to provide training beyond the community service assignment to enable participants to meet their unsubsidized employment objectives. The SCSEP grantee or sub-recipient, the host agency, the WIOA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU. (See § 641.540 for a further discussion of training for SCSEP participants.)

Subpart C—The State Plan

§ 641.300 What is the State Plan?

The State Plan is a plan, submitted by the Governor, or the highest government official, in each State, as an independent document or as part of the

§ 641.302

20 CFR Ch. V (4–1–20 Edition)

WIOA Combined State Plan, that outlines a 4-year strategy for the statewide provision of community service employment and other authorized activities for eligible individuals under the SCSEP as described in § 641.302. The State Plan also describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees and sub-recipients operating within the State and to facilitate the efforts of stakeholders, including State and local boards under WIOA, to work collaboratively through a participatory process to accomplish the SCSEP's goals. (OAA sec. 503(a)(1).) The State Plan provisions are listed in § 641.325.

[82 FR 56882, Dec. 1, 2017]

§ 641.302 What is a four-year strategy?

The State Plan must outline a four-year strategy for the statewide provision of community service employment and other authorized activities for eligible individuals under the SCSEP program. (OAA § 503(a)(1)). The four-year strategy must specifically address the following:

(a) The State's long-term strategy for achieving an equitable distribution of SCSEP positions within the State that:

(1) Moves positions from over-served to underserved locations within the State, under § 641.365;

(2) Equitably serves rural and urban areas; and

(3) Serves individuals afforded priority for service, pursuant to § 641.520;

(b) The State's long-term strategy for avoiding disruptions to the program when new Census or other reliable data become available, or when there is over-enrollment for any other reason;

(c) The State's long-term strategy for serving minority older individuals under SCSEP;

(d) Long-term projections for job growth in industries and occupations in the State that may provide employment opportunities for older workers, and how those relate to the types of unsubsidized jobs for which SCSEP par-

ticipants will be trained, and the types of skill training to be provided;

(e) The State's long-term strategy for engaging employers to develop and promote opportunities for the placement of SCSEP participants in unsubsidized employment;

(f) The State's strategy for continuous improvement in the level of performance for entry into unsubsidized employment;

(g) Planned actions to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIOA, including plans for using the WIOA One-Stop delivery system and its partners to serve individuals aged 55 and older;

(h) Planned actions to coordinate activities of SCSEP grantees with the activities being carried out in the State under other titles of the OAA;

(i) Planned actions to coordinate the SCSEP with other public and private entities and programs that provide services to older Americans, such as community and faith-based organizations, transportation programs, and programs for those with special needs or disabilities;

(j) Planned actions to coordinate the SCSEP with other labor market and job training initiatives; and

(k) The State's long-term strategy to improve SCSEP services, including planned longer-term changes to the design of the program within the State, and planned changes in the use of SCSEP grantees and program operators to better achieve the goals of the program; this may include recommendations to the Department, as appropriate.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56882, Dec. 1, 2017]

§ 641.305 Who is responsible for developing and submitting the State Plan?

The Governor, or the highest governmental official, of each State is responsible for developing and submitting the State Plan to the Department.

§ 641.310 May the Governor, or the highest government official, delegate responsibility for developing and submitting the State Plan?

(a) Yes, the Governor, or the highest governmental official of each State, may delegate responsibility for developing and submitting the State Plan, provided that any such delegation is consistent with State law and regulations.

(b) To delegate responsibility, the Governor, or the highest government official, must submit to the Department a signed statement indicating the individual and/or organization that will be submitting the State Plan on his or her behalf.

§ 641.315 Who participates in developing the State Plan?

(a) In developing the State Plan the Governor, or the highest government official, must seek the advice and recommendations of representatives from:

- (1) The State and area agencies on aging;
- (2) State and local boards under WIOA;
- (3) Public and private nonprofit agencies and organizations providing employment services, including each grantee operating a SCSEP project within the State, except as provided in § 641.320(b);
- (4) Social service organizations providing services to older individuals;
- (5) Grantees under title III of the OAA;
- (6) Affected communities;
- (7) Unemployed older individuals;
- (8) Community-based organizations serving older individuals;
- (9) Business organizations; and
- (10) Labor organizations.

(b) The Governor, or the highest government official, may also obtain the advice and recommendations of other interested organizations and individuals, including SCSEP program participants, in developing the State Plan. (OAA § 503(a)(2)).

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56882, Dec. 1, 2017]

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

(a) The eligibility provision at OAA § 514(c)(6) requires national grantees to coordinate activities with other organizations at the State and local levels. Therefore, except as provided in paragraph (b) of this section, any national grantee that does not participate in the State planning process may be deemed ineligible to receive SCSEP funds in the following Program Year.

(b) National grantees serving older American Indians, or Pacific Island and Asian Americans, with funds reserved under OAA sec. 506(a)(3), are exempted from the requirement to participate in the State planning processes under sec. 503(a)(9) of the OAA. Although these national grantees may choose not to participate in the State planning process, the Department encourages their participation. Only those grantees using reserved funds are exempt; if a grantee is awarded one grant with reserved funds and another grant with non-reserved funds, the grantee is required under paragraph (a) of this section to participate in the State planning process for purposes of the non-reserved funds grant.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56882, Dec. 1, 2017]

§ 641.325 What information must be provided in the State Plan?

The Department issues instructions detailing the information that must be provided in the State Plan. At a minimum, the State Plan must include the State's four-year strategy, as described in § 641.302, and information on the following:

- (a) The ratio of eligible individuals in each service area to the total eligible population in the State;
- (b) The relative distribution of:
 - (1) Eligible individuals residing in urban and rural areas within the State;
 - (2) Eligible individuals who have the greatest economic need;
 - (3) Eligible individuals who are minorities;
 - (4) Eligible individuals who are limited English proficient; and
 - (5) Eligible individuals who have the greatest social need;

§ 641.330

(c) The current and projected employment opportunities in the State (such as by providing information available under sec. 15 of the Wagner-Peyser Act (29 U.S.C. 491-2) by occupation), and the types of skills possessed by eligible individuals;

(d) The localities and populations for which projects of the type authorized by OAA title V are most needed;

(e) Actions taken and/or planned to coordinate activities of SCSEP grantees in the State with activities carried out in the State under title I of WIOA;

(f) A description of the process used to obtain advice and recommendations on the State Plan from representatives of organizations and individuals listed in § 641.315, and advice and recommendations on steps to coordinate SCSEP services with activities funded under title I of WIOA from representatives of organizations listed in § 641.335;

(g) A description of the State's procedures and time line for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment as required by § 641.350;

(h) Public comments received, and a summary of the comments;

(i) A description of the steps taken to avoid disruptions to the greatest extent possible as provided in § 641.365; and

(j) Such other information as the Department may require in the State Plan instructions. (OAA § 503(a)).

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56882, Dec. 1, 2017]

§ 641.330 How should the State Plan reflect community service needs?

The Governor, or the highest government official, must ensure that the State Plan identifies the types of community services that are needed and the places where these services are most needed. The State Plan should specifically identify the needs and locations of those individuals most in need of community services and the groups working to meet their needs. (OAA § 503(a)(4)(E)).

20 CFR Ch. V (4-1-20 Edition)

§ 641.335 How should the Governor, or the highest government official, address the coordination of SCSEP services with activities funded under title I of WIOA?

The Governor, or the highest government official, must seek the advice and recommendations from representatives of the State and local area agencies on aging in the State and the State and local boards established under title I of WIOA. (OAA sec. 503(a)(2).) The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIOA. (OAA sec. 503(a)(4)(F).) The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop delivery system and the steps that will be taken to encourage and improve coordination with the One-Stop delivery system.

[82 FR 56882, Dec. 1, 2017]

§ 641.340 How often must the Governor, or the highest government official, update the State Plan?

(a) Under instructions issued by the Department, the Governor, or the highest government official, must review the State Plan and submit an update to the State Plan to the Secretary for consideration and approval not less often than every two years. OAA § 503(a)(1). States are encouraged to review their State Plan more frequently than every two years, however, and make modifications as circumstances warrant, under § 641.345.

(b) Before development of the update to the State Plan, the Governor, or the highest government official, must seek the advice and recommendations of the individuals and organizations identified in § 641.315 about what, if any, changes are needed, and must publish the State Plan, showing the changes, for public comment. OAA § section 503(a)(2), 503(a)(3).

§ 641.345 What are the requirements for modifying the State Plan?

(a) Modifications may be submitted anytime circumstances warrant.

(b) Modifications to the State Plan are required when:

(1) There are changes in Federal or State law or policy that substantially change the assumptions upon which the State Plan is based;

(2) There are significant changes in the State's vision, four-year strategy, policies, performance indicators, or organizational responsibilities; or

(3) There is a change in a grantee or grantees.

(c) Modifications to the State Plan are subject to the same public comment requirements that apply to the development of the State Plan under § 641.350.

(d) States are not required to seek the advice and recommendations of the individuals and organizations identified in § 641.315 when modifying the State Plan, except that States must seek the advice and recommendations of any national grantees operating in the State. While not required, states are strongly encouraged to seek the advice and recommendation of the relevant entities listed in § 641.315 when or if modifying the State Plan becomes necessary.

(e) The Department will issue additional instructions for the procedures that must be followed when requesting modifications to the State Plan.

§ 641.350 How should public comments be solicited and collected?

The Governor, or the highest government official, should follow established State procedures to solicit and collect public comments. The State Plan must include a description of the State's procedures and schedule for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment.

§ 641.355 Who may comment on the State Plan?

Any individual or organization may comment on the Plan.

§ 641.360 How does the State Plan relate to the equitable distribution report?

The two documents address some of the same areas, but are prepared at different points in time. The equitable distribution report is prepared by State grantees at the beginning of each fiscal year and provides a "snapshot" of the

actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census or other reliable data. The State Plan is prepared by the Governor, or the highest government official, and covers many areas in addition to equitable distribution, as discussed in § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the next equitable distribution report, which then forms the basis for the proposed distribution in the next State Plan update. This process is iterative in that it moves the authorized positions from overserved areas to underserved areas over a period of time.

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

(a) Governors, or highest government officials, must describe in the State Plan the steps that are being taken to comply with the statutory requirement to avoid disruptions in the provision of services for participants. (OAA sec. 503(a)(7).)

(b) When there is new Census or other reliable data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift in positions as they become vacant to areas where there has been an increase in the eligible population.

(c) The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service assignment indefinitely. As discussed in § 641.570, there is a time limit on SCSEP participation, thus permitting positions to be transferred over time.

(d) Grantees and sub-recipients must not transfer positions from one geographic area to another without first notifying the State agency responsible for preparing the State Plan and equitable distribution report.

§ 641.370

(e) Grantees must submit, in writing, any proposed changes in distribution that occur after submission of the equitable distribution report to the Department for approval.

(f) All grantees are required to coordinate any proposed changes in position distribution with the other grantees in the State, including the State project director, before submitting the proposed changes to the Department for approval. The request for the Department's approval must include the comments of the State project director, which the Department will consider in making its decision.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56882, Dec. 1, 2017]

§ 641.370 May a State incorporate its 4-year plan for SCSEP into a Combined State Plan under WIOA?

Yes. A State may include its 4-year plan for SCSEP in its WIOA Combined State Plan according to the requirements in 20 CFR 676.140 through 676.145. For a State that obtains approval of that Combined State Plan under 20 CFR 676.143, the requirements of sec. 103 of WIOA and 20 CFR part 676 will apply in lieu of sec. 503(a) of the OAA and this subpart, and any reference in this part to a "State Plan" will be considered to be a reference to that Combined State Plan.

[82 FR 56883, Dec. 1, 2017]

Subpart D—Grant Application and Responsibility Review Requirements for State and National SCSEP Grants

§ 641.400 What entities are eligible to apply to the Department for funds to administer SCSEP projects?

(a) *National grants.* Entities eligible to apply for national grants include nonprofit organizations, Federal public agencies, and tribal organizations. These entities must provide information to establish that they are capable of administering a multi-State program, as required by the Secretary. State and local agencies may not apply for these funds.

(b) *State grants.* (1) Section 506(e) of the OAA requires the Department to award each State a grant to provide

20 CFR Ch. V (4–1–20 Edition)

SCSEP services. Governors, or highest government officials, designate an individual State agency as the organization to administer SCSEP funds.

(2) If the State fails to meet its expected levels of performance for the core indicators for three consecutive years, it is not eligible to designate an agency to administer SCSEP funds in the following year. Instead, the State must conduct a competition to select an organization as the grantee of the funds allotted to the State under § 506(e). Public and nonprofit private agencies and organizations, State agencies other than the previously designated, failed agency, and tribal organizations, are eligible to be selected as a grantee for the funds. Other States may not be selected as a grantee for this funding.

§ 641.410 How does an eligible entity apply?

(a) *General.* An eligible entity must follow the application guidelines issued by the Department. The Department will issue application guidelines announcing the availability of national funds and State funds, whether they are awarded on a competitive or non-competitive basis. The guidelines will contain application due dates, application instructions, evaluation criteria, and other necessary information.

(b) *National grant applicants.* All applicants for SCSEP national grant funds, except for applications for grants proposing to serve older Indians and Pacific Island and Asian Americans with funds reserved under OAA § 506(a)(3), must submit their applications to the Governor, or the highest government official, of each State in which projects are proposed so that he or she has a reasonable opportunity to make the recommendations described in § 641.480, before submitting the application to the Department. (OAA § 503(a)(5)).

(c) *State applicants.* A State that submits a Combined State Plan under sec. 103 of WIOA may include the State's SCSEP grant application in its Combined State Plan. Any State that submits a SCSEP grant application as part of its WIOA Combined State Plan must

Employment and Training Administration, Labor

§ 641.430

address all of the application requirements as published in the Department's instructions. Sections 641.300 through 641.370 address State Plans and modifications.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56883, Dec. 1, 2017]

§ 641.420 What are the eligibility criteria that each applicant must meet?

To be eligible to receive SCSEP funds, each applicant must demonstrate:

(a) An ability to administer a program that serves the greatest number of eligible participants, giving particular consideration to individuals with greatest economic need, individuals with greatest social need, and individuals described in § 641.570(b) or § 641.520(a)(2) through (a)(8).

(b) An ability to administer a program that provides employment in community service assignments for eligible individuals in communities in which they reside, or in nearby communities, that will contribute to the general welfare of the community;

(c) An ability to administer a program that moves eligible participants into unsubsidized employment;

(d) Where the applicant has previously received a SCSEP grant, the applicant's prior performance in meeting SCSEP core measures of performance and addressing SCSEP additional measures of performance; and where the applicant has not received a SCSEP grant, the applicant's prior performance under other Federal or State programs; relevant past performance will also be used for scoring criterion and will be set forth more fully in the Solicitation for Grant Applications (see § 641.460);

(e) An ability to move participants with multiple barriers to employment, including individuals described in § 641.570(b) or § 641.520(a)(2) through (a)(8), into unsubsidized employment;

(f) An ability to coordinate activities with other organizations at the State and local levels, including the One-Stop delivery system;

(g) An ability to properly manage the program, as reflected in its plan for fiscal management of the SCSEP;

(h) An ability to administer a project that provides community service;

(i) An ability to minimize program disruption for current participants and in community services provided if there is a change in project sponsor and/or location, and its plan for minimizing disruptions;

(j) Any additional criteria that the Department deems appropriate to minimize disruptions for current participants. (OAA § 514(c)).

§ 641.430 What are the responsibility conditions that an applicant must meet?

Subject to § 641.440, each applicant must meet the listed responsibility "tests" by not having committed the following acts:

(a) The Department has been unable to recover a debt from the applicant, whether incurred by the applicant or by one of its sub-recipients, or the applicant has failed to comply with a debt repayment plan to which it agreed. In this context, a debt is established by final agency action, followed by three demand letters to the applicant, without payment in full by the applicant.

(b) Established fraud or criminal activity of a significant nature within the applicant's organization.

(c) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations.

(d) Willful obstruction of the auditing or monitoring process.

(e) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable core performance measures or address other applicable indicators of performance.

(f) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

§ 641.440

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a sub-recipient complies with applicable audit requirements, including OMB Circular A-133 and the audit requirements specified at § 641.821.

(l) Failure to audit a sub-recipient within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the Grant Officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a sub-recipient's audit in a timely fashion. (OAA § 514(d)(4)).

§ 641.440 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if

(1) Either of the first two responsibility tests, a or b, listed in § 641.430 is not met, or

(2) The applicant substantially, or persistently for two or more consecutive years, fails one of the other responsibility tests listed in § 641.430.

(b) The second responsibility test addresses "fraud or criminal activity of a significant nature." The Department will determine the existence of significant fraud or criminal activity which typically will include willful or grossly negligent disregard for the use or handling of, or other fiduciary duties concerning, Federal funding, where the grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will typically include coordinated patterns or behaviors that pervade a grantee's administration or are committed by the higher levels of a grantee's management or authority. The Department will determine whether "fraud or criminal activity of a significant nature" has occurred on a case-by-case basis, regardless of what party identifies the alleged fraud or criminal activity.

20 CFR Ch. V (4-1-20 Edition)

§ 641.450 How will the Department examine the responsibility of eligible entities?

The Department will review available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider all relevant information, including the organization's history of managing other grants awarded by the Department or by other Federal agencies. (OAA § 514(d)(1) and (d)(2)).

§ 641.460 What factors will the Department consider in selecting national grantees?

The Department will select national grantees from among applicants that are able to meet the eligibility and responsibility review criteria at § 514 of the OAA. (Section 641.420 contains the eligibility criteria and §§ 641.430 and 641.440 contain the responsibility criteria.) The Department also will take the rating criteria described in the Solicitation for Grant Applications or other instrument into consideration. These rating criteria will include relevant past performance.

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

(a) Any entity whose application is rejected in whole or in part will be informed that it has not been selected. The non-selected entity may request

an explanation of the Department's basis for its rejection. If requested, the Department will provide the entity with feedback on its proposal. The non-selected entity may follow the procedures in §641.900.

(b) Incumbent grantees will not have an opportunity to obtain technical assistance provided by the Department under OAA §513(d)(2)(B)(i) to cure, in an open competition, any deficiency in a proposal because that will create inequity in favor of incumbents. Nor, during an open competition, will the Department provide assistance to any applicant to improve its application.

(c) If the Administrative Law Judge (ALJ) rules, under §641.900, that the organization should have been selected, in whole or in part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization continues to meet the requirements of this part, and whether the positions which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees, and the operational needs of the SCSEP.

(d) In the event that the Grant Officer determines that it is not feasible to award any positions to the appealing applicant, the applicant will be awarded its bid preparation costs, or a pro rata share of those costs if the Grant Officer's finding applies to only a portion of the funds that would be awarded. If positions are awarded to the appealing applicant, that applicant 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. The available remedy in a SCSEP non-selection appeal is neither retroactive nor immediately effective selection; rather it is the potential to be selected as a SCSEP grantee as quickly as administratively feasible in the future, for the remainder of the grant cycle.

(e) In the event that any party notifies the Grant Officer that it is not sat-

isfied with the Grant Officer's decision, the Grant Officer must return the decision to the ALJ for review.

(f) Any organization selected and/or funded as a SCSEP grantee is subject to having its positions reduced or to being removed as a SCSEP grantee if an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose positions are affected or which is being removed. All parties must agree to the provisions of this paragraph as a condition of being a SCSEP grantee.

§ 641.480 May the Governor, or the highest government official, make recommendations to the Department on national grant applications?

(a) Yes, in accordance with §641.410(b), each Governor, or highest government official, will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's, or the highest government official's, State before the Department makes a final decision on a grant award. The Governor's, or the highest government official's, comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's, or the highest government official's, recommendations should be consistent with the State Plan. (OAA §503(a)(5)).

(b) The Governor, or the highest government official, has the option of making the authorized recommendations on all applications or only on those applications proposed for award following the rating process. It is incumbent on each Governor, or the highest government official, to inform the Department of his or her intent to review the applications before or after the rating process.

§ 641.490

§ 641.490 When will the Department compete SCSEP grant awards?

(a)(1) The Department will hold a full and open competition for national grants every four years. (OAA § 514(a)(1)).

(2) If a national grantee meets the expected level of performance for each of the core indicators for each of the four years, the Department may provide an additional one-year grant to the national grantee. (OAA § 514(a)(2)).

§ 641.495 When must a State compete its SCSEP award?

If a State grantee fails to meet its expected levels of performance for three consecutive Program Years, the State must hold a full and open competition, under such conditions as the Secretary may provide, for the State SCSEP funds for the full Program Year following the determination of consecutive failure. (OAA § 513(d)(3)(B)(iii)). The incumbent (failed) grantee is not eligible to compete. Other states are also not eligible to compete for these funds. § 641.400(b)(2).

Subpart E—Services to Participants

§ 641.500 Who is eligible to participate in the SCSEP?

Anyone who is at least 55 years old, unemployed (as defined in § 641.140), and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by OMB (Federal poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 518(a)(3), (9).) A person with a disability may be treated as a “family of one” for income eligibility determination purposes at the option of the applicant.

[82 FR 56883, Dec. 17, 2017]

§ 641.505 When is eligibility determined?

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee or sub-recipient is responsible for verifying their continued eligibility at least once every 12 months. Grantees

20 CFR Ch. V (4–1–20 Edition)

and sub-recipients may also verify an individual’s eligibility as circumstances require, including instances when enrollment is delayed.

§ 641.507 How is applicant income computed?

An applicant’s income is computed by calculating the includable income received by the applicant during the 12-month period ending on the date an individual submits an application to participate in the SCSEP, or the annualized income for the 6-month period ending on the application date. The Department requires grantees to use whichever method is more favorable to the individual. (OAA § 518(a)(4)).

§ 641.510 What types of income are included and excluded for participant eligibility determinations?

(a) With certain exceptions, the Department will use the definition of income from the U.S. Census Bureau’s Current Population Survey (CPS) as the standard for determining SCSEP applicant income eligibility.

(b) Any income that is unemployment compensation, a benefit received under title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*), a payment made to or on behalf of veterans or former members of the Armed Forces under the laws administered by the Secretary of Veterans Affairs, or 25 percent of a benefit received under title II of the Social Security Act (42 U.S.C. 401 *et seq.*), must be excluded from SCSEP income eligibility determinations. (OAA § 518(a)(3)(A)).

(c) The Department has issued administrative guidance on income inclusions and exclusions and procedures for determining SCSEP income eligibility. This guidance may be updated periodically.

§ 641.512 May grantees and sub-recipients enroll otherwise eligible job ready individuals and place them directly into unsubsidized employment?

No, grantees and sub-recipients may not enroll as SCSEP participants job-ready individuals who can be directly placed into unsubsidized employment. Such individuals should be referred to an employment provider, such as the

Employment and Training Administration, Labor

§ 641.535

One-Stop Center for job placement assistance under WIOA or another employment program.

[82 FR 56883, Dec. 1, 2017]

§ 641.515 How must grantees and sub-recipients recruit and select eligible individuals for participation in the SCSEP?

(a) Grantees and sub-recipients must develop methods of recruitment and selection that assure that the maximum number of eligible individuals have an opportunity to participate in the program. To the extent feasible, grantees and sub-recipients should seek to enroll minority and Indian eligible individuals, eligible individuals with limited English proficiency, and eligible individuals with greatest economic need, at least in proportion to their numbers in the area, taking into consideration their rates of poverty and unemployment. (OAA § 502(b)(1)(M)).

(b) Grantees and sub-recipients must use the One-Stop delivery system as one method in the recruitment and selection of eligible individuals to ensure that the maximum number of eligible individuals have an opportunity to participate in the project. (OAA § 502(b)(1)(H)).

(c) States may enter into agreements among themselves to permit cross-border enrollment of eligible participants. Such agreements should cover both State and national grantee positions and must be submitted to the Department for approval in the grant application or a modification of the grant.

§ 641.520 Are there any priorities that grantees and sub-recipients must use in selecting eligible individuals for participation in the SCSEP?

(a) Yes, in selecting eligible individuals for participation in the SCSEP, priority must be given to individuals who have one or more of the following characteristics:

- (1) Are 65 years of age or older;
- (2) Have a disability;
- (3) Have limited English proficiency or low literacy skills;
- (4) Reside in a rural area;
- (5) Are veterans (or, in some cases, spouses of veterans) for purposes of § 2(a) of the Jobs for Veterans Act, 38

U.S.C. 4215(a) as set forth in paragraph (b) of this section;

- (6) Have low employment prospects;
- (7) Have failed to find employment after using services provided through the One-Stop delivery system; or
- (8) Are homeless or are at risk for homelessness. (OAA § 518(b)).

(b) Section 2(a) of the Jobs for Veterans Act creates a priority for service for veterans (and, in some cases, spouses of veterans) who otherwise meet the program eligibility criteria for the SCSEP. 38 U.S.C. 4215(a). Priority is extended to veterans. Priority is also extended to the spouse of a veteran who died of a service-connected disability; the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power; the spouse of any veteran who has a total disability resulting from a service-connected disability; and the spouse of any veteran who died while a disability so evaluated was in existence.

(c) Grantees and sub-recipients must apply these priorities in the following order:

(1) Persons who qualify as a veteran or qualified spouse under § 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a), and who possess at least one of the other priority characteristics;

(2) Persons who qualify as a veteran or qualified spouse under § 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a), who do not possess any other of the priority characteristics;

(3) Persons who do not qualify as a veteran or qualified spouse under § 2(a) of the Jobs for Veterans Act (non-veterans), and who possess at least one of the other priority characteristics.

§ 641.535 What services must grantees and sub-recipients provide to participants?

(a) When individuals are selected for participation in the SCSEP, the grantee or sub-recipient is responsible for:

- (1) Providing orientation to the SCSEP, including information on

project goals and objectives, community service assignments, training opportunities, available supportive services, the availability of a free physical examination, participant rights and responsibilities, and permitted and prohibited political activities;

(2)(i) Assessing participants' work history, skills and interests, talents, physical capabilities, aptitudes, needs for supportive services, occupational preferences, training needs, potential for performing community service assignments, and potential for transition to unsubsidized employment;

(ii) Performing an initial assessment upon program entry, unless an assessment has already been performed under title I of WIOA as provided in § 641.230. Subsequent assessments may be made as necessary, but must be made no less frequently than two times during a 12-month period (including the initial assessment);

(3)(i) Using the information gathered during the initial assessment to develop an IEP that includes an appropriate employment goal for each participant, except that if an assessment has already been performed and an IEP developed under title I of WIOA, the WIOA assessment and IEP will satisfy the requirement for a SCSEP assessment and IEP as provided in § 641.230;

(ii) Updating the IEP as necessary to reflect information gathered during the subsequent participant assessments (OAA § 502(b)(1)(N));

(iii) The initial IEP should include an appropriate employment goal for each participant. Thereafter, if the grantee determines that the participant is not likely to obtain unsubsidized employment, the IEP must reflect other approaches to help the participant achieve self-sufficiency, including the transition to other services or programs.

(4) Placing participants in appropriate community service assignments in the community in which they reside, or in a nearby community (OAA § 502(b)(1)(B));

(5) Providing or arranging for training identified in participants' IEPs and consistent with the SCSEP's goal of unsubsidized employment (OAA § 502(a)(1), 502(b)(1)(B), 502(b)(1)(I), 502(b)(1)(N)(ii));

(6) Assisting participants in obtaining needed supportive services identified in their IEPs (OAA § 502(b)(1)(N));

(7) Providing appropriate services for participants, or referring participants to appropriate services, through the One-Stop delivery system established under WIOA (OAA sec. 502(b)(1)(O));

(8) Providing counseling on participants' progress in meeting the goals and objectives identified in their IEPs, and in meeting their supportive service needs (OAA § 502(b)(1)(N)(iii));

(9) Providing participants with wages and benefits for time spent in the community service assignment, orientation, and training (OAA § 502(b)(1)(I), 502(b)(1)(J), 502(c)(6)(A)(i)) (see also §§ 641.565 and 641.540(f), addressing wages and benefits);

(10) Ensuring that participants have safe and healthy working conditions at their community service employment worksites (OAA § 502(b)(1)(J));

(11) Assisting participants in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of their IEPs;

(b) The Department may issue administrative guidance that clarifies the requirements of paragraph (a).

(c) Grantees may not use SCSEP funds for job ready individuals who only need job search assistance or job referral services. Grantees may provide job search assistance and job club activities to participants who are enrolled in the SCSEP and are assigned to community service assignments. (See also § 641.512).

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56883, Dec. 1, 2017]

§ 641.540 What types of training may grantees and sub-recipients provide to SCSEP participants in addition to the training received at a community service assignment?

(a) In addition to the training provided in a community service assignment, grantees and sub-recipients may arrange skill training provided that it:

(1) Is realistic and consistent with the participants' IEP;

(2) Makes the most effective use of the participant's skills and talents; and

(3) Prepares the participant for unsubsidized employment.

(b) Training may be provided before or during a community service assignment.

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, online instruction, and on-the-job experiences. Training may be provided by the grantee or through other arrangements, including but not limited to, arrangements with other workforce development programs such as WIOA. (OAA sec. 502(c)(6)(A)(ii).)

(d) Grantees and sub-recipients are encouraged to obtain training through locally available resources, including host agencies, at no cost or reduced cost to the SCSEP.

(e) Grantees and sub-recipients may pay for participant training, including the payment of reasonable costs of instructors, classroom rental, training supplies, materials, equipment, and tuition. (OAA § 502(c)(6)(A)(ii)).

(f) Participants must be paid wages while in training, as described in § 641.565(a). (OAA § 502(b)(1)(I)).

(g) As provided in § 641.545, grantees and sub-recipients may pay for costs associated with supportive services, such as transportation, necessary to participate in training. (OAA § 502(b)(1)(L)).

(h) Nothing in this section prevents or limits participants from engaging in self-development training available through other sources, at their own expense, during hours when not performing their community service assignments.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56883, Dec. 1, 2017]

§ 641.545 What supportive services may grantees and sub-recipients provide to participants?

(a) Grantees and sub-recipients are required to assess all participants' need for supportive services and to make every effort to assist participants in obtaining needed supportive services. Grantees and sub-recipients may provide directly or arrange for supportive services that are necessary to enable an individual to successfully participate in a SCSEP project, including but not limited to payment of reasonable costs of transportation; health and medical services; special job-related or

personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; dependent care; housing, including temporary shelter; needs-related payments; and follow-up services. (OAA secs. 502(c)(6)(A)(iv), 518(a)(8).)

(b) To the extent practicable, the grantee or sub-recipient should arrange for the payment of these expenses from other resources.

(c) Grantees and sub-recipients are encouraged to contact placed participants throughout the first 12 months following placement to determine if they have the necessary supportive services to remain in the job and to provide or arrange to provide such services if feasible.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56883, Dec. 1, 2017]

§ 641.550 What responsibility do grantees and sub-recipients have to place participants in unsubsidized employment?

For those participants whose IEPs include a goal of unsubsidized employment, grantees and sub-recipients are responsible for working with participants to ensure that the participants are receiving services and taking actions designed to help them achieve this goal. Grantees and sub-recipients must contact private and public employers directly or through the One-Stop delivery system to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

§ 641.565 What policies govern the provision of wages and benefits to participants?

(a) *Wages.* (1)(i) Grantees and sub-recipients must pay participants the highest applicable required wage for time spent in orientation, training, and community service assignments.

(ii) SCSEP participants may be paid the highest applicable required wage while receiving WIOA career services.

(2) The highest applicable required wage is either the minimum wage applicable under the Fair Labor Standards Act of 1938; the State or local minimum wage for the most nearly comparable covered employment; or the prevailing rate of pay for persons employed in similar public occupations by the same employer.

(3) Grantees and sub-recipients must make any adjustments to minimum wage rates payable to participants as may be required by Federal, State, or local statute during the grant term.

(b) *Benefits*—(1) *Required benefits.* Except as provided in paragraph (b)(2) of this section, grantees and sub-recipients must ensure that participants receive such benefits as are required by law.

(i) Grantees and sub-recipients must provide benefits uniformly to all participants within a project or sub-project, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, participants, and project administration.

(ii) Grantees and sub-recipients must offer participants the opportunity to receive physical examinations annually.

(A) Physical examinations are a benefit, and not an eligibility criterion. The examining physician must provide, to the participant only, a written report of the results of the examination.

(B) Participants may choose not to accept the physical examination. In that case, the grantee or sub-recipient must document this refusal, through a signed statement, within 60 workdays after commencement of the community service assignment. Each year thereafter, grantees and sub-recipients must offer the physical examination and document the offer and any participant's refusal.

(C) Grantees and sub-recipients may use SCSEP funds to pay the costs of physical examinations.

(iii) When participants are not covered by the State workers' compensation law, the grantee or sub-recipient must provide participants with workers' compensation benefits equal to those provided by law for covered employment. OAA §504(b).

(iv) If required by State law, grantees/sub-recipients must provide unemployment compensation coverage for participants.

(v) Grantees and sub-recipients must provide compensation for scheduled work hours during which a host agency's business is closed for a Federal holiday, which may be paid or in the form of rescheduled work time.

(vi) Grantees and sub-recipients must provide necessary sick leave that is not part of an accumulated sick leave program, which may be paid or in the form of rescheduled work time.

(2) *Prohibited wage and benefits costs.*

(i) Participants may not carry over allowable benefits from one Program Year to the next;

(ii) Grantees and sub-recipients may not provide payment or otherwise compensate participants for unused benefits such as sick leave or holidays;

(iii) Grantees and sub-recipients may not use SCSEP funds to cover costs associated with the following participant benefits:

(A) Retirement. Grantees and sub-recipients may not use SCSEP funds to provide contributions into a retirement system or plan, or to pay the cost of pension benefits for program participants.

(B) Annual leave.

(C) Accumulated sick leave.

(D) Bonuses. (OAA §502(c)(6)(A)(i)).

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56883, Dec. 1, 2017]

§ 641.570 Is there a time limit for participation in the program?

(a) *Individual time limit.* (1) Eligible individuals may participate in the program for a maximum duration of 48 months in the aggregate (whether or not consecutive), from the later of July 1, 2007, or the date of the individual's enrollment in the program.

(2) At the time of enrollment, the grantee or sub-recipient must inform the participant of this time limit and the possible extension available under paragraph (b) of this section, and the grantee or sub-recipient must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions

for transition must be reflected in the participant's IEP.

(3) If requested by a grantee or sub-recipient, the Department will authorize an extension for individuals who meet the criteria in paragraph (b) of this section. Notwithstanding any individual extensions granted, grantees and sub-recipients must ensure that projects do not exceed the overall average participation cap for all participants, as described in paragraph (c) of this section.

(b) *Increased periods of individual participation.* If requested by a grantee, the Department will authorize increased periods of participation for individuals who:

- (1) Have a severe disability;
- (2) Are frail or are age 75 or older;
- (3) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);
- (4) Live in an area with persistent unemployment and are individuals with severely limited employment prospects; or
- (5) Have limited English proficiency or low literacy skills.

(c) *Average grantee participation cap.*
 (1) Notwithstanding any individual extension authorized under paragraph (b) of this section, each grantee must manage its SCSEP project in such a way that the grantee does not exceed an average participation cap for all participants of 27 months (in the aggregate).

(2) A grantee may request, and the Department may authorize, an extended average participation period of up to 36 months (in the aggregate) for a particular project area in a given Program Year if the Department determines that extenuating circumstances exist to justify an extension, due to one more of the following factors:

(i) High rates of unemployment or of poverty or of participation in the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act, in the areas served by a grantee, relative to other areas of the State involved or the Nation;

(ii) Significant downturns in the economy of an area served by the grantee or in the national economy;

(iii) Significant numbers or proportions of participants with one or more barriers to employment, including "most-in-need" individuals described in §641.710(a)(6), served by a grantee relative to such numbers or proportions for grantees serving other areas of the State or Nation;

(iv) Changes in Federal, State, or local minimum wage requirements; or

(v) Limited economies of scale for the provision of community service employment and other authorized activities in the areas served by the grantee.

(3) For purposes of the average participation cap, each grantee will be considered to be one project.

(d) *Authorized break in participation.* On occasion a participant takes an authorized break in participation from the program, such as a formal leave of absence necessitated by personal circumstances or a break caused because a suitable community service assignment is not available. Such an authorized break, if taken under a formal grantee policy allowing such breaks and formally entered into the SCSEP Performance and Results Quarterly Performance Reporting (SPARQ) system, will not count toward the individual time limit described in paragraph (a) or the average participation cap described in paragraph (c) of this section.

(e) *Administrative guidance.* The Department will issue administrative guidance detailing the process by which a grantee may request increased periods of individual participation, and the process by which a grantee may request an extension of the average participation cap. The process will require that the determination of individual participant extension requests is made in a fair and equitable manner.

(f) *Grantee authority.* Grantees may limit the time of participation for individuals to less than the 48 months described in paragraph (a) of this section, if the grantee uniformly applies the lower participation limit, and if the grantee submits a description of the lower participation limit policy in its grant application or modification of the grant and the Department approves the policy. (OAA §§502(b)(1)(C), 518(a)(3)(B)).

§ 641.575 May a grantee or sub-recipient establish a limit on the amount of time its participants may spend at a host agency?

Yes, grantees and sub-recipients may establish limits on the amount of time that participants spend at a particular host agency, and are encouraged to rotate participants among different host agencies, or to different assignments within the same host agency, as such rotations may increase participants' skills development and employment opportunities. Such limits must be established in the grant agreement or modification of the grant, and approved by the Department. The Department will not approve any limit that does not require an individualized determination that rotation is in the best interest of the participant and will further the acquisition of skills listed in the IEP. Host agency rotations have no effect on either the individual participation limit or the average participation cap.

§ 641.577 Is there a limit on community service assignment hours?

While there is no specific limit on the number of hours that may be worked in a community service assignment, a community service assignment must be a part-time position. However, the Department strongly encourages grantees to use 1,300 hours as a benchmark and good practice for monitoring community service hours.

§ 641.580 Under what circumstances may a grantee or sub-recipient terminate a participant?

(a) If, at any time, a grantee or sub-recipient determines that a participant was incorrectly declared eligible as a result of false information knowingly given by that individual, the grantee or sub-recipient must give the participant immediate written notice explaining the reason(s) for termination and may terminate the participant 30 days after it has provided the participant with written notice.

(b) If, during eligibility verification under § 641.505, a grantee or sub-recipient finds a participant to be no longer eligible for enrollment, the grantee or sub-recipient must give the participant written notice explaining the reason(s)

for termination and may terminate the participant 30 days after it has provided the participant with written notice.

(c) If, at any time, the grantee or sub-recipient determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant, the grantee or sub-recipient must give the participant immediate written notice explaining the reason(s) for termination and may terminate the participant 30 days after it has provided the participant with written notice.

(d) A grantee or sub-recipient may terminate a participant for cause. Grantees must include their policies concerning for-cause terminations in the grant application and obtain the Department's approval. The grantee or sub-recipient must give the participant written notice explaining the reason(s) for termination and may terminate the participant 30 days after it has provided the participant with written notice.

(e) A grantee or sub-recipient may terminate a participant if the participant refuses to accept a reasonable number of job offers or referrals to unsubsidized employment consistent with the IEP and there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment. The grantee or sub-recipient must give the participant written notice explaining the reason(s) for termination and may terminate the participant 30 days after it has provided the participant with written notice.

(f) When a grantee or sub-recipient makes an unfavorable determination of enrollment eligibility under paragraph (b) or (c) of this section, it should refer the individual to other potential sources of assistance, such as the One-Stop delivery system. When a grantee or sub-recipient terminates a participant under paragraph (d) or (e) of this section, it may refer the individual to other potential sources of assistance, such as the One-Stop delivery system.

(g) Grantees and sub-recipients must provide each participant at the time of enrollment with a written copy of its policies for terminating a participant

for cause or otherwise, and must verbally review those policies with each participant.

(h) Any termination, as described in paragraphs (a) through (e) of this section, must be consistent with administrative guidelines issued by the Department and the termination notice must inform the participant of the grantee's grievance procedure, and the termination must be subject to the applicable grievance procedures described in § 641.910.

(i) Participants may not be terminated from the program solely on the basis of their age. Grantees and sub-recipients may not impose an upper age limit for participation in the SCSEP.

§ 641.585 What is the employment status of SCSEP participants?

(a) Participants are not considered Federal employees solely as a result of their participation in the SCSEP. (OAA § 504(a)).

(b) Grantees must determine whether or not a participant qualifies as an employee of the grantee, sub-recipient, local project, or host agency, under applicable law. Responsibility for this determination rests with the grantee even when a Federal agency is a grantee or host agency.

Subpart F—Pilot, Demonstration, and Evaluation Projects

§ 641.600 What is the purpose of the pilot, demonstration, and evaluation projects authorized under § 502(e) of the OAA?

The purpose of the pilot, demonstration, and evaluation projects authorized under § 502(e) of the OAA is to develop and implement techniques and approaches, and to demonstrate the effectiveness of these techniques and approaches, in addressing the employment and training needs of individuals eligible for SCSEP.

§ 641.610 How are pilot, demonstration, and evaluation projects administered?

The Department may enter into agreements with States, public agencies, nonprofit private organizations, or private business concerns, as may be

necessary, to conduct pilot, demonstration, and evaluation projects.

§ 641.620 How may an organization apply for pilot, demonstration, and evaluation project funding?

Organizations applying for pilot, demonstration, and evaluation project funding must follow the instructions issued by the Department. Instructions for these unique funding opportunities are published in TEGs available at <http://www.doleta.gov/Seniors>.

§ 641.630 What pilot, demonstration, and evaluation project activities are allowable under the Older Americans Act?

Allowable pilot, demonstration and evaluation projects include:

(a) Activities linking businesses and eligible individuals, including activities providing assistance to participants transitioning from subsidized activities to private sector employment;

(b) Demonstration projects and pilot projects designed to:

(1) Attract more eligible individuals into the labor force;

(2) Improve the provision of services to eligible individuals under One-Stop delivery systems established under title I of WIOA;

(3) Enhance the technological skills of eligible individuals; and

(4) Provide incentives to SCSEP grantees for exemplary performance and incentives to businesses to promote their participation in the SCSEP;

(c) Demonstration projects and pilot projects, as described in paragraph (b) of this section, for workers who are older individuals (but targeted to eligible individuals) only if such demonstration projects and pilot projects are designed to assist in developing and implementing techniques and approaches in addressing the employment and training needs of eligible individuals;

(d) Provision of training and technical assistance to support a SCSEP project;

(e) Dissemination of best practices relating to employment of eligible individuals; and

(f) Evaluation of SCSEP activities.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56884, Dec. 1, 2017]

§ 641.640 Should pilot, demonstration, and evaluation project entities coordinate with SCSEP grantees and sub-recipients, including area agencies on aging?

(a) To the extent practicable, the Department will provide an opportunity, before the development of a demonstration or pilot project, for the appropriate area agency on aging and SCSEP grantees and sub-grantees to submit comments on the project in order to ensure coordination of SCSEP activities with activities carried out under this subpart.

(b) To the extent practicable, entities carrying out pilot, demonstration, and evaluation projects must consult with appropriate area agencies on aging, SCSEP grantees and sub-grantees, and other appropriate agencies and entities to promote coordination of SCSEP and pilot, demonstration, and evaluation activities. (OAA § 502(e)).

Subpart G—Performance Accountability

SOURCE: 82 FR 56884, Dec. 1, 2017, unless otherwise noted.

§ 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

(a) *Measures of performance.* There are seven core performance measures. Core measures (defined in § 641.710) are subject to goal-setting and corrective action (described in § 641.720); that is, performance level goals for each core measure must be agreed upon between the Department and each grantee as described in § 641.720, and if a grantee fails to meet the performance level goals for the core measures, that grantee is subject to corrective action.

(b) *Core measures.* Section 513(b)(1) of the OAA establishes the following core measures of performance:

- (1) Hours (in the aggregate) of community service employment;
- (2) The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project;
- (3) The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project;

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

(5) Indicators of effectiveness in serving employers, host agencies, and project participants;

(6) The number of eligible individuals served; and

(7) The number of most-in-need individuals served (the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2)).

(c) *Affected entities.* The core measures of performance are applicable to each grantee without regard to whether such grantee operates the program directly or through sub-contracts, sub-grants, or agreements with other entities. Grantees must assure that their sub-grantees and lower-tier sub-grantees are collecting and reporting program data.

(d) *Required evaluation and reporting.* An agreement to be evaluated on the core measures of performance is a requirement for application for, and is a condition of, all SCSEP grants.

§ 641.710 How are the performance measures defined?

The core measures are defined as follows:

(a) “Hours of community service employment” is defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee’s grant, after adjusting for differences in minimum wage among the States and areas. Paid training hours are excluded from this measure.

(b) “The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(c) “The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project” is defined

by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.

(d) “The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project” is defined by the formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: The wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter.

(e) “Indicators of effectiveness in serving employers, host agencies, and project participants” is defined as the combined results of customer assessments of the services received by each of these three customer groups.

(f) “The number of eligible individuals served” is defined as the total number of participants served divided by a grantee’s authorized number of positions, after adjusting for differences in minimum wage among the States and areas.

(g) “Most-in-need” or the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2) is defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served. Participants are characterized as most-in-need if they:

- (1) Have a severe disability;
- (2) Are frail;
- (3) Are age 75 or older;
- (4) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);
- (5) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;
- (6) Have limited English proficiency;
- (7) Have low literacy skills;
- (8) Have a disability;
- (9) Reside in a rural area;
- (10) Are veterans;
- (11) Have low employment prospects;

(12) Have failed to find employment after utilizing services provided under title I of the Workforce Innovation and Opportunity Act; or

(13) Are homeless or at risk for homelessness.

§ 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

(a) *First 2 years.* Before the beginning of the first program year of the grant, each grantee must reach agreement with the Department on levels of performance for each measure listed in §641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section.

The levels agreed to will be considered the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee’s satisfaction with the negotiated levels.

(b) *Third and fourth year.* Each grantee must reach agreement with the Department prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in §641.700, for each of the third and fourth program years so covered. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. The levels agreed to will be considered to be the expected levels of performance for the grantee for such program years. Funds may not be awarded under the grant until such agreement is reached. At the conclusion of negotiations concerning the performance levels with all grantees, the Department will make available

§ 641.730

for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

(c) *Factors.* In reaching the agreements described in paragraphs (a) and (b) of this section, each grantee and the Department must:

(1) Take into account how the levels involved compare with the expected levels of performance established for other grantees;

(2) Ensure that the levels involved are adjusted, using an objective statistical model based on the model established by the Secretary of Labor with the Secretary of Education in accordance with sec. 116(b)(3)(A)(viii) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3141(b)(3)(A)(viii)); and

(3) Take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds.

(d) *Adjustments based on economic conditions and individuals served during the program year.* The Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2) of this section, adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year.

§ 641.730 How will the Department assist grantees in the transition to the new core performance measures?

As soon as practicable after January 2, 2018, the Department will determine if a SCSEP grantee's performance under the measures in effect prior to January 2, 2018 would have met the expected levels of performance for the Program Year 2018. If the Department determines that the grantee would have failed to meet the Program Year 2018 expected levels of performance, the Department will provide technical assistance to help the grantee to transition to eventually meet the expected levels of performance under the measures in § 641.700.

20 CFR Ch. V (4-1-20 Edition)

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

(a) *Aggregate calculation of performance.* Not later than 120 days after the end of each program year, the Department will determine if a grantee has met the expected levels of performance including any adjustments to such levels made in accordance with § 641.720(d) by aggregating the grantee's core measures. The aggregate is calculated by combining the percentage of goal achieved on each of the individual core measures to obtain an average score. A grantee will fail to meet its performance measures when it does not meet 80 percent of the agreed-upon level of performance for the aggregate of all the core measures. Performance in the range of 80 to 100 percent constitutes meeting the level for the core performance measures. Performance in excess of 100 percent constitutes exceeding the level for the core performance measures.

(b) *Consequences—(1) National grantees.* (i) If the Department determines that a national grantee fails to meet the expected levels of performance in a program year, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require such grantee to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the grantee will take to meet the expected levels of performance in the next program year.

(iii) Any national grantee that has failed to meet the expected levels of performance for 4 consecutive years will not be allowed to compete in the subsequent grant competition, but may compete in the next grant competition after that subsequent competition.

(2) *State grantees.* (i) If the Department determines that a State fails to meet the expected levels of performance, as described in paragraph (a) of this section, the Department, after each year of such failure, will provide technical assistance and will require

the State to submit a corrective action plan not later than 160 days after the end of the program year.

(ii) The corrective action plan must detail the steps the State will take to meet the expected levels of performance in the next program year.

(iii) If the Department determines that the State fails to meet the expected levels of performance for 3 consecutive program years the Department will require the State to conduct a competition to award the funds allotted to the State under sec. 506(e) of the OAA for the first full program year following the Department's determination. The new grantee will be responsible for administering the SCSEP in the State and will be subject to the same requirements and responsibilities as had been the State grantee.

(c) *Evaluation.* The Department will annually evaluate, publish and make available for public review, information on the actual performance of each grantee with respect to the levels achieved for each of the core measures of performance, compared to the expected levels of performance established under § 641.720 (including any adjustments to such levels made in accordance with § 641.720(d)). The results of the Department's annual evaluation will be reported to Congress.

§ 641.750 Will there be performance-related incentives?

The Department is authorized by OAA secs. 502(e)(2)(B)(iv) and 517(c)(1) to use recaptured SCSEP funds to provide incentive awards. The Department will exercise this authority at its discretion.

Subpart H—Administrative Requirements

§ 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

(a) SCSEP recipients and sub-recipients must follow the uniform administrative requirements and allowable cost requirements that apply to their type of organization. (OAA § 503(f)(2)).

(b) Governments, State, local, and Indian tribal organizations that receive SCSEP funds under grants or cooperative agreements must follow the com-

mon rule implementing OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments" (10/07/1994) (further amended 08/29/1997), codified at 29 CFR part 97.

(c) Nonprofit and commercial organizations, institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A-110, codified at 29 CFR part 95.

§ 641.803 What is program income?

Program income, as described in 29 CFR 97.25 (State and local governments) and 29 CFR 95.2(bb) (non-profit and commercial organizations), is income earned by the recipient or sub-recipient during the grant period that is directly generated by an allowable activity supported by grant funds or earned as a result of the award of grant funds. Program income includes income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. (See 29 CFR 95.24(e) (non-profit and commercial organizations) and 29 CFR 97.25(e) (State and local governments)). Costs of generating SCSEP program income may be deducted from gross income received by SCSEP recipients and sub-recipients to determine SCSEP program income earned or generated provided these costs have not been charged to the SCSEP.

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP and must use it to further the purposes of the program and in accordance with the terms and conditions of the grant award. Program income may only be spent during the grant period in which it was earned (except as provided for in paragraph (b)), as provided in 29 CFR 95.24(a) (non-profit and commercial organizations) or 29 CFR 97.25(g) (2) (State and local governments), as applicable.

§ 641.809

(b)(1) Except as provided for in paragraph (b)(2), recipients that continue to receive a SCSEP grant from the Department must spend program income earned from SCSEP-funded activities in the Program Year in which the earned income was received.

(2) Any program income remaining at the end of the Program Year in which it was earned will remain available for expenditure in the subsequent Program Year only. Any program income remaining after the second Program Year must be remitted to the Department.

(c) Recipients that do not continue to receive a SCSEP grant from the Department must remit unexpended program income earned during the grant period from SCSEP funded activities to the Department at the end of the grant period. These recipients have no obligation to the Department for program income earned after the end of the grant period.

§ 641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?

(a) The Department will pay no more than 90 percent of the total cost of activities carried out under a SCSEP grant. (OAA sec. 502(c)(1)).

(b) All SCSEP recipients, including Federal agencies if there is no statutory exemption, must provide or ensure that at least 10 percent of the total cost of activities carried out under a SCSEP grant (non-Federal share of costs) consists of allowable costs paid for with non-Federal funds, except as provided in paragraphs (e) and (f) of this section.

(c) Recipients must determine the non-Federal share of costs in accordance with 29 CFR 97.24 for governmental units, or 29 CFR 95.23 for nonprofit and commercial organizations.

(d) The non-Federal share of costs may be provided in cash, or in-kind, or a combination of the two. (OAA § 502(c)(2)).

(e) A recipient may not require a sub-recipient or host agency to provide non-Federal resources for the use of the SCSEP project as a condition of entering into a sub-recipient or host agency relationship. This does not preclude a sub-recipient or host agency from voluntarily contributing non-Fed-

20 CFR Ch. V (4–1–20 Edition)

eral resources for the use of the SCSEP project.

(f) The Department may pay all of the costs of activities in an emergency or disaster project or a project in an economically distressed area. (OAA § 502(c)(1)(B)).

§ 641.812 What is the period of availability of SCSEP funds?

(a) Except as provided in § 641.815, recipients must expend SCSEP funds during the Program Year for which they are awarded (July 1–June 30). (OAA § 517(b)).

(b) SCSEP recipients must ensure that no sub-agreement provides for the expenditure of any SCSEP funds before the start of the grant year, or after the end of the grant period, except as provided in § 641.815.

§ 641.815 May the period of availability be extended?

SCSEP recipients may request in writing, and the Department may grant, an extension of the period during which SCSEP funds may be obligated or expended. SCSEP recipients requesting an extension must justify that an extension is necessary. (OAA § 517(b)). The Department will notify recipients in writing of the approval or disapproval of any such requests.

§ 641.821 What audit requirements apply to the use of SCSEP funds?

(a) Recipients and sub-recipients receiving Federal awards of SCSEP funds must follow the audit requirements in paragraphs (b) and (c) of this section that apply to their type of organization. As used here, Federal awards of SCSEP funds include Federal financial assistance and Federal cost-reimbursement contracts received directly from the Department or indirectly under awards by SCSEP recipients or higher-tier sub-recipients. (OAA § 503(f)(2)).

(b) All governmental and nonprofit organizations that are recipients or sub-recipients must follow the audit requirements of OMB Circular A–133. These requirements are codified at 29 CFR parts 96 and 99 and referenced in 29 CFR 97.26 for governmental organizations and in 29 CFR 95.26 for institutions of higher education, hospitals, and other nonprofit organizations.

(c)(1) The Department is responsible for audits of SCSEP recipients that are commercial organizations.

(2) Commercial organizations that are sub-recipients under the SCSEP and that expend more than the minimum level specified in OMB Circular A-133 (\$500,000, for fiscal years ending after December 31, 2003) must have either an organization-wide audit or a program-specific financial and compliance audit conducted in accordance with OMB Circular A-133.

§ 641.824 What lobbying requirements apply to the use of SCSEP funds?

SCSEP recipients and sub-recipients must comply with the restrictions on lobbying codified in the Department's regulations at 29 CFR part 93. (Also refer to § 641.850(c), "Lobbying costs.")

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

(a) SCSEP recipients, sub-recipients, and host agencies are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR parts 31 and 32 and the provisions on the equal treatment of religious organizations at 29 CFR part 2 subpart D.

(b) Recipients and sub-recipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 38 if:

(1) The recipient:

(i) Is a One-Stop partner listed in sec. 121(b) of WIOA, and

(ii) Operates programs and activities that are part of the One-Stop delivery system established under WIOA; or

(2) The recipient otherwise satisfies the definition of "recipient" in 29 CFR 38.4.

(c) Recipients must ensure that participants are provided informational materials relating to age discrimination and/or their rights under the Age Discrimination in Employment Act of 1975 that are distributed to recipients by the Department as required by § 503(b)(3) of the OAA.

(d) Questions about or complaints alleging a violation of the nondiscrimination requirements cited in this section may be directed or mailed

to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC, 20210, for processing. (See § 641.910(d)).

(e) The specification of any right or protection against discrimination in paragraphs (a) through (d) of this section must not be interpreted to exclude or diminish any other right or protection against discrimination in connection with a SCSEP project that may be available to any participant, applicant for participation, or other individual under any applicable Federal, State, or local laws prohibiting discrimination, or their implementing regulations.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017]

§ 641.833 What policies govern political patronage?

(a) A recipient or sub-recipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as provided in § 641.827(b), certain recipients and sub-recipients of SCSEP funds are required to comply with WIOA nondiscrimination regulations in 29 CFR part 38. These regulations prohibit discrimination on the basis of political affiliation or belief.

(b) A recipient or sub-recipient must not provide, or refuse to provide, funds to any sub-recipient, host agency, or other entity based on political affiliation.

(c) SCSEP recipients must ensure that every entity that receives SCSEP funds through the recipient is applying the policies stated in paragraphs (a) and (b) of this section.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017]

§ 641.836 What policies govern political activities?

(a) No project under title V of the OAA may involve political activities. SCSEP recipients must ensure compliance with the requirements and prohibitions involving political activities described in paragraphs (b) and (c) of this section.

(b) State and local employees involved in the administration of SCSEP

§ 641.839

20 CFR Ch. V (4-1-20 Edition)

activities may not engage in political activities prohibited under the Hatch Act (5 U.S.C. chapter 15), including:

- (1) Seeking partisan elective office;
- (2) Using official authority or influence for the purpose of affecting elections, nominations for office, or fundraising for political purposes. (5 U.S.C. 1502).

(c) SCSEP recipients must provide all persons associated with SCSEP activities with a written explanation of allowable and unallowable political activities under the Hatch Act. A notice explaining these allowable and unallowable political activities must be posted in every workplace in which SCSEP activities are conducted. The Department will provide the form and content of the notice and explanatory material by administrative issuance. (OAA § 502(b)(1)(P)).

(d) SCSEP recipients must ensure that:

(1) No SCSEP participants or staff persons engage in partisan or non-partisan political activities during hours for which they are being paid with SCSEP funds.

(2) No participants or staff persons engage in partisan political activities in which such participants or staff persons represent themselves as spokespersons for the SCSEP.

(3) No participants are employed or out-stationed in the offices of a Member of Congress, a State or local legislator, or on the staff of any legislative committee.

(4) No participants are employed or out-stationed in the immediate offices of any elected chief executive officer of a State or unit of general government, except that:

(i) Units of local government may serve as host agencies for participants, provided that their assignments are non-political; and

(ii) While assignments may place participants in such offices, such assignments actually must be concerned with program and service activities and not in any way involved in political functions.

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in

non-political assignments is permissible, however, provided that:

(i) SCSEP recipients develop safeguards to ensure that participants placed in these assignments are not involved in political activities; and

(ii) These safeguards are described in the grant agreement and are approved by the Department and are subject to review and monitoring by the SCSEP recipient and by the Department.

§ 641.839 What policies govern union organizing activities?

Recipients must ensure that SCSEP funds are not used in any way to assist, promote, or deter union organizing.

§ 641.841 What policies govern nepotism?

(a) SCSEP recipients must ensure that no recipient or sub-recipient hires, and no host agency serves as a worksite for, a person who works in a SCSEP community service assignment if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, recipient, sub-recipient, or host agency. The Department may exempt worksites on Native American reservations and in rural areas from this requirement provided that adequate justification can be documented, such as that no other persons are eligible and available for participation in the program.

(b) To the extent that an applicable State or local legal nepotism requirement is more restrictive than this provision, SCSEP recipients must ensure that the more restrictive requirement is followed.

(c) For purposes of this section, "immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild.

§ 641.844 What maintenance of effort requirements apply to the use of SCSEP funds?

(a) A community service assignment for a participant under title V of the OAA is permissible only when specific

maintenance of effort requirements are met.

(b) Each project funded under title V:

(1) Must not reduce the number of employment opportunities or vacancies that would otherwise be available to individuals not participating in the program;

(2) Must not displace currently employed workers (including partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits);

(3) Must not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed; and

(4) Must not employ or continue to employ any eligible individual to perform the same work or substantially the same work as that performed by any other individual who is on layoff. (OAA §502(b)(1)(G)).

§ 641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?

(a) *General.* Unless specified otherwise in this part or the grant agreement, recipients and sub-recipients must follow the uniform allowable cost requirements that apply to their type of organization. For example, a local government sub-recipient receiving SCSEP funds from a nonprofit organization must use the allowable cost requirements for governmental organizations in OMB Circular A-87. The Department's regulations at 29 CFR 95.27 (non-profit and commercial organizations) and 29 CFR 97.22 (State and local governments) identify the Federal principles for determining allowable costs that each kind of organization must follow. The applicable Federal principles for each kind of organization are described in paragraphs (b)(1) through (b)(5) of this section. (OAA §503(f)(2)).

(b) *Allowable costs/cost principles.* (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 nonprofit 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 with 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 nonprofit 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.

§ 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?

(a) Yes, in addition to the generally applicable cost principles in §641.847(b), the cost principles in paragraphs (b) through (g) of this section apply to SCSEP grants.

(b) *Claims against the Government.* 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.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93, SCSEP funds must not be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States or any State legislature. (See §641.824).

(d) *One-Stop costs.* Costs of participating as a required partner in the One-Stop delivery system established in accordance with sec. 121(e) of WIOA are allowable, provided that SCSEP services and funding are provided in accordance with the MOU required by WIOA and OAA sec. 502(b)(1)(O), and costs are determined in accordance with the applicable cost principles. The costs of services provided by the SCSEP, including those provided by participants/enrollees, may comprise a portion or the total of a SCSEP project's proportionate share of One-Stop costs.

§ 641.853

(e) *Building repairs and acquisition costs.* Except as provided in this paragraph and as an exception to the allowable cost principles in § 641.847(b), no SCSEP funds may be used for the purchase, construction, or renovation of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use for project purposes;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(f) *Accessibility and reasonable accommodation.* Recipients and sub-recipients may use SCSEP funds to meet their obligations under § 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, and any other applicable Federal disability nondiscrimination laws, to provide physical and programmatic accessibility and reasonable accommodation/modifications for, and effective communications with, individuals with disabilities. (29 U.S.C. 794).

(g) *Participants' benefit costs.* Recipients and sub-recipients may use SCSEP funds for participant benefit costs only under the conditions set forth in § 641.565.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017]

§ 641.853 How are costs classified?

(a) All costs must be classified as "administrative costs" or "programmatic activity costs." (OAA § 502(c)(6)).

(b) Recipients and sub-recipients must assign participants' wage and benefit costs and other participant (enrollee) costs such as supportive services to the programmatic activity cost category. (See § 641.864). When a participant's community service assignment involves functions whose costs are normally classified as administrative costs, compensation provided to the participants must be charged as programmatic activity costs instead of administrative costs, since participant

20 CFR Ch. V (4-1-20 Edition)

wage and benefit costs are always charged to the programmatic activity cost category.

§ 641.856 What functions and activities constitute administrative costs?

(a) Administrative costs are that allocable portion of necessary and reasonable allowable costs of recipients and program operators that are associated with those specific functions identified in paragraph (b) of this section and that are not related to the direct provision of programmatic activities specified in § 641.864. These costs may be both personnel and non-personnel and both direct and indirect costs.

(b) Administrative costs are the costs associated with:

(1) Performing general administrative and coordination functions, including:

(i) Accounting, budgeting, financial, and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(x) Preparing administrative reports; and

(xi) Other activities necessary for general administration of government funds and associated programs.

(2) Oversight and monitoring responsibilities related to administrative functions;

(3) Costs of goods and services used 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 program;

(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 and;

(6) Costs of technical assistance, professional organization membership dues, and evaluating results obtained by the project involved against stated objectives. (OAA § 502(c)(4)).

§ 641.859 What other special rules govern the classification of costs as administrative costs or programmatic activity costs?

(a) Recipients and sub-recipients must comply with the special rules for classifying costs as administrative costs or programmatic activity costs set forth in paragraphs (b) through (e) of this section.

(b)(1) Costs of awards by recipients and program operators that are solely for the performance of their own administrative functions are classified as administrative costs.

(2) Costs incurred by recipients and program operators for administrative functions listed in § 641.856(b) are classified as administrative costs.

(3) Costs incurred by vendors and sub-recipients performing the administrative functions of recipients and program operators are classified as administrative costs. (See 29 CFR 99.210 for a discussion of factors differentiating sub-recipients from vendors.)

(4) Except as provided in paragraph (b)(3) of this section, all costs incurred by all vendors, and only those sub-recipients below program operators, are classified as programmatic activity costs. (See 29 CFR 99.210 for a discussion of factors differentiating sub-recipients from vendors.)

(c) Personnel and related non-personnel costs of staff who perform both administrative functions specified in § 641.856(b) and programmatic services or activities must be allocated as administrative or programmatic activity costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(d) The allocable share of indirect or overhead costs charged to the SCSEP grant are to be allocated to the administrative and programmatic activity cost categories in the same proportion as the costs in the overhead or indirect cost pool are classified as programmatic activity or administrative costs.

(e) Costs of the following information systems including the purchase, systems development and operating (e.g., data entry) costs are charged to the programmatic activity cost category:

(1) Tracking or monitoring of participant and performance information;

(2) Employment statistics information, including job listing information, job skills information, and demand occupation information; and

(3) Local area performance information.

§ 641.861 Must SCSEP recipients provide funding for the administrative costs of sub-recipients?

(a) Recipients and sub-recipients must obtain funding for administrative costs to the extent practicable from non-Federal sources. (OAA § 502(c)(5)).

(b) SCSEP recipients must ensure that sufficient funding is provided for the administrative activities of sub-recipients that receive SCSEP funding through the recipient. Each SCSEP recipient must describe in its grant application the methodology used to ensure that sub-recipients receive sufficient funding for their administrative activities. (OAA § 502(b)(1)(R)).

§ 641.864 What functions and activities constitute programmatic activity costs?

Programmatic activity costs include, but are not limited to, the costs of the following functions:

(a) Participant wages, such benefits as are required by law (such as workers' compensation or unemployment compensation), the costs of physical examinations, compensation for scheduled work hours during which a host agency is closed for a Federal holiday, and necessary sick leave that is not part of an accumulated sick leave program, except that no amounts provided under the grant may be used to pay the cost of pension benefits, annual leave,

§ 641.867

20 CFR Ch. V (4-1-20 Edition)

accumulated sick leave, or bonuses, as described in § 641.565;

(b) Outreach, recruitment and selection, intake, orientation, assessment, and preparation and updating of IEPs;

(c) Participant training, as described in § 641.540, which may be provided before commencing or during a community service assignment, and which may be provided at a host agency, in a classroom setting, or using other appropriate arrangements, which may include reasonable costs of instructors' salaries, classroom space, training supplies, materials, equipment, and tuition;

(d) Subject to the restrictions in § 641.535(c), job placement assistance, including job development and job search assistance, job fairs, job clubs, and job referrals; and

(e) Participant supportive services, to enable an individual to successfully participate in a SCSEP project, as described in § 641.545. (OAA § 502(c)(6)(A)).

§ 641.867 What are the limitations on the amount of SCSEP administrative costs?

(a) Except as provided in paragraph (b), no more than 13.5 percent of the SCSEP funds received for a Program Year may be used for administrative costs.

(b) The Department may increase the amount available for administrative costs to not more than 15 percent, in accordance with § 641.870. (OAA § 502(c)(3)).

§ 641.870 Under what circumstances may the administrative cost limitation be increased?

(a) SCSEP recipients may request that the Department increase the amount available for administrative costs. The Department may honor the request if:

(1) The Department determines that it is necessary to carry out the project; and

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, such as liability insurance, payments for workers' compensation for staff, costs associated with achieving unsubsidized placement

goals, and other operation requirements imposed by the Department;

(ii) The number of community service assignment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of administration is not increased; or

(iii) The size of the project is so small that the amount of administrative costs incurred to carry out the project necessarily exceeds 13.5 percent of the grant amount. (OAA § 502(c)(3)).

(b) A request by a recipient or prospective recipient for an increase in the amount available for administrative costs may be submitted as part of the grant application or as a separate submission at any time after the grant award.

§ 641.873 What minimum expenditure levels are required for participant wages and benefits?

(a) Except as provided in § 641.874 or in paragraph (c) of this section, not less than 75 percent of the SCSEP funds provided under a grant from the Department must be used to pay for wages and benefits of participants as described in § 641.864(a). (OAA § 502(c)(6)(B)).

(b) A SCSEP recipient is in compliance with this provision if at least 75 percent of the total expenditure of SCSEP funds provided to the recipient was for wages and benefits, even if one or more sub-recipients did not expend at least 75 percent of their SCSEP sub-recipient award for wages and benefits.

(c) A SCSEP grantee may submit to the Department a request for approval to use not less than 65 percent of the grant funds to pay wages and benefits under § 641.874.

§ 641.874 What conditions apply to a SCSEP grantee request to use additional funds for training and supportive service costs?

(a) A grantee may submit to the Department a request for approval—

(1) To use not less than 65 percent of the grant funds to pay the wages and benefits described in § 641.864(a);

(2) To use the percentage of grant funds specified in § 641.867 to pay for administrative costs as described in § 641.856;

Employment and Training Administration, Labor

§ 641.879

(3) To use the 10 percent of grant funds that would otherwise be devoted to wages and benefits under § 641.873 to provide participant training (as described in § 641.540(e)) and participant supportive services to enable participants to successfully participate in a SCSEP project (as described in § 641.545), in which case the grantee must provide (from the funds described in this paragraph) the wages for those individual participants who are receiving training from the funds described in this paragraph, but may not use the funds described in this paragraph to pay for any administrative costs; and

(4) To use the remaining grant funds to provide participant training, job placement assistance, participant supportive services, and outreach, recruitment and selection, intake, orientation and assessment.

(b) In submitting the request the grantee must include in the request—

(1) A description of the activities for which the grantee will spend the grant funds described in paragraphs (a)(3) and (a)(4) of this section;

(2) An explanation documenting how the provision of such activities will improve the effectiveness of the project, including an explanation of whether any displacement of eligible individuals or elimination of positions for such individuals will occur, information on the number of such individuals to be displaced and of such positions to be eliminated, and an explanation of how the activities will improve employment outcomes for the individuals served, based on the assessment conducted under § 641.535(a)(2); and

(3) A proposed budget and work plan for the activities, including a detailed description of how the funds will be spent on the activities described in paragraphs (a)(3) and (a)(4) of this section.

(c)(1) If a grantee wishes to amend an existing grant agreement to use additional funds for training and supportive service costs, the grantee must submit such a request not later than 90 days before the proposed date of implementation contained in the request. Not later than 30 days before the proposed date of implementation, the Department will approve, approve as modified, or reject the request, on the

basis of the information included in the request.

(2) If a grantee submits a request to use additional funds for training and supportive service costs in the grant application, the request will be accepted and processed as a part of the grant review process.

(d) Grantees may apply this provision to individual sub-recipients but need not provide this opportunity to all their sub-recipients.

§ 641.876 How will compliance with cost limitations and minimum expenditure levels be determined?

The Department will determine compliance by examining expenditures of SCSEP funds. The cost limitations and minimum expenditure level requirements must be met at the time all such funds have been expended or the period of availability of such funds has expired, whichever comes first.

§ 641.879 What are the financial and performance reporting requirements for recipients?

(a) In accordance with 29 CFR 97.41 (State and local governments) or 29 CFR 95.52 (non-profit and commercial organizations), each SCSEP recipient must submit a SCSEP Financial Status Report (FSR, ETA Form 9130) in electronic format to the Department via the Internet within 45 days after the ending of each quarter of the Program Year. Each SCSEP recipient must also submit a final closeout FSR to the Department via the Internet within 90 days after the end of the grant period. The Department will provide instructions for the preparation of this report. (OAA § 503(f)(3)).

(1) Financial data must be reported on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities as required by the Department.

(2) If the SCSEP recipient's accounting records are not normally kept on the accrual basis of accounting, the SCSEP recipient must develop accrual information through an analysis of the documentation on hand.

(b) In accordance with 29 CFR 97.40 (State and local governments) or 29 CFR 95.51 (non-profit and commercial

organizations), each SCSEP recipient must submit updated data on participants (including data on demographic characteristics and data regarding the performance measures), host agencies, and employers in an electronic format specified by the Department via the Internet within 30 days after the end of each of the first three quarters of the Program Year, on the last day of the fourth quarter of the Program Year, and within 90 days after the last day of the Program Year. Recipients wishing to correct data errors or omissions for their final Program Year report must do so within 90 days after the end of the Program Year. The Department will generate SCSEP Quarterly Progress Reports (QPRs), as well as the final QPR, as soon as possible after receipt of the data. (OAA § 503(f)(3)).

(c) Each State agency receiving title V funds must annually submit an equitable distribution report of SCSEP positions by all recipients in the State. The Department will provide instructions for the preparation of this report. (OAA § 508).

(d) In addition to the data required to be submitted under paragraph (b) of this section, each SCSEP recipient may be required to collect data and submit reports on the performance measures. See subpart G. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(e) In addition to the data required to be submitted under paragraph (b) of this section, each SCSEP recipient may be required to collect data and submit reports about the demographic characteristics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare these reports.

(f) Federal agencies that receive and use SCSEP funds under interagency agreements must submit project financial and progress reports in accordance with this section. Federal recipients must maintain the necessary records that support required reports according to instructions provided by the Department. (OAA § 503(f)(3)).

(g) Recipients may be required to maintain records that contain any other information that the Department

determines to be appropriate in support of any other reports that the Department may require. (OAA § 503(f)(3)).

(h) Grantees submitting 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 reports, which may result in failing one of the responsibility tests outlined in § 641.430 and OAA § 514(d).

§ 641.881 What are the SCSEP recipient's responsibilities relating to awards to sub-recipients?

(a) Recipients are responsible for ensuring that all awards to sub-recipients are conducted in a manner to provide, to the maximum extent practicable, full and open competition in accordance with the procurement procedures in 29 CFR 95.43 (non-profit and commercial organizations) and 29 CFR 97.36 (State and local governments).

(b) The SCSEP recipient is responsible for all grant activities, including the performance of SCSEP activities by sub-recipients, and ensuring that sub-recipients comply with the OAA and this part. (See also OAA § 514(d) and § 641.430 of this part on responsibility tests).

(c) Recipients must follow their own procedures for allocating funds to other entities. The Department will not grant funds to another entity on the recipient's behalf.

(d)(1) National grantees that receive grants to provide services in an area where a substantial population of individuals with barriers to employment exists must, in selecting sub-recipients, give special consideration to organizations (including former national grant recipients) with demonstrated expertise in serving such individuals. (OAA § 514(e)(2)).

(2) For purposes of this section, the term "individuals with barriers to employment" means minority individuals, Indian individuals, individuals with greatest economic need, and most-in-need individuals. (OAA § 514(e)(1)).

§ 641.884 What are the grant closeout procedures?

SCSEP recipients must follow the grant closeout procedures at 29 CFR

97.50 (State and local governments) or 29 CFR 95.71 (non-profit and government organizations), as appropriate. The Department will issue supplementary closeout instructions to OAA title V recipients as necessary.

Subpart I—Grievance Procedures and Appeals Process

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

(a) An applicant for financial assistance under title V of the OAA that is dissatisfied because it was not awarded financial assistance in whole or in part may request that the Grant Officer provide an explanation for not awarding financial assistance to that applicant. The request must be filed within 10 days of the date of notification indicating that financial assistance would not be awarded. The Grant Officer must provide the protesting applicant with feedback concerning its proposal within 21 days of the protest. Applicants may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ), within 21 days of the date of the Grant Officer's feedback on the proposal, or within 21 days of the Grant Officer's notification that financial assistance would not be awarded if the applicant does not request feedback on its proposal. The appeal may be for a part or the whole of the denied funding. This appeal will not in any way interfere with the Department's decisions to fund other organizations to provide services during the appeal period.

(b) Failure to file an appeal within the 21 days provided in paragraph (a) of this section constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this section must state specifically those issues in the Grant Officer's notification upon which review is requested. Those provisions of the Grant Officer's notification not specified for review are considered resolved and not subject to further 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 North, 800 K Street,

NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2-96, published at 61 FR 19978, May 3, 1996), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave., NW., Room N5404, Washington, DC 20210. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

(f) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(1) The appeal is not considered a complaint; and

(2) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the ALJ conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the ALJ by the official issuing the notification not to award financial assistance must be part of the evidentiary record of the case and need not be moved into evidence.

(g) The ALJ should render a written decision no later than 90 days after the closing of the record.

§ 641.910

(h) The remedies available are provided in § 641.470.

EFFECTIVE DATE NOTE: At 85 FR 13028, Mar. 6 2020, § 641.900 was amended by revising paragraph (e), effective Apr. 20, 2020. For the convenience of the user, the added and revised text is set forth as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

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§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

(a) Each grantee must establish, and describe in the grant agreement, grievance procedures for resolving complaints, other than those described by paragraph (d) of this section, arising between the grantee, employees of the grantee, sub-recipients, and applicants or participants.

(b) The Department will not review final determinations made under paragraph (a) of this section, except to determine whether the grantee's grievance procedures were followed, and according to paragraph (c) of this section.

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the

grantee's procedures, may be filed with the Chief, Division of Adult Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

(d) Questions about, or complaints alleging a violation of, the non-discrimination requirements of title VI of the Civil Rights Act of 1964, sec. 504 of the Rehabilitation Act of 1973, sec. 188 of the Workforce Innovation and Opportunity Act (WIOA), or their implementing regulations, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIOA sec. 188 may be filed initially at the grantee level. See 29 CFR 38.69, 38.72. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 38.69 through 38.76 to resolve the complaint.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017]

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

(a) Appeals from a final disallowance of costs as a result of an audit must be made under 29 CFR 96.63.

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR part 31 or 29 CFR part 38, as appropriate.

(c) Protests and appeals of decisions not to award a grant, in whole or in part, will be handled under § 641.900.

(d) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of costs as a result of an audit, as described in paragraph (a) of this section), payment, suspension or termination, or the imposition of sanctions, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified

mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 400 North, 800 K Street, NW., Washington, DC 20001 with a copy to the Department official who signed the final determination.

(2) The request for hearing must be accompanied by a copy of the final determination, and must state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(3) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(i) The appeal is not considered as a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record. In ordering relief, the ALJ may exercise the full authority of the Secretary under the OAA.

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 2-96), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the

ARB is 200 Constitution Ave., NW., Room N5404, Washington, DC 20210. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017]

EFFECTIVE DATE NOTE: At 85 FR 13028, Mar. 6, 2020, §641.920 was amended by revising paragraph (d)(5), effective Apr. 20, 2020. For the convenience of the user, the added and revised text is set forth as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

§ 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint that has been filed according to the requirements of §641.920 (a), (c), and (d) 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) Unless the parties agree in writing to extend the period, 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 the final agency decision.

PART 645—PROVISIONS GOVERNING WELFARE-TO-WORK GRANTS

Subpart A—Scope and Purpose

Sec.

- 645.100 What does this part cover?
- 645.110 What are the purposes of the Welfare-to-Work program?
- 645.120 What definitions apply to this part?
- 645.125 What are the roles of the local and State governmental partners in the governance of the WtW program?
- 645.130 What are the effective dates for the Welfare-to-Work 1999 Amendments?
- 645.135 What is the effective date for spending Federal Welfare-to-Work formula funds on newly eligible participants and newly authorized services?

Subpart B—General Program and Administrative Requirements

- 645.200 What does this subpart cover?
- 645.210 What is meant by the terms “entity” and “project” in the statutory phrase “an entity that operates a project” with Welfare-to-Work funds?
- 645.211 How must Welfare-to-Work funds be spent by the operating entity?
- 645.212 Who may be served under the general eligibility and noncustodial parent eligibility (primary eligibility) provision?
- 645.213 Who may be served as an individual in the “other eligibles” (30 percent) provision?
- 645.214 How will Welfare-to-Work participant eligibility be determined?

- 645.215 What must a WtW operating entity that serves noncustodial parent participants do?
- 645.220 What activities are allowable under this part?
- 645.221 For what activities and services must local boards use contracts and vouchers?
- 645.225 How do Welfare-to-Work activities relate to activities provided under TANF and other related programs?
- 645.230 What general fiscal and administrative rules apply to the use of Federal funds?
- 645.233 What are the time limitations on the expenditure of Welfare-to-Work grant funds?
- 645.235 What types of activities are subject to the administrative cost limit on Welfare-to-Work grants?
- 645.240 What are the reporting requirements for Welfare-to-Work programs?
- 645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?
- 645.250 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?
- 645.255 What nondiscrimination protections apply to participants in Welfare-to-Work programs?
- 645.260 What health and safety provisions apply to participants in Welfare-to-Work programs?
- 645.265 What safeguards are there to ensure that participants in Welfare-to-Work employment activities do not displace other employees?
- 645.270 What procedures are there to ensure that currently employed workers may file grievances regarding displacement and that Welfare-to-Work participants in employment activities may file grievances regarding displacement, health and safety standards and gender discrimination?

Subpart C—Additional Formula Grant Administrative Requirements and Procedures

- 645.300 What constitutes an allowable match?
- 645.310 What assurances must a State provide that it will make the required matching expenditures?
- 645.315 What actions are to be taken if a State fails to make the required matching expenditures?

Subpart D—State Formula Grant Administration

- 645.400 Under what conditions may the Governor request a waiver to designate an alternate local administering agency?