

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 641****Office of the Secretary****29 CFR Part 89**

RIN 1205-AA29

**Senior Community Service Employment Program**

**AGENCY:** Employment and Training Administration and Office of the Secretary, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the regulations for the Senior Community Service Employment Program (SCSEP) to implement the Older American Act Amendments of 1984, 1987, and 1992 and to make clarifying changes. This regulation provides administrative and programmatic guidance and requirements for the implementation of the SCSEP.

**EFFECTIVE DATE:** June 30, 1995

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Atkinson, Chief, Division of Older Worker Programs. Telephone: (202) 219-4778 (this is not a toll-free number). Copies of this final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

**SUPPLEMENTARY INFORMATION:****A. Background**

As authorized by title V of the Older Americans Act (OAA), as amended (42 U.S.C. 3056, *et seq.*), the Senior Community Service Employment Program (SCSEP) fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are fifty-five years old or older. The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) administers the program by means of grant agreements with eligible organizations, such as governmental entities and certain public and private non-profit agencies and organizations. Pursuant to the OAA, the Department in 1973 established the SCSEP.

The SCSEP regulations were last revised in 1976: 29 CFR part 89, 41 FR 9006 (March 2, 1976). The SCSEP legislation has been amended by the following laws since the last revision of

the regulation: Pub. L. 95-478, section 105 (October 18, 1978); Pub. L. 97-115, section 12 (December 29, 1981); Pub. L. 98-459, sections 501-05 (October 9, 1984); Pub. L. 100-175, sections 161-66 (December 7, 1987); and Pub. L. 102-375, sections 502-11 (September 30, 1992) and Pub. L. 103-171 (December 2, 1993). On April 26, 1994, the Department published a notice of proposed rule making governing the SCSEP in the **Federal Register** (59 FR 21875) for the purpose of soliciting public comments. The comments made in response to the April 26, 1994, **Federal Register** proposed rule have been considered in drafting this final rule. Also implemented are the 1987 and 1992 amendments contained in Pub. L. 100-175 (December 7, 1987) and Pub. L. 102-375 (September 30, 1992). This document issues the final rule to conform to the OAA and to make technical changes based on the Department's experience in administering the SCSEP.

**B. Procedural Matters**

This final rule is not classified as a "major rule" under Executive Order 12866 concerning Federal regulations because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the final rule.

**Paperwork Reduction Act**

Pursuant to the Paperwork Reduction Act, information collection requirements which must be imposed as a result of the final rule are being submitted separately to the Office of Management and Budget.

**Catalogue of Federal Domestic Assistance Number**

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.235 "Senior

Community Service Employment Program."

**List of Subjects in 20 CFR Part 641**

Allotment, Allocation, Coordination, Dual eligibility, Cooperative relationships, Assessment, Eligibility, Individual development plan, Over-enrollment, Training, and Administrative requirements.

**Format of Final Rule**

29 CFR part 89 is redesignated as 20 CFR part 641.

**Major Changes**

A total of twenty-eight comments were received in response to the proposed rule. Sources of comments received by the close of the comment period were as follows: National SCSEP grantees (5); State units on aging (9); area agencies on aging (4); community-based organizations (3); public interest group (1); Federal agencies (2); and State Job Service (2). In addition, two responses were received after the comment period from county officials, which were also considered.

Based on the comments the Department has received, the majority reflect approval of the regulations; however, one public interest group was displeased with the Department's policy regarding unsubsidized employment. The comments addressed thirty different sections of the regulations with the bulk of the comments addressing nine sections. A number of the comments extended beyond the regulations to pose operational questions. Each of the comments and the respective regulatory sections are addressed below.

**§ 641.101 Scope and purpose.**

Consistent with changes made in response to comments on § 641.301 of this part regarding the purpose of the program, this section has been reworded to acknowledge that SCSEP provides community service and promotes transition to unsubsidized employment.

**§ 641.102 Definitions.**

There were a total of fifteen comments that dealt with ten definitions.

There were three identical comments on "authorized position". The thrust of the comments was to request that the regulation include a required annual adjustment by the Department concerning the value of each position. Because Congressional action controls the appropriations levels which, in turn, determine the amount of funds available for authorized positions, this unit cost concern will continue to be dealt with on an administrative basis. Therefore,

no change is made to this regulatory provision.

There were two similar comments on the "dual eligibility" definition which requested the Department update the proposed regulations by including Section 204(d) of the Job Training Partnership Act (JTPA) so that the regulations will reflect the JTPA amendment to the OAA. The language at § 641.102 is amended to reflect coverage of both sections 203 and 204(d) by adding a citation to Title II-A.

One commenter requested that the Department alter the terminology throughout to use the term "grantee or subgrantee" rather than "recipient or subrecipient". As a result of this comment, the definitions for "recipient and subrecipient" are replaced by the term "grantee or subgrantee" and these terms are used throughout the regulations.

Three commenters requested the Department to revise the definition of "enrollee" in order to: acknowledge the services provided by grantees, overcome potential misunderstandings vis-a-vis JTPA, and address the employee aspect of the enrollee. The Department acknowledges the need to incorporate additional information regarding grantee-performed services so a more accurate picture of the services will be provided. However, the Department does not think that changing the definition will accomplish this objective. Therefore, the goal of more accurately reflecting the services will be addressed administratively via reporting changes, if there is sufficient demand to do so. Suggestions for reporting changes that would more accurately reflect what is being accomplished at the project level are welcomed. The Department has clarified the enrollee/trainee relationship with JTPA through the issuance of an administrative directive. Furthermore, the JTPA regulations now clarify this relationship.

The status of an enrollee as an employee is a complex concern that cannot be addressed easily. While the authorizing legislation is silent on this matter, for the last two years Congressional intent regarding the enrollee role has clearly been expressed in the following appropriations report language: "they [enrollees] are not employees of the U.S. Department of Labor, or State or national sponsors administering the Senior Community Service Program." It is likely that the report language will continue to be used and grantees and subgrantees can cite the reports when corresponding with other Federal and State agencies. However, since the appropriations language applies only to the period of

the appropriations, since report language is not binding and since these regulations apply solely to the OAA, the report language cannot bind non-Department of Labor regulatory agencies. No useful propose would be served by incorporating the report language in the regulations. Consistent with the comments received on § 641.310 which recommended the deletion of the word "employment" from the term "community service employment assignment", this word is deleted in the definition of the term "enrollee" to avoid misunderstandings between enrollees and staff.

There was one comment that requested the definition of "host agency" be altered to add the word "exclusively" after the word "used" and before the phrase "as a place for sectarian religious instruction; and substitute the word "training" for "work" site. Neither suggestion is incorporated into the definition since the suggested changes may create further problems of interpretation rather than clarify the definition. The addition of the word "exclusively" as it applies to sectarian religious instruction would extend the definition beyond its present intent and the use of the word "training" instead of "job" site would establish an emphasis beyond community service.

Two commenters requested relief from the requirement to calculate an applicant's income using either the preceding six-month or twelve-month period as it applies to the definition of "low income" because they believe elimination of this requirement would permit the grantee or subgrantee to deal with homeless persons or other emergencies more expediently. The Department believes that such a change would be inconsistent with eligibility determinations for other employment and training programs and create additional linkage problems; therefore, this change is not incorporated. However, as a result of reviewing this definition, it was noted that there was no reference to the family's income. This shortcoming is corrected by adding the phrase "of the family" after the word "income".

There were three comments on the definition of "poor employment prospects" which addressed various aspects of this term. Two of the commenters wanted additional language that would include individuals living in rural and urban areas. Since the proposed definition permitted additional categories to be identified and persons living in isolated areas have special problems in finding employment, this term is amended by

adding the phrase, "or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.". The remaining comment pointed out the health problems of older Americans which may prevent them from performing many jobs. It is true that some older Americans do have health problems which would prevent them from being employed, but the objective of the program is to obtain employment for all individuals who are enrolled; therefore, no change is made to establish any limitations.

There was a proposal to add a new definition of "similar public occupations" to address possible misunderstandings on enrollee wages. The addition of such a term may create confusion with the "maintenance of effort" requirements found in § 641.325, rather than solving a possible misunderstanding on enrollee wages. No position should be established which in any way would indicate maintenance of effort violations. Positions established under SCSEP should be designed specifically for the enrollee and not represent ongoing duties that have previously been performed by staff of the host agency.

Finally, there was a recommendation to expand the definition of "residence" to include the word, "address" so as to be able to work with homeless individuals more easily. Although the present definition does not preclude working with the homeless, the phrase "or address" is added to overcome possible limiting interpretations.

#### § 641.201 Allocation of funds.

There were two comments regarding language changes to paragraph (c) of this section, which were: (1) To drop the phrase, "and the amount allotted to each project"; and (2) to add the phrase, "or a project sponsor designated by the Department". As a result of these requests, both changes are made. The suggested deletion more correctly states the current practice of not requiring the amount allotted to be identified. The suggestion to add the language on the project sponsor acknowledges the option available to Governors to relinquish the State share of the allocations to national grants.

#### § 641.205 Responsibility review.

There were three comments on this section. Two of the comments sought relief from the 90-day requirement for the submission of the final closeout documents in paragraph (c)(5). This requirement is part of the administrative requirements for closeouts applicable to all DOL programs which are contained

at 29 CFR 95.71 or 29 CFR 97.50, as appropriate; therefore, no change is made to this paragraph. However, if additional time is needed to prepare the closeout documents, waivers can be provided administratively. The third comment suggested strengthening this section by adding several new "responsibility" provisions from the Federal Acquisition Regulation which deal with contracts. This is a grant program, and the present set of provisions contained in this section provide sufficient authority to ensure that grantees are responsible entities. Clarifications are provided for paragraphs (a) and (c)(9). The phrase "included in (b) and (c) below" is added to ensure the reader understands that the 13 responsibility tests consist of both paragraphs. The word "have" is deleted along with the "ed" from the word "maintained" in paragraph (c)(9) to maintain parallel sentence structure.

#### § 641.207 Negotiation.

The phrase "planned occupational categories of SCSEP" is removed and the phrase "community service" is substituted to overcome any misunderstandings in paragraph (b)(1) about the intent of this paragraph.

#### § 641.301 Grant operations.

There was one comment relating to the purpose of the program. The comment recommended expanding the task of the grantees to include the development of appropriate training, as well as work assignments. Since the grantees already explore the training needs of the individual as part of the assessment, this expanded language is unnecessary. The legislatively-mandated purpose of the program is community service. This suggested addition may confuse project operators rather than clarify; therefore, it is not adopted. The word "dual" is substituted for the word "primary" in paragraph (b) to acknowledge that there is more than one program purpose and the phrase, "and to provide useful community service" is deleted since "community service" is already used in the same sentence. As noted in the comments addressed in § 641.310 and acknowledged in the definition of enrollee, the word "employment" is deleted in paragraph (b) to prevent confusion between the enrollees and the staff about whether the enrollee is assigned to a community service position or a job. The phrase "and will promote unsubsidized employment opportunities" is added the last sentence in paragraph (b) consistent with the change to the word "dual" above.

#### § 641.302 Grantee responsibilities.

There were a total of eight comments which addressed three separate areas of this section. Four of the comments questioned the need to provide documentation on an individual's eligibility for the program. While this concern is valid, the need to ensure that only eligible persons are served outweighs this concern. The operating guidance on documentation will be widely circulated for comment prior to the implementation of this provision. The remaining four comments sought language clarifications. The commenters asked the DOL to clarify that wages are to be paid for community service. As a result of the request, the word "remit" in the opening paragraph is substituted for the word "provide" and the phrase "for community service assignments and provide" is added while the phrase "skill acquisition or" is deleted. One commenter suggested the regulations directly quote the OAA rather than paraphrasing it in paragraph (a)(3) to clearly state the legislative intent of whom is to be served. For consistency, a portion of the language from section 502(b)(1)(M) of the OAA is quoted rather than paraphrased. Lastly, a commenter suggested that a specific number of monitoring trips be inserted in paragraph (b). Rather than establish a regulatory numerical requirement for monitoring visits for grantees, that concern will continue to be dealt with administratively.

#### § 641.303 Cooperative relationships.

In order to avoid any potential confusion regarding local consultations, the specific wording from 502(d)(1) of the OAA is inserted in paragraph (b)(5).

#### § 641.304 Recruitment and selection of enrollees.

There were five comments on this section. Three of the commenters asked that the requirement for listing vacancies with the Job Service be altered to a requirement to notify the Job Service of vacancies so there is no confusion about the intent. Another commenter wanted all private sector jobs listed with the Job Service. The remaining commenter did not want to be hindered by having to notify the Job Service. The language is altered by omitting the phrase "listing of vacancies with" and inserting in its place the term, "notifying" and adding the phrase "when vacancies occur" in the first paragraph of this section. This is to notify the Job Service of SCSEP vacancies only when they occur since SCSEP grantees cannot control internal State employment security agencies' procedures to list positions.

#### § 641.305 Enrollment eligibility.

There were a total of eleven comments on this section. In addition, in order to clarify eligibility, a change is made to paragraph (a)(2) to clarify that re-enrollment is appropriate when an enrollee leaves the SCSEP or unsubsidized employment through no fault of the enrollee, for example, if the enrollee becomes ill. Two commenters asked that section 204(d)(2)(A) of the JTPA be cited to reflect consistency with the technical amendments to the OAA. As a result of the 1994 technical amendments to the OAA which impact on the JTPA, paragraph (d)(2) of this section is altered to broaden the reference to include a citation to Title II-A of the JTPA so it is clear that it applies to both section 203 and 204(d). Two commenters asked that the regulations acknowledge that the enrollment eligibility requirements could be changed by other Federal laws. Paragraph (c) of this section is altered by adding the phrase "unless required by Federal law". In paragraph (b)(2), one commenter identified an incorrect citation to § 641.103 which is corrected to read § 641.102. Also in paragraph (b)(2), a second sentence is added to permit disabled persons to be considered as a family of one for income eligibility purposes. Two commenters asked that the twelve-month recertification requirement be dropped. It is the Department's intent that recertifications be conducted every twelve months if an enrollee continues in the program; therefore, the requirement is retained. One commenter expressed concern about the eligibility documentation requirement previously addressed under § 641.302(c), Grantee responsibility, above. As previously indicated, specific administrative requirements will be widely circulated for comment in order to limit, to the extent possible, burdens being placed on grantees. One commenter asked for a clarification on the meaning of the term "permanent address". To overcome any limiting reference, the word "permanent" is removed from the definition for residence, as previously noted.

#### § 641.306 Enrollment priorities.

There were five comments relating to this section. Two commenters indicated support for the changes. One commenter pointed out a grammatical error in paragraph (a)(3) which is amended to read "seek" rather than "seeks". There were two requests for clarification of paragraph (a)(3) regarding who may return to the program. In response, individuals may potentially return to the program if they are not at fault in

losing their unsubsidized job or if they have become ill and are forced to leave their unsubsidized employment. Paragraph (a)(3) is amended to reflect this clarification with the addition of the phrase, "through no fault of their own". The provision on vacant positions in paragraph (c) is clarified by adding the sentence "[T]he priorities do not apply to the experimental private sector projects." to prevent any misunderstanding about the non-application of enrollment priorities to the experimental project positions that are authorized in § 641.326. Also, the phrase "community service" is added before the word "position" to be consistent with the addition of the new sentence. Also, in this paragraph, the word "and" replaces the word "but" to more clearly state the intent.

#### § 641.308 Orientation.

Paragraph (a) of this section is amended by adding language to acknowledge that orientation cannot always be conducted prior to the commencement of a community service assignment. The word "for" replaces the word "to" in paragraph (a) to improve readability. Paragraph (b) is amended by substituting the word "an" for the word "the", and adding the phrase, "similar to the one", for clarity. Paragraph (c) is amended to read "[T]he grantee or subgrantee shall ensure that host agencies provide adequate supervision and adequate orientation and instruction regarding, among, other things, job duties and safe working procedures".

#### § 641.309 Assessment and reassessment.

There were six comments on this section requesting clarifications of paragraphs (a), (b), (d), (e), and (g). Paragraph (a) is revised by inserting the phrase, "and community service objectives" in addition to "employment" and "training" to ensure that the community service aspect of the program is highlighted. The phrase "for each individual" is shifted to the end of the sentence so it is clear that it applies to both the assignment and objectives. A new paragraph (b) is added to address the assessment of physical capabilities and the remaining paragraphs are renumbered (c)-(h). An assessment of physical ability is a pre-employment medical inquiry and, therefore, must conform to the prescriptions of Section 504 of the Rehabilitation Act of 1973, as amended (section 504), the Americans with Disabilities Act of 1990 (ADA) and their respective implementing regulations. See, e.g., 29 CFR 32.15, the section of the Department's section 504 regulations that addresses pre-

employment inquiries. Prior to the offer of a particular community service assignment, disability-related inquiries may not be made. Generally, the assessment of physical ability is limited to an inquiry as to whether the enrollee is capable, with or without a reasonable accommodation, of performing the functions of the job (essential and/or marginal). Enrollees may also be asked to describe or demonstrate how they would perform these functions. Once a bona fide community service assignment offer has been made, medical inquiries, including medical examinations, may be made. However, these inquiries are subject to section 504 of the Rehabilitation Act, the ADA, and their implementing regulations. For example, with respect to medical examinations, 29 CFR 32.15 provides that the examination must be a routine part of the host agency's selection process for the job in question and must be performed by a physician qualified to make functional assessments. If a particular medical test is a prerequisite to placement into a community service assignment, including a medical test that is required by a local ordinance or State law, it is recommended that it be conducted at the same time as the physical examination described in paragraph (b)(4) of this section.

The former paragraph (b) (now paragraph (c)) is not altered to incorporate suggested language on other appropriate employment and training opportunities since this is a community service program. In the new paragraph (e) (formerly paragraph (d)), the acronym "IDP" replaces the phrase, "service strategy", in order to avoid confusion with the term, "individual service strategy", used under JTPA. Also the phrase "program year" is deleted from the new paragraph (e) and replaced by the phrase "a 12-month period" to overcome situations where an enrollee may be in the program for only brief periods. In the new paragraph (f), (formerly paragraph (e)) the phrase "upon completion of the review" is deleted to ensure that grantees understand that alternative assignments may be permitted at any point while working with an enrollee. The new paragraph (h) (formerly paragraph (g)) is amended by adding language to clarify that the phrase, "recent assessment" means an assessment done within the last year.

#### § 641.310 Community service assignments.

There were five comments on this section. Two commenters requested the deletion of the word "employment" from the title, the text of this section

and elsewhere in the final rule. The word "employment" is removed from the title and this section, as well as elsewhere in the final rule, to emphasize that the community service assignment does not constitute an enrollee's job. The term "community service assignment" is used throughout the regulation. In a similar manner, the word "placed" is substituted for the word "employed" in paragraph (a)(1) in order to ensure parallel construction. One commenter requested that the phrase "as soon as possible" in § 641.310(a) be deleted since it is not always possible to refer an enrollee to a community service assignment. This provision is retained since this is consistent with the Department's intent that there be no lengthy delays in enrollment after receipt of orientation. Two commenters requested clarifying the provision in § 641.310(a)(1) by stating that project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP. This change is incorporated into paragraph (a)(1) in lieu of the last two sentences of the paragraph since the revised sentence more accurately communicates Departmental policy. The phrase, "if appropriate according to the IDP" is added to ensure consistency with § 641.308. The last two sentences of paragraph (a)(1) are deleted. The 1300 hour provision in paragraph (b) is also retained. The second sentence in paragraph (b)(2) is moved to become the second sentence in paragraph (b)(3) since both paragraphs refer to periods of less than 20 hours. There were two comments on § 641.310(d). There was one suggestion to permit the use of SCSEP funds for reasonable accommodations. This suggestion is incorporated into § 641.403 since that section deals with allowable costs, but it is recognized that due to limited availability of administrative funds, it may not be practical to do this except in limited situations. There also was a suggestion that § 641.310(d) be amended by inserting a sentence on work place conditions to address ergonomically sound conditions to prevent repetitive motion injuries such as carpal tunnel syndrome. This suggestion is not adopted since the comment is limited primarily to office occupations and the work place is much broader for the title V program. However, a bulletin will be issued on the broader issue of workplace safety and sound ergonomic design concerns as suggested by the commenter.

**§ 641.311 Enrollee wages and fringe benefits.**

There were eleven comments on this section. Five addressed concerns regarding the use of physical examinations given in order to assess an enrollee's physical ability and need for any supportive service(s). The assessment of an enrollee's physical ability and the *physical examination* provided to enrollees as a program benefit are two separate activities. As a result, assessment of an enrollee's physical ability is moved to § 641.309 in order to group all activities on assessment in a single section. Since physical examinations are a fringe benefit, they are addressed in this section. Therefore, paragraph (b)(3) is amended to reflect this change and it is numbered as (i) for the examination and (ii) for the waiver.

Paragraph (b)(3) of this section addresses the physical examination that is provided to enrollees as a fringe benefit. The physical examination must be offered within 60 working days after commencement of the community service assignment instead of before the first day of compensated participation. It is not an eligibility criterion, nor should the results of the examination be taken into consideration when determining a community service assignment. The physician who conducts the examination should only give a copy directly to the enrollee rather than to program staff. An enrollee should not have to request a copy, as suggested by one commenter. One commenter indicated that the impact of the physical examinations upon the administrative budget category needs to be considered. Since the regulation is changed to authorize charging the cost of the physical examination to the enrollee wages and fringe cost category, the regulations provide additional flexibility, rather than limiting flexibility, and no further change is made. Another commenter suggested SCSEP funds could be used to insure reasonable accommodation for participants at the host agency. As indicated above, such expenditures will be deemed allowable, within funding limitations.

The Department was also asked to consider additional regulatory changes that would exempt the SCSEP program from payment of unemployment compensation taxes to States. In addition, the Department was asked to substitute the phrase "host work site" for the word "employer" at § 641.311 (a)(3) and include a new definition at § 641.102 for similar public occupations. Neither of these suggestions are implemented for two

reasons. First, with regard to unemployment compensation, these regulations cannot alter the federal or State unemployment compensation laws that regulate this area of concern since such determinations must be made individually by State employment security agencies. (Since the issuance of a directive on the SCSEP by the Unemployment Insurance Service, the underlying question of unemployment compensation legislation has been virtually eliminated). Second, as indicated in response to the comments on definitions, community service assignments for enrollees must be free from any potential charges of non-maintenance of effort which could be inferred by limiting the application of prevailing rates of pay to a single work site of the host work site.

Finally, a typographical error on the word "waiver" is corrected in paragraph (b)(2).

**§ 641.312 Enrollee supportive services.**

There were ten comments received that dealt with the need to clarify the unallowability of enrollee transportation costs. Two of these expressed a concern, that the unallowability of such costs would be a hardship for host agencies. Another commenter wanted the option to pay transportation costs eliminated since it could serve as a disincentive to enrollees seeking unsubsidized employment. The remaining seven commenters requested a clarification of the regulations to make it clear that SCSEP funds can be used to pay for enrollee travel when they are working in a SCSEP administrative capacity. Since section 502(b)(1)(L) of the OAA only authorizes the payment of necessary transportation costs of eligible individuals which may be incurred in the employment in any project funded under this title, the Department amends § 641.312(5)(ii) to read "[G]rant funds may not be expended to support the transportation costs of host agencies or programs funded other than under title V of the OAA, except where provided by federal law". Because federal appropriations law prevents funds from one grant being used to defray the expenses incurred under a separate grant, this provision clarifies that SCSEP funds cannot be used for certain host-agency travel costs which are to be met under another federal grant or local program. However, enrollee travel to and from the work site, in selected cases, is necessary in isolated settings where no transportation is available and that option is retained. There was one comment received that suggested the regulations should require grantees and subgrantees to make reasonable

accommodations for enrollees with disabilities at host agencies. The Department fully supports efforts to accommodate individuals with disabilities. However, in order to protect the limited funds available for this program, the regulation requires that the expenditure be made with "administrative" funds to the extent that funding permits.

**§ 641.313 Training.**

There were a total of ten comments on this section. As suggested by two commenters, the "prior to and in preparation for actual community service assignment" phrase in paragraph (a) is removed since training before commencement of a community service assignment is not always practical or possible. In addition, paragraph (a) is amended by adding language that states a grantee is to provide "or arrange for training that is specific to an enrollee's community service assignment". Three of the commenters requested an increase in training hours. Paragraph (b) is amended to now provide up to 500 hours of training for enrollees "per grant year" and the word "orientation" is deleted to overcome potential confusion with § 641.308, Orientation. Also, as suggested by a commenter, the original paragraph (c) is deleted since it is a duplication of paragraph (a) and the remaining paragraphs are renumbered to (c)-(h). The new paragraph (f) (formerly paragraph (g)) is prefaced by deleting the phrase, "at no cost to the project" and adding the phrase, "whenever possible" to acknowledge it is not always possible. In addition this paragraph is amended by deleting the phrase, "at no cost to title V" to more clearly state the intent of the OAA. There were two comments dealing with training costs under SCSEP. Since it is not encouraged for grantees and subgrantees to use SCSEP funds for training, due to the limited funding available, paragraph (f) is amended to read that grantees and subgrantees shall seek training "whenever possible at reduced or no costs to title V". Paragraph (g) is amended to remove the "al" from the word "self-development" to improve the readability. Two commenters suggested rewording paragraph (h) to more positively state this provision. The Department agrees with the suggestion and paragraph (h) is amended to read: "Joint programming, including co-enrollment, when appropriate, between title V programs and programs authorized under the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged".

**§ 641.314 Placement into unsubsidized employment.**

There were three comments on this section. Two of those comments dealt with an unsubsidized employment goal of the program. The first commenter raised a question about whether the increased emphasis on the unsubsidized employment goal would detract from the original intention of the SCSEP being a community service program. The second commenter suggested that individual goals be established for each grantee depending upon specific local situations. Since the unsubsidized employment goal remains unchanged and continues as a goal, rather than a firm requirement, it is retained as a single measure. The other comment sought a change on enrollee placement "follow-up", set forth in paragraph (d), that would reduce the follow-up time frame to one month from the current 90 days as a means to reinforce successful placement of the former enrollee. This suggestion is an excellent operational procedure and would assist grantees in working with employers by identifying enrollee employment-related problems, as well as areas where the grantee can better assist the employer. Nevertheless, the Department is not including such a numerical requirement in the regulations since a one-month follow-up requirement may not be possible in all instances. Paragraph (b) is revised to insert the word "project's" before the word "annual" to clarify that the goal applies to the total grant period as opposed to a monthly or quarterly requirement. Also, the phrase, "within the project year" is deleted from paragraph (b) to prevent a misinterpretation.

**§ 641.315 Maximum duration of enrollment.**

There were nine comments on this section with seven supporting this provision. However, one commenter requested that this section be omitted since, in the commenter's opinion, it is contrary to the original goals of the program. The Department thinks that since this section will provide grantees with additional flexibility, it is in the best interest of the program to retain this provision. To prevent misinterpretation, another commenter suggested the following language be added to this section: "Time limits on enrollment shall be reasonable and IDP's shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired." This change is incorporated since it is the intent of the regulations to retain a customer focus which should be consistent with the enrollee's IDP.

**§ 641.316 Individual development plan-related terminations.**

Eight comments were received on this section with seven supporting the provision. The remaining comment expressed concerns about implementation of the IDP requirement that will have to be addressed once the regulations are effective. This comment deals with issues beyond the scope of the regulations which will be addressed in an administrative issuance. As with the other administrative issuances, the Department plans to widely circulate drafts for comment prior to issuing operational guidance.

**§ 641.317 Status of enrollees.**

Four commenters requested clarification of the employment status of enrollees when they are working at community service assignments. They suggested that in addition to enrollees not being considered federal employees, they should also not be considered employees of the grantees or their subgrantees. As explained earlier, in the definitions section, the Department would like to clarify this through regulations since it would overcome many misunderstandings and would also eliminate the need for administrative interpretations regarding employee/enrollee status by various governmental units. However, without specific language in the program legislation, regulatory guidance binding on other agencies administering other statutes cannot be issued in these regulations. Also, the language used by the appropriations committee for the past two years in the passage of these appropriations bills has the effect of implementing these suggestions on a year-to-year basis. Of course, subsequent authorizing legislation could statutorily clarify employee/enrollee employment status.

**§ 641.318 Over-enrollment.**

There was one comment received regarding this section. It suggested substituting the word "temporary" for "short-term" to overcome any misunderstandings on the intent of the term. The Department agrees and this section is amended to reflect this clarification. The citation in paragraph (b)(2) is corrected to read section 502(b)(1)(P) instead of 502(b)(1)(O).

**§ 641.321 Political activities.**

Paragraph (a)(1) is amended by substituting the phrase "they are" for the phrase "enrollee is" since this provision applies to both enrollees and staff, as stated at the beginning of this provision. Paragraph (b)(1) is amended by substituting "Special Counsel (OSC)"

for "Personnel Management (OSC)" to clarify which office has current responsibility for interpreting the Hatch Act; the U.S. Office of the Special Counsel (OSC) is located at 1730 M Street, NW., Suite 300, Washington, DC 20036-4505. Paragraph (b)(2) is amended by substituting the word "have" for the phrase, "be submitted for approval to" to overcome any potential misunderstandings about the need to seek individual approvals of the notice to be displayed and provided to the enrollees.

**§ 641.323 Nepotism.**

There was one comment requesting the Department extend the waiver provision set forth in paragraph (a) to isolated rural areas. The Department thinks that rural areas are similar enough in population density to Native American reservations to justify extending the provision to rural areas; thus, this provision is added to paragraph (a). Also, paragraph (a) is amended by inserting the phrase, "who works" to clarify the person referenced in this paragraph. The phrase, "the total service population is 2,000 or less and is isolated, or where there is a history of dependence on public assistance" is deleted since these factors do not apply directly to the SCSEP program.

**§ 641.324 Enrollee and applicant complaint resolution.**

There was one comment questioning whether this section applied to host agencies. This section does not apply to host agencies. Because this is not a consideration requiring regulatory guidance, there is no change to the regulations.

**§ 641.326 Experimental private sector training projects.**

Paragraph (g) is amended by substituting a citation to title II-A of the JTPA for the old citation to section 204(d). Paragraph (h) is amended by adding the word "national" before the word "grantee" to ensure that it is understood that this provision applies only to national grantees; and by deleting the word "formulas" to eliminate any possible misunderstandings on the distribution of the State allocation for experimental private sector training projects. A new paragraph (i) is added to acknowledge that non-federal matching is not required specifically for projects under this section.

**§ 641.402 Administrative requirements.**

Paragraph (a) is amended by providing the present citation for the Department's administrative requirements. The former citation was

41 CFR part 29-70 and the present citation is 29 CFR part 95.

**§ 641.403 Allowable costs.**

There were three comments on this section. Two identified incorrect citations. The paragraph addressing "allowable fringe benefits costs" is incorrectly cited as "(d)(3)". This paragraph is amended to reflect that the proper citation is paragraph (e). Under the same paragraph, the term "workers" is substituted for the term "workman's" in order to use the correct term. The remaining comment expresses a concern that listing fringe benefits deemed allowable in paragraph (e) might result in enrollee disincentives to leave the program for unsubsidized employment. The listing does not establish enrollee entitlements. However, it is the Department's judgment that it is more helpful than it is harmful to list the types of allowable fringe benefits; therefore, this listing is retained. Paragraphs (b)(2)(iii) and (4) are amended by deleting the phrase "as not subject to OMB Circular A-122" to eliminate potential misinterpretations of this confusing phrase. A new § 641.403(d)(4) is added to provide that grantee funds may be used to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

**§ 641.404 Classification of cost.**

There were three comments on this section. One commenter questioned permitting enrollees to perform administrative functions, since these are not reflected in the administrative costs. The Department is retaining the provision permitting the use of enrollees to perform administrative functions. It has been a longstanding practice for grantees to maximize the number of enrollees by exposing them to administrative functions. This has been a win-win practice for both the grantee and the enrollees. To acknowledge existing policy, new language is added in § 641.310(a)(1) of the regulations to reflect that the use of enrollees to perform administrative functions is an allowable activity.

Another commenter requested that those training costs incurred to train sub-grantees not be counted against the administrative cost category. Since such expenditures cannot be applied against another cost category, the current provision is retained. The last comment sought inclusion of enrollee training costs as an enrollee wage and fringe benefit. Since the program is focused on

community service, enrollee training outside of SCSEP is sought only when appropriate to meet the needs of the enrollee. Paragraph (b) is amended by inserting the phrase, "including hours of" before the word "training" to clarify that this phrase applies to both community service and training. Paragraph (c)(6) is amended to add the phrase "such as tuition" to ensure that there is no misunderstanding regarding the use of the word "training", as used under paragraph (b).

**§ 641.405 Limitations on federal funds.**

The citation in paragraph (a) is corrected to read (b) instead of (6). Also, in this paragraph, the phrase "and periods during which limitation" is deleted since this phrase was intended as transitional language intended to apply to the 1985 draft proposed regulations and does not currently apply. In paragraph (b)(1), the word "grant" is altered to read "project", consistent with the legislative language. The sole comment received was on paragraph (b)(2) of this section. The commenter pointed out that the "75 percent rule" regarding expenditure of funds on enrollee wages and fringe benefits limited the flexibility to utilize resources for the section 502(e) experimental programs. The 75 percent limitation is retained since the basic program objective is to put as much of the funds as possible into the hands of the enrollee rather than divert funds to administrative functions.

**§ 641.406 Administrative cost waiver.**

The word "and" is substituted for the word "the" in the last sentence of the initial paragraph since there is a series of items. To improve reading of the regulation, the initial three sections are designated as paragraph (a) and the remaining information on waivers is designated as paragraph (b). Therefore, paragraphs (a)-(e) are renumbered as (1)-(5).

**§ 641.407 Non-federal share of project costs.**

This section is amended to provide the present citation for the calculation of the non-federal share. The regulations now are found at 29 CFR 97.24 or 29 CFR 95.23 instead of 41 CFR 29-70.206 (1984). In addition, this section is revised to assign each item on the list of exceptions to the matching requirement to a separately designated clause. Also the reference to the 502(e) projects is moved to § 641.326(i) so all items on this topic are in a single section.

**§ 641.408 Budget changes.**

This section is amended to provide the present citation for revision of budget and program plans. The present cite at 29 CFR 95.25, Revision of budget and program plans, is added and the previous cite at 41 CFR 29-70.211 (1984), *Modifications and Budget Revisions Procedure*, is deleted.

**§ 641.409 Grantee fiscal and performance reporting requirements.**

There were two comments on this section. One commenter suggested clarifying language at paragraph (c) in order to acknowledge that several Governors currently provide their State funding to national grantees for operation of the SCSEP program. The Department agrees with this clarification and amends paragraph (c) by adding "or another project sponsor designated by the Department". The second commenter asked if the Cash Transaction Report referred to in paragraph (b)(3) was necessary. Based on a review of other methods for obtaining information for draw downs of funds, the Department thinks that existing reports will suffice. Therefore, this report is discontinued upon the effective date of these regulations. Paragraphs (a) and (b) are amended to provide the new citation for reporting requirements and waivers for late reports are acknowledged, consistent with present practice. The present citations for paragraph (a) can be found at 29 CFR 95.91 and the previous citation of 41 CFR 29-70.209 3 (1984) is deleted. The present citation for paragraph (b) can be found at 29 CFR 95.52 and the previous cites of 41 CFR-29 70.207 2(a) (1984) and 41 CFR 29-70.208 (1984) are deleted.

**§ 641.410 Subgrant agreements.**

Paragraph (c) is amended to provide the present citation for grantee procurement. The present citation can be found at 29 CFR 95.40 through 95.48 and the previous citation of 41 CFR 29-70.216 (1984) is deleted.

**§ 641.411 Program income.**

This section is amended to provide the present citation for program income. The present citation can be found at 29 CFR 95.24 and the previous citation of 41 CFR 29-70.205 (1984) is deleted.

**§ 641.414 Grant closeout procedures.**

This section is amended to provide the present citation for grant closeout procedures. The present citation can be found at 29 CFR 97.50 or 29 CFR 95.71, as appropriate, and the previous citation of CFR part 97 is deleted.

*Other*

There were other comments that did not fall within any section. They are as follows:

1. Residential Health Positions. It was suggested that priority in the distribution of eligible slots be given to individuals in residential health care facilities. Since there is no legislative basis for providing such a priority, in the interest in local flexibility, we have chosen not to adopt an additional priority.

2. Administrative Costs. It was pointed out by two commenters that the 13.5 percent administrative cost limitation has remained static, while additional administrative responsibilities have been added. Congress recognized the administrative burdens they were creating in the passage of the 1992 amendments. The House report acknowledged that if additional administrative requirements, such as assessment and coordination, forced grantees to seek a waiver from the 13.5 percent level to the 15 percent ceiling, such a request should be accommodated.

3. Paperwork Reduction Act. A question was raised about why the older worker programs cannot use the same administrative forms as other employment and training programs. The regulations mandate the submission of necessary information. However, they do not mandate any particular forms. Since the Department encourages closer cooperation and coordination between programs within a State, such an approach within a State represents a goal the Department supports.

4. Social Security Eligibility. A suggestion was made that SCSEP income should not count in calculating eligibility for Supplemental Security Income under the Social Security program. Since the SCSEP regulations cannot impact on the legislation of other programs, this suggestion is not incorporated into these regulations.

5. Eligibility Criteria. A suggestion was made that the Department's guidelines on the SCSEP program's eligibility criteria need to be updated. The Department concurs with this observation and commits itself to issuing updated guidelines to replace an existing bulletin. Since these criteria are of an administrative nature, they are not incorporated into the regulations.

6. Congressional Intent. One comment was received which questioned the Department's implementation of the 1992 amendments' emphasis on placing individuals in unsubsidized employment. The unsubsidized employment goal of the program has

remained the same for the last nine years and these regulations do not alter this goal. Furthermore, the program can only serve a small percentage of all persons who potentially qualify for the program. Without turnover of the enrollees, no additional persons could be served beyond those currently enrolled. On a practical basis, many of those individuals who are served by the program need more than 20 hours a week of employment at the minimum wage to maintain themselves. Therefore, the modest placement goal encouraging projects to seek unsubsidized positions for such participants is retained. This option must be available to serve individuals who require unsubsidized employment.

**List of Subjects 20 CFR Part 641**

Aged, employment and grant programs—Labor.

**20 CFR Part 89**

Aged, employment and grant programs—Labor.

*Final Rule*

Under the Secretary's authority, 5 U.S.C. 301 and Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix, 29 CFR part 89 is redesignated as 20 CFR part 641 and revised to read as follows:

**PART 641—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM****Subpart A—Introductory Provisions**

- 641.101 Scope and purpose.
- 641.102 Definitions.

**Subpart B—Grant Planning and Application Procedures**

- 641.201 Allocation and allotment of title V funds.
- 641.202 Eligibility for title V funds.
- 641.203 Soliciting applications for title V funds.
- 641.204 Grant application requirements.
- 641.205 Responsibility review.
- 641.206 Grant application review.
- 641.207 Negotiation.
- 641.208 Rejection of grant application or project components.
- 641.209 Award of funds.

**Subpart C—Grant Operations**

- 641.301 General.
- 641.302 Grantee responsibilities.
- 641.303 Cooperative relationships.
- 641.304 Recruitment and selection of enrollees.
- 641.305 Enrollment eligibility.
- 641.306 Enrollment priorities.
- 641.307 [Reserved]
- 641.308 Orientation.
- 641.309 Assessment and reassessment of enrollees.
- 641.310 Community service assignments.
- 641.311 Enrollee wages and fringe benefits.
- 641.312 Enrollee supportive services.
- 641.313 Training.

- 641.314 Placement into unsubsidized employment.
- 641.315 Maximum duration of enrollment.
- 641.316 Individual development plan-related terminations.
- 641.317 Status of enrollees.
- 641.318 Over-enrollment.
- 641.319 [Reserved]
- 641.320 Political patronage.
- 641.321 Political activities.
- 641.322 Unionization.
- 641.323 Nepotism.
- 641.324 Enrollee and applicant complaint resolution.
- 641.325 Maintenance of effort.
- 641.326 Experimental private sector training projects.

**Subpart D—Administrative Standards and Procedures for Grantees and Limitations on Federal Funds**

- 641.401 General.
- 641.402 Administrative requirements.
- 641.403 Allowable costs.
- 641.404 Classification of costs.
- 641.405 Limitations on federal funds.
- 641.406 Administrative cost waiver.
- 641.407 Non-federal share of project costs.
- 641.408 Budget changes.
- 641.409 Grantee fiscal and performance reporting requirements.
- 641.410 Subgrant agreements.
- 641.411 Program income accountability.
- 641.412 Equipment.
- 641.413 Audits.
- 641.414 Grant closeout procedures.
- 641.415 Department of Labor appeals procedures for grantees.

**Subpart E—Interagency Agreements**

- 641.501 Administration.

**Subpart F—Assessment and Evaluation**

- 641.601 General.
- 641.602 Limitation.

**Authority:** 42 U.S.C. 3056(b)(2).

**Subpart A—Introductory Provisions****§ 641.101 Scope and purpose.**

Part 641 contains the regulations of the Department of Labor for the Senior Community Service Employment Program (SCSEP) under title V of the OAA. The dual purposes of a SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. This part, and other pertinent regulations expressly incorporated by reference, set forth all regulations applicable to the SCSEP.

**§ 641.102 Definitions.**

The following definitions apply to this part:

*OAA* means the Older Americans Act of 1965, as amended (42 U.S.C. 3001 *et seq.*).

*Area agency on aging* means an area agency on aging designated under section 305(a)(2)(A) of the OAA or a

State agency performing the functions of an area agency on aging under section 305(b)(5) of the OAA.

*Authorized position* means an enrollment opportunity during a program year. The number of authorized positions is derived by dividing the total amount of funds appropriated during a program year by the national average unit cost per enrollee for that program year as determined by the Department. The national average unit cost includes all administration costs, other enrollee costs, and enrollee wage and fringe benefit costs. An allotment of the total dollars for the grantee is divided by the national unit cost to determine the total number of authorized positions for each grant agreement.

*Community service* means social, health, welfare, and educational services (particularly literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, day care and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; pollution control and environmental quality efforts; weatherization activities; and includes inter-generational projects; but is not limited to the above. It excludes building and highway construction (except that which normally is performed by the project sponsor) and work which primarily benefits private, profitmaking organizations. [Section 507(2) of the OAA.]

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

*Disability* means a physical or mental impairment of an individual that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment. [29 CFR parts 32 and 34.]

*Dual eligibility* means individuals eligible under title V who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA are deemed to satisfy the requirements of all JTPA programs funded under Title II-A of the JTPA.

*Eligible individual* means a person who is 55 years of age, or older, and who has a low income as defined in this section. [Section 507(1) of the OAA.]

*Eligible organization* means an organization which is legally capable of receiving and using Federal funds under the OAA and entering into a grant or other agreement with the Department to

carry out the provisions of title V of the OAA. [Section 502(b)(1) of the OAA.]

*Employment and training program(s)* means publicly funded efforts designed to offer employment, training and/or placement services which enhance an individual's employability. The term is used in this part to include, but is not limited to, the JTPA or similar legislation and State or local programs of a similar nature.

*Enrollee* means an individual who is eligible, receives services, and is paid wages for engaging in community service assignments under a project.

*Grantee* means an eligible organization which has entered into a grant agreement with the Department under this part.

*Greatest economic need* means the need resulting from an income level at or below the poverty line based on guidelines provided by the Department.

*Greatest social need*, as defined at section 102(a)(30) of the OAA, means the need caused by noneconomic factors which include:

- (1) Physical and mental disabilities;
- (2) Language barriers; and
- (3) Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status.

*Host agency* means a public agency or a private non-profit organization, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, which provides a work site and supervision for an enrollee.

*Individual development plan* means a plan for an enrollee which shall include an employment goal, achievement objectives, and appropriate sequence of services for the enrollee based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the enrollee.

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

*Low income* means an income of the family which, during the preceding six months on an annualized basis or the actual income during the preceding 12 months, whichever is more beneficial to the applicant, is not more than 125 percent of the poverty levels established and periodically updated by the U.S. Department of Health and Human Services. In addition, an individual who receives, or is a member of a family which receives, regular cash welfare payments shall be deemed to have a low income for purposes of this part.

*Poor employment prospects* means the unlikelihood of an otherwise eligible individual obtaining employment

without the assistance of this or other employment and training programs. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, English-language proficiency, or displaced homemakers, school dropouts, disabled veterans, homeless or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

*Program year* means the one-year period covered by a grant agreement beginning July 1 and ending on June 30.

*Project* means an undertaking by a grantee or subgrantee, pursuant to a grant agreement between the Department and the grantee, which provides for community service opportunities for eligible individuals and the delivery of associated services.

*Reallocation* means a redistribution of funds by a grantee.

*Reallotment* means the redistribution of allotted title V funds by the Department from one State to another State(s) or from one grantee to another grantee.

*Residence* means an individual's declared dwelling place or address. No requirement pertaining to length of residency prior to enrollment shall be imposed.

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

*State agency on aging* means the sole agency designated by the State, in accordance with regulations of the Assistant Secretary on Aging, pursuant to section 305(a)(1) of the OAA.

*Subgrantee* means the legal entity to which a subgrant is awarded by a grantee and which is accountable to the grantee (or higher tier subgrantee) for the use of the funds provided.

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

## Subpart B—Grant Planning and Application Procedures

### § 641.201 Allotment and allocation of title V funds.

(a) *Allotment.* The Secretary shall allot funds for projects in each State in accordance with the distribution requirements contained in section 506(a) of the OAA.

(b) *Within-State apportionment.* The amount allotted for projects within a State shall be apportioned among areas within the State in an equitable manner, taking into consideration:

(1) The proportion which eligible individuals in each such area bears to the total number of such persons, respectively, in that State;

(2) The relative distribution of such individuals residing in rural and urban areas within the State; and

(3) The relative distribution of such individuals who are individuals with the greatest economic need, such individuals who are minority individuals, and such individuals with greatest social need.

(c) *Annual report of funds allocated by state.* The State agency for each State receiving funds or a sponsor designated by the Department shall report at the beginning of each fiscal year on such State's status relative to section 506(c) of the OAA. Each State's report shall include names and geographic locations of all projects receiving title V funds for projects in the State. All grantees and subgrantees operating in a State shall provide information necessary to compile the report. [Section 506(d) of the OAA.]

**§ 641.202 Eligibility for title V funds.**

Agencies and organizations eligible to receive title V funds shall be those specified in sections 502(b) and 506(a) of the OAA.

**§ 641.203 Soliciting applications for title V funds.**

The Department may solicit or request organizations to submit applications for funds.

**§ 641.204 Grant application requirements.**

(a) *Schedules.* The Department shall establish, by administrative directive, schedules for submittal of grant preapplications and applications; the contents of grant applications, including goals and objectives; amounts of grants; and grant budget and narrative formats.

(b) *Intergovernmental reviews.* Grant applicants shall comply with the requirements of the Department's regulation, at 29 CFR part 17, which implements the intergovernmental review of Department programs and activities. A *Preapplication for Federal Assistance* form (SF-424) filed as a result of the intergovernment review system shall contain an attachment which, at a minimum, lists the proposed number of authorized community service positions in each county, or other appropriate jurisdiction within the affected State. Whenever a national organization or other program grantee or subgrantee proposes to conduct projects within a planning and service area in a State, such organization or program grantee is responsible for sharing their applications with area agencies on aging and other SCSEP sponsors in the area prior to the award of the funds in accord with guidelines issued by the Department.

(c) *Subgrants.* A grant applicant planning to award funds by subgrant shall:

(1) Outline the nature and extent of the planned use of such funds; and

(2) Assure that in the event that a subgrant agreement is canceled in whole or in part, the grantee will provide continuity of services to enrollees.

**§ 641.205 Responsibility review.**

(a) In order to enter into and continue a grant relationship with DOL, an organization (applicant) shall be responsible. To determine responsibility, DOL conducts a preaward review of all grant applicants. As part of this review, DOL applies 13 basic responsibility tests to each applicant, included in paragraphs (b) and (c) of this section.

(b) If a grant applicant fails either of the following two responsibility tests, it shall not be designated as a grantee:

(1) The Department's efforts to recover debts from the applicant (for which three demand letters have been sent) established by final Department action have been unsuccessful, or the applicant has failed to comply with an approved repayment plan.

(2) Fraud or criminal activity has been determined to exist within the organization.

(c) Eleven additional basic responsibility tests are applied to each grant applicant. Failure to meet any one of these tests does not establish that the applicant is not responsible, unless the failure is substantial or persistent. These tests are as follows:

(1) Serious administrative deficiencies have been identified, such as failure to maintain a financial management system as required by Federal regulations.

(2) Willful obstruction of the monitoring process.

(3) Failure to meet performance requirements.

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

(5) Failure to submit correct grant closeout documents within 90 days after expiration of the grant, unless an extension has been requested and granted.

(6) Failure to return outstanding cash advances within 90 days of the expiration date of the grant, unless an extension has been requested and granted, or the funds have been authorized to be retained for use on other grants.

(7) Failure to submit correct required reports by established due dates.

(8) Failure to properly report and dispose of government property as instructed by DOL.

(9) Failure to maintain cost controls resulting in excess cash on hand.

(10) Failure to timely comply with the audit requirements of 29 CFR part 96.

(11) Final disallowed costs in excess of five percent of the grant award.

**§ 641.206 Grant application review.**

(a) The Department shall review each timely grant application submitted by an eligible organization.

(b) In reviewing and considering an application, the Department shall determine the following:

(1) The availability of funds for the proposed grant;

(2) Whether the application is in accordance with the Department's instructions;

(3) Whether the application complies with the requirements of the OAA and this part;

(4) Whether the application offers the best prospect of serving appropriate geographic areas; and

(5) Whether the application demonstrates the effective use of funds.

**§ 641.207 Negotiation.**

(a) The Department may negotiate with an eligible organization to arrive at a grant agreement if the application generally meets requirements set forth in this part.

(b) The subjects of negotiation may include, but are not limited to, the following:

(1) Project components, including community service assignments and geographic locations of authorized positions;

(2) Subproject(s), if any;

(3) Funding level, including all budget line items; and

(4) Performance goals.

**§ 641.208 Rejection of grant application or project components.**

(a) The Department may question any proposed project component if it believes that the component will not serve the purposes of the OAA; if negotiation does not produce a mutually acceptable conclusion, it may reject this grant application.

(b) If the Department rejects an application, as set forth in paragraph (a) of this section, the Department may solicit applications from other eligible organizations in order to arrive at a grant agreement.

(c) When an application is not approved, the Department shall notify the applicant within a reasonable time in writing and state the reason(s) for rejection.

(d) Rejection of a proposal or application is a final Departmental action which is not subject to further administrative review. Rejection will not affect future consideration of the applicant for other projects as long as the organization meets the eligibility criteria.

**§ 641.209 Award of funds.**

When the applicant is a unit of State government or a public or private non-profit organization, the award of funds to a grantee shall be accomplished through the execution of a grant agreement prepared by the Department. When the applicant is a unit of the Federal Government, other than the Department, the award of funds shall be accomplished through an interagency agreement.

**Subpart C—Grant Operations**

**§ 641.301 General.**

(a) This subpart establishes basic grant operation standards and procedures to be followed by all organizations receiving title V funds for the purpose of operating SCSEP grant agreements and projects.

(b) The dual purposes of an SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. Grantees and subgrantees shall develop appropriate work assignments for eligible individuals which will result in the provision of community services as defined in sections 502(b) and 507(2) of the OAA, and § 641.102 and will promote unsubsidized employment opportunities.

**§ 641.302 Grantee responsibilities.**

The grantee shall remit to eligible individuals wages, for community service assignments, and provide skill enhancement opportunities, periodic physical examinations, personal and employment-related counseling, assistance in transition to unsubsidized employment where feasible, and other benefits as approved by the Department.

(a) grantees are responsible for:

- (1) Following and enforcing the requirements set forth in the OAA and this part;
- (2) Implementing and carrying out projects in accordance with the provisions of the grant agreement; and
- (3) Assuring that, to the extent feasible, such projects will serve the needs of minority, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, at

least in proportion to their numbers in the State, and take into consideration their rates of poverty and unemployment based on the best available information.

(b) The grantee periodically shall monitor the performance of grant-supported activities to assure that project goals are being achieved and that the requirements of the OAA and this part are being met.

(c) The grantee or subgrantee shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and maintain documentation supporting the eligibility of enrollees.

(d) Each grantee or subgrantee shall make efforts to provide equitable services among substantial segments of the population eligible for participation in SCSEP. Such efforts shall include, but not be limited to: outreach efforts to broaden the composition of the pool of those considered for participation, to include members of both sexes, various race/ethnic groups and individuals with disabilities.

**§ 641.303 Cooperative relationships.**

(a) Each grantee or subgrantee shall, to the maximum extent feasible, cooperate with other agencies, including agencies conducting programs under the JTPA, to provide services to elderly persons, to persons with low incomes, and with agencies providing employment and training services.

(b) The cooperation described in paragraph (a) of this section shall include, but not be limited to:

(1) Selection of community service assignment occupational categories, work assignments, and host agencies to provide a variety of community service opportunities for enrollees and to produce a variety of federally funded services which respond to the community's total needs and initiatives.

(2) Establishment of cooperative relations with the State agency on aging designated under section 305(a)(1) of the OAA and with area agencies on aging designated under section 305(a)(2) of the OAA for the purpose of obtaining services as authorized under titles III, IV, and VI of the OAA to increase the likelihood of receipt of unsubsidized employment opportunities and supportive services that are available. Existing services provided under the authority of section 321(a) of the OAA shall be used first by grantee or subgrantee.

(3) Establishment of cooperative relations with other employment and training organizations including the State and local JTPA and the Carl D. Perkins Act programs to insure that

project enrollees can benefit from such cooperative activities as dual eligibility, shared assessments, training and referral.

(4) Establishment of cooperative relations with State employment security agencies to insure that enrollees are made aware of services available from these agencies.

(c) Whenever a national organization or other program sponsor conducts a project within a planning and service area in a State, such an organization or program sponsor shall conduct such a project in consultation with the area agency on aging of the planning and service area and shall submit to the State agency and the area agency on aging a description of such project to be conducted in the State including the location of the project, 30 days prior to undertaking the project, for review and comment to assure efficient and effective coordination of programs under this part.

**§ 641.304 Recruitment and selection of enrollees.**

Grantees and subgrantees shall use methods of recruitment and selection (including notifying the State employment security agency when vacancies occur) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the program. Recruitment efforts shall be designed, to the extent feasible, to assure equitable distribution of services to groups described in § 641.302(e). [Section 502(b)(1)(H) of the OAA.]

**§ 641.305 Enrollment eligibility.**

(a) *General.* Eligibility criteria set forth in this section apply to all SCSEP applicants and enrollees, including the following individuals:

- (1) Each individual seeking initial enrollment;
- (2) Each individual seeking reenrollment after termination from the SCSEP because of loss of unsubsidized employment through no fault of their own, including illness; and
- (3) Each enrollee seeking recertification for continued enrollment.

(b) *Eligibility criteria.* To be eligible for initial enrollment, each individual shall meet the following criteria for age, income, and place of residence:

(1) *Age.* Each individual shall be no less than 55 years of age. No person whose age is 55 years or more shall be determined ineligible because of age, and no upper age limit shall be imposed for initial or continued enrollment. [Section 502 of the OAA.]

(2) *Income.* The income of the family of which the individual is a member

shall not exceed the low-income standards defined in § 641.102 and issued by the Department. In addition, a disabled person may be treated as a "family of one" for income eligibility purposes.

(3) *Residence.* Each individual, upon initial enrollment, shall reside in the State in which the project is authorized.

(c) *No additional eligibility requirement.* Grantees and subgrantees shall not impose any additional condition or requirement for enrollment eligibility unless required by Federal law.

(d) *Dual Eligibility.* Individuals eligible under title V of the OAA who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA shall be deemed to satisfy the requirements of JTPA Title II-A.

(e) *Special responsibilities of the grantees and subgrantee(s) relating to eligibility.*

(1) Each grantee or subgrantee shall recertify the income of each enrollee under its grant or subgrant, respectively, once each project year, according to the schedule set forth in the grant agreement and shall maintain documentation to support the recertification. Enrollees found to be ineligible for continued enrollment because of income shall be given, by the grantee or subgrantee, a written notice of termination and shall be terminated 30 days after the notice. No enrollee shall participate in a community service position for more than 12 months without having his or her income recertified.

(2) If, at any time, the grantee or a subgrantee determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the individual shall be given a written notice explaining the reason or reasons for the determination and shall be terminated immediately.

(3) If, at any time, the grantee or subgrantee determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the grantee or subgrantee shall give the enrollee immediate written notice explaining the reason or reasons for termination, and the enrollee shall be terminated 30 days after the notice.

(4) When a grantee or subgrantee makes an unfavorable determination on continued eligibility, it shall explain in writing to the enrollee the reason(s) for the determination and shall provide notice of the right of appeal in accordance with the required procedures set forth in § 641.324.

(5) When a grantee or subgrantee terminates an enrollee for cause, it shall inform the enrollee, in writing, of the reason(s) for termination and of the right of appeal in accordance with the required procedures set forth in § 641.324.

(6) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility pursuant to paragraph (e) (1) or (3) of this section, it should assure that the individual is given a reason for non-enrollment and, when feasible, should refer the individual to other potential sources of assistance.

#### § 641.306 Enrollment priorities.

(a) As set forth in sections 502(b)(1)(M) and 507(1) of the OAA, enrollment priorities for filling all positions shall be as follows:

- (1) Eligible individuals with the greatest economic need;
- (2) Eligible individuals who are 60 years old or older; and
- (3) Eligible individuals who seek re-enrollment following termination of an unsubsidized job through no fault of their own or due to illness, provided that re-enrollment is sought within one year of termination.

(b) Within all enrollment priorities, those persons with poor employment prospects shall be given preference.

(c) Enrollment priorities established in this section shall apply to all vacant community service positions, but shall not be interpreted to require the termination of any eligible enrollee. The priorities do not apply to the experimental private sector projects authorized by section 502(e) of the OAA.

#### § 641.307 [Reserved]

#### § 641.308 Orientation.

(a) *Enrollee.* The grantee or subgrantee shall provide orientation to eligible individuals who are enrolled as soon as practicable after a determination of eligibility. The orientation shall provide, as appropriate, information related to: project objectives; community service assignments; training; supportive services; responsibilities, rights, and duties of the enrollee; permitted and prohibited political activities; plans for transition to unsubsidized employment and a discussion of safe working conditions at the host agencies.

(b) *Host agency.* The grantee or a subgrantee shall provide to those individuals who will supervise enrollees at the host agencies, an orientation similar to the one described in paragraph (a) of this section. This is

to assure that enrollees will receive adequate supervision and opportunities for transitioning to the host agency staff or other unsubsidized employment.

(c) *Supervision.* The grantee or subgrantee shall ensure that host agencies provide adequate supervision, adequate orientation and instruction regarding, among other things, job duties and safe working procedures.

#### § 641.309 Assessment and reassessment of enrollees.

(a) *General.* The grantee or subgrantee shall assess each enrollee under the grant or subgrant, respectively, to determine the most suitable community service assignment and to identify appropriate employment, training, and community service objectives for each individual. The assessment shall be made in partnership with the new enrollee and should consider the individual's preference of occupational category, work history, skills, interests, talents, physical capabilities, need for supportive services, aptitudes, potential for performing proposed community service assignment duties, and potential for transition to unsubsidized employment.

(b) *Assessment of physical capabilities.* The assessment of each enrollee shall take into consideration his or her physical capabilities. Assessments of physical ability shall be consistent with section 504 of the Rehabilitation Act of 1973, as amended (section 504), and the Americans with Disabilities Act of 1990 (ADA).

(c) *Assignment.* The grantee or subgrantee shall seek a community service assignment which will permit the most effective use of each enrollee's skills, interests, and aptitudes.

(d) *Individual development plans.* The grantee and subgrantee shall use the assessment or reassessment as a basis for developing or amending an individual development plan (IDP). The IDP shall be developed in partnership with the enrollee to reflect the needs of the enrollee as indicated by the assessment, as well as the expressed interests and desires of the enrollee.

(e) *Review of IDP plan.* The grantee and subgrantee shall review the IDP at least once in a 12 month period for the following purposes: to evaluate the progress of each enrollee in meeting the objectives of the IDP; to determine each enrollee's potential for transition to unsubsidized employment; to determine the appropriateness of each enrollee's current community service assignment; and to review progress made toward meeting their training and employment objectives.

(f) *Alternative assignment.* The sponsor may develop an alternative assignment for an enrollee, when feasible, should there be one of the following determinations:

(1) That a different community service assignment will provide greater opportunity for the use of an enrollee's skills and aptitudes;

(2) That an alternative assignment will provide work experience which will enhance the potential for unsubsidized employment; or

(3) That an alternative assignment will otherwise serve the best interests of the enrollee.

(g) *Minimum requirements.* The assessments and reassessments required by this section shall meet minimum requirements issued by the Department on assessment, and subsequent determinations are to be recorded in the enrollee's IDP, to become a part of each enrollee's permanent record.

(h) *Recent assessments.* Assessments of an enrollee, prepared by another employment or training program (such as a program under the JTPA or the Carl D. Perkins Vocational and Applied Technology Act) may be substituted for one prepared by the grantee or subgrantee if the training program prepared the assessment within the last year prior to applying for SCSEP. [section 502(b)(1)(M) of the OAA.]

#### **§ 641.310 Community service assignments.**

(a) *Assignment to community service.* After the completion of an enrollee's orientation and initial training, if any, the grantee or subgrantee shall refer the enrollee, as soon as possible, to a useful part-time community service assignment, if appropriate, according to the IDP.

(1) Each enrollee shall be placed in a community service assignment which contributes to the general welfare of the community and provides services related to publicly-owned and operated facilities and projects, or projects sponsored by organizations other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986. Project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP.

(2) The enrollee shall not be assigned to work involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship, or to work which primarily benefits private, profit-making organizations. [Sections 502(b)(1)(A), (C), and (D) and 507(2) of the OAA.]

(b) *Hours of community service assignments.*

(1) Each enrollee's community service assignment shall not exceed 1,300 hours during a 12-month period specified in the grantee's agreement. The 1,300 hours includes paid hours of orientation, training, sick leave, and vacation and hours of enrollment provided by all grantees and subgrantees. No enrollee shall be paid for more than 1,300 hours in any 12-month period. [Section 508(a)(2) of the OAA.]

(2) The grantee or subgrantee shall not require an enrollee to participate more than 20 hours during one week; however, hours may be extended with the consent of the enrollee.

(3) The grantee or subgrantee shall not offer an enrollee an average of fewer than 20 hours of paid participation per week. Shorter periods may be authorized by the grant agreement, in writing by the Department, or by written agreement between an enrollee and a grantee or subgrantee. [Section 508(a)(2) of the OAA.]

(4) The grantee or subgrantee shall, to the extent possible, ensure that the enrollee works during normal business hours, if the enrollee so desires.

(c) *Location.* The enrollee shall be employed at work sites in or near the community where the enrollee resides. [Section 502(b)(1)(B) of the OAA.]

(d) *Working conditions for enrollees.* Enrollees shall not be permitted to work in a building or surroundings or under conditions which are unsanitary, hazardous, or dangerous to the enrollees' health or safety. The grantee or subgrantee shall make periodic visits to the enrollees' work site(s) to assure that the working conditions and treatment of the enrollee are consistent with the OAA and this part. [Section 502(b)(1)(J) of the OAA.]

#### **§ 641.311 Enrollee wages and fringe benefits.**

(a) *Wages.* Upon engaging in part-time community service assignments, including orientation and training in preparation for community service assignments, each enrollee shall receive wages at a rate no less than the highest applicable rate:

(1) The minimum wage which would be applicable to the enrollee under the Fair Labor Standards Act of 1938;

(2) The State or local minimum wage for the most nearly comparable covered employment; or

(3) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits.*

(1) The grantee or subgrantee shall ensure that enrollees receive all fringe benefits required by law.

(2) Within a project or subproject, fringe benefits shall be provided uniformly to all enrollees, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, enrollees, and the project administration.

(3) *Physical examination.*

(i) Each enrollee shall be offered the opportunity to take a physical examination annually. A physical is a fringe benefit, and is not an eligibility criterion. The examining physician shall provide, to the enrollee only, a written report of the results of the examination. The enrollee may, at his or her option, provide the grantee or subgrantee a copy of the report. The results of the physical examination shall not be taken into consideration in determining placement into a community service assignment.

(ii) An enrollee may refuse the physical examination offered. In such a case, the grantee or subgrantee should document this refusal, through a signed waiver or other means, within 60 work days after commencement of the community service assignment. Thereafter, grantees or subgrantees shall document an enrollee's refusal of the annual physical examination.

(c) *Retirement.* Expenditures of grant funds for contributions into a retirement system or plan are prohibited, unless the grantee has documentation on hand showing that:

(1) The costs are allowable under the appropriate cost principles indicated at § 641.403(b); and

(2) Such contributions bear a reasonable relationship to the cost of providing such benefits to enrollees because:

(i) the benefits vest at the time contributions are made on behalf of the enrollees; or

(ii) the charges to SCSEP funds are for contributions on behalf of enrollees to a "defined benefit" type of plan which do not exceed the amounts reasonably necessary to provide the specified benefit to enrollees, as determined under a separate actuarial determination.

(d) *Workers' compensation.* Where an enrollee is not covered by the State workers' compensation law, the grantee or subgrantee shall provide the enrollee with workers' compensation benefits equal to that provided by law for covered employment. [Section 504(b) of the OAA.]

(e) *Unemployment compensation.* The grantee is authorized to pay the cost of unemployment insurance for covered

enrollees, where required by law. [Section 502(b)(1)(O) of the OAA.]

**§ 641.312 Enrollee supportive services.**

(a) The grantee or subgrantee shall provide supportive services designed to assist the enrollee in participating successfully in community service assignments and, where appropriate, to prepare and assist the enrollee in obtaining unsubsidized employment. To the extent feasible, the grantee or subgrantee shall utilize supportive services available from other titles of the OAA, particularly those administered by area agencies on aging and other funding sources.

(b) Supportive services may include, but need not be limited to, all or some of the following:

(1) Counseling or instruction designed to assist the enrollee to participate successfully in community service assignments or to obtain unsubsidized employment.

(2) Counseling designed to assist the enrollee personally in areas such as health, nutrition, social security benefits, Medicare benefits, and retirement laws.

(3) Incidentals, including, but not limited to: work shoes, badges, uniforms, safety glasses, eyeglasses, and hand tools, may be provided if necessary for successful participation in community service assignments and if not available from other sources.

(4) Periodic meetings on topics of general interest, including matters related to health, job seeking skills, safety, and consumer affairs.

(5) *Enrollee transportation.*

(i) Enrollee transportation may be paid if transportation from other sources at no cost to the project is unavailable and such unavailability is documented. When authorized in the grant agreement, transportation may be provided for enrollees from home to work, to training or to supportive services. [Section 502(b)(1)(L) of the OAA.]

(ii) Grant funds may not be expended to support the transportation costs of host agencies or programs funded by other than title V of the OAA, except where provided by Federal law.

**§ 641.313 Training.**

(a) The grantee or subgrantee shall provide or arrange for training specific to an enrollee's community service assignment. Training may be provided through lectures, seminars, classroom instruction, individual instruction or other arrangements including, but not limited to, arrangements with employment and training programs. The grantee or the subgrantee is encouraged

to obtain such services through locally available resources, including employment and training programs, as defined in § 641.103, and through host agencies, at no cost or reduced cost to the project. [Section 502(b)(1)(I) of the OAA.]

(b) Training shall consist of up to 500 hours per grant year and shall be consistent with the enrollee's IDP. Such training may cover all aspects of training; e.g., skill, job search, etc. Enrollees shall not be enrolled solely for the purpose of receiving job search and job referral services. Waivers for additional hours of training will be considered on an exception basis.

(c) In addition to training in preparation for community service assignments, as described in this section, a grantee or subgrantee is encouraged to arrange for, or directly provide, skills-training opportunities beyond the SCSEP community service training activities which will permit the enrollee to acquire or improve skills, including literacy training, applicable in community service assignment or for unsubsidized employment.

(d) A grantee or subgrantee, to the extent feasible, shall arrange skill-training for the enrollee which is realistic and consistent with his or her IDP. A grantee or subgrantee shall place major emphasis on the training available through on-the-job experience at SCSEP work sites, thereby retaining the community service focus of the SCSEP.

(e) An enrollee engaging in skills-related training, as described in paragraphs (c) and (d) of this section, may be reimbursed for the documented travel costs and room and board necessary to engage in such training. [Section 502(b)(1)(I) of the OAA.]

(f) Whenever possible a grantee or subgrantee shall seek to obtain all training for enrollees reduced or no cost to title V from such sources as the JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act. Where training is not available from other sources, title V funds may be used for training.

(g) Nothing in this section shall be interpreted to prevent or limit an enrollee from engaging in self-development training available from sources other than title V of the OAA during hours other than hours of community service assignment.

(h) Joint programming, including co-enrollment when appropriate, between title V programs and programs authorized by the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged.

**§ 641.314 Placement into unsubsidized employment.**

(a) In order to ensure that the maximum number of eligible individuals have an opportunity to participate in community service assignments, the grantee or subgrantee shall employ reasonable means to place each enrollee into unsubsidized employment.

(b) To encourage the placement of the enrollee into an unsubsidized job, the Department has established a goal of placing into unsubsidized employment the number of enrollees which equals at least 20 percent of the project's annual authorized positions. Whenever this goal is not achieved, the grantee shall develop and submit a plan of action for addressing this shortfall.

(c) The grantee or subgrantee may contact private and public employers directly or through the State employment security agencies to develop or identify suitable unsubsidized employment opportunities; and should encourage host agencies to employ enrollees in their regular work forces.

(d) The grantee or subgrantee shall follow-up on each enrollee who is placed into unsubsidized employment and shall document such follow-up at least once within 3 months of unsubsidized placement.

**§ 641.315 Maximum duration of enrollment.**

A maximum duration of enrollment may be established by the grantee in the grant agreement, when authorized by the Department. Time limits on enrollment shall be reasonable and IDPs shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired.

**§ 641.316 Individual development plan-related terminations.**

When an enrollee refuses to accept a reasonable number of referrals or job offers to unsubsidized employment consistent with his or her IDP and there are no extenuating circumstances, the enrollee may be terminated from the SCSEP. Such a termination shall be consistent with administrative guidelines issued by the Department and the termination shall be subject to the applicable appeal rights and procedures described in § 641.324.

**§ 641.317 Status of enrollees.**

Enrollees who are employed in any project funded under the OAA are not deemed to be Federal employees as a result of such employment. [Section 504(a) of the OAA.]

**§ 641.318 Over-enrollment.**

Should attrition or funding adjustments prevent a portion of project funds from being fully utilized, the grantee may use those funds during the period of the agreement to over-enroll additional eligible individuals. The number over-enrolled may not exceed 20 percent of the total number of authorized positions established under the grant agreement without the written approval of the Department. Payments to or on behalf of enrollees in such positions shall not exceed the amount of the unused funds available. Each individual enrolled in such a position shall be informed in writing that the assignment is temporary in nature and may be terminated. The grantee shall first seek to maintain full enrollment in authorized positions and shall seek to schedule all enrollments and terminations to avoid excessive terminations at the end of the grant period.

**§ 6541.319 [Reserved]****§ 641.320 Political patronage.**

(a) No grantee may select, reject, promote, or terminate an individual based on that individual's political affiliations or beliefs. The selection or advancement of enrollees as a reward for political services, or as a form of political patronage, is prohibited.

(b) There shall be no selection of subgrantees or host agencies based on political affiliation.

**§ 641.321 Political activities.**

(a) *General.* No project under title V of the OAA or this part may involve political activities.

(1) No enrollee or staff person may be permitted to engage in partisan or nonpartisan political activities during hours for which they are paid with SCSEP funds.

(2) No enrollee or staff person, at any time, may be permitted to engage in partisan political activities in which such enrollee or staff person represents himself or herself as a spokesperson of the SCSEP program.

(3) No enrollee may be employed or out-stationed in the office of a Member of Congress, a State or local legislator, or on any staff of a legislative committee.

(4) No enrollee may be employed or out-stationed in the immediate office of any elected chief executive officer(s) of a State or unit of general government, except that:

(i) Units of local government may serve as host-agencies for enrollees in such positions, provided that such assignments are nonpolitical; and

(ii) Where assignments are technically in such offices, such assignments actually are program activities not in any way involved in political functions.

(5) No enrollee may be assigned to perform political activities in the offices of other elected officials. However, placement of enrollees in such nonpolitical assignments within the offices of such elected officials is permissible, provided that grantees develop safeguards to ensure that enrollees placed in these assignments are not involved in political activities. These safeguards shall be described in the grant agreement and shall be subject to review and monitoring by the grantee and the Department.

**(b) Hatch Act.**

(1) State and local employees governed by 5 U.S.C. chapter 15 shall comply with the Hatch Act provisions as interpreted and applied by the Office of the Special Counsel.

(2) Each project subject to 5 U.S.C. chapter 15 shall display a notice and shall make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under 5 U.S.C. chapter 15 which are applicable to the project and each category of individuals associated with such project. This notice, which shall have the approval of the Department, shall contain the telephone number and address of the DOL Inspector General. [Section 502(b)(1)(P) of the OAA.] Enforcement of the Hatch Act shall be as provided at 5 U.S.C. chapter 15.

**§ 641.322 Unionization.**

No funds provided under title V of the OAA or this part may be used in any way to assist, promote, or deter union organizing.

**§ 641.323 Nepotism.**

(a) No grantee or subgrantee may hire, and no host agency may be a work site for a person who works in an administrative capacity, staff position, or community service position funded under title V of the OAA or this part if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, grantee, subgrantee or host agency. This provision may be waived by the Department at work sites on Native American reservations and rural areas provided that adequate justification can be documented, such as that no other persons are eligible for participation.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive

than this provision, that requirement shall be followed.

(c) For purposes of this section:

(1) *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, and grandchild.

(2) *Engaged in an administrative capacity* includes those persons who, in the administration of projects, or host agencies, have responsibility for, or authority over those with responsibility for, the selection of enrollees from among eligible applicants.

**§ 641.324 Enrollee and applicant complaint resolution.**

(a) Each grantee shall establish and describe in the grant agreement procedures for resolving complaints, other than those described by paragraph (c) of this section, arising between the grantee and an enrollee.

(b) Allegations of violations of federal law, other than those described in paragraph (c) of this section, which cannot be resolved within 60 days as a result of the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, Washington, DC 20210.

(c) Grantees that do not receive any funds under the JTPA shall process complaints of discrimination in accordance with 29 CFR parts 31 and 32. Grantees that receive any funds under JTPA shall process complaints of discrimination in accordance with 29 CFR part 34.

(d) Except for complaints described in paragraphs (b) and (c) of this section, the Department shall limit its review to determining whether the grantee's appeal procedures were followed.

**§ 641.325 Maintenance of effort.**

(a) Employment of an enrollee funded under title V of the OAA or this part shall be only in addition to budgeted employment which would otherwise be funded by the grantee, subgrantee and the host agency(ies) without assistance under the OAA. [Section 502(b)(1)(F) of the OAA.]

(b) Each project funded under title V of the OAA or this part:

(1) Should result in an increase in employment opportunities in addition to those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-

overtime work, wages, or employment benefits;

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

(4) Shall not substitute project jobs for existing federally-assisted jobs; and

(5) Shall not employ or continue to employ any enrollee to perform work which is the same or substantially the same as that performed by any other person who is on layoff. [Section 502(b)(1)(G) of the OAA.]

**§ 641.326 Experimental private sector training projects.**

(a) The Department may authorize a grantee to develop an experimental job training project(s) designed to provide second career training and the placement of eligible individuals in employment opportunities with private business concerns. [Section 502(e) of the OAA.]

(b) Experimental project agreements for training may be with States, public agencies, non-profit private organizations, and private business concerns.

(c) The geographic location of these projects shall be determined by the Department to insure an equitable distribution of such projects.

(d) To the extent feasible, experimental projects shall emphasize second-career training, and innovative work modes, including those with reduced physical exertion, and placement into growth industries and jobs reflecting new technologies.

(e) The Department shall establish by administrative guidelines the application schedule, content, format, allocation levels and reporting requirements for experimental projects.

(f) Current title V eligibility standards shall be used for experimental projects unless the Department permits, in writing, the use of another approved income index.

(g) Projects funded under section 502(e) of the OAA shall seek to be coordinated with projects carried out under title II-A of the JTPA to the extent feasible.

(h) National grantees shall distribute funds for experimental projects in accordance with the State allocation in their title V grant.

(i) A grantee may exclude a project, permitted under section 502(e) of the OAA, from meeting the non-federal share requirement set forth in § 641.407; however, this exclusion does not relieve the grantee from the matching requirement, under § 641.407, which applies to the entire grant.

**Subpart D—Administrative Standards and Procedures for Grantees and Limitations on Federal Funds**

**§ 641.401 General.**

This subpart establishes limitations on title V funds to be used for community service activities and describes, or incorporates by reference, requirements for the administration of grants by the SCSEP grantee.

**§ 641.402 Administrative requirements.**

(a) Except as otherwise provided in this part, title V funds shall be administered in accordance with, and subject to, the Department's regulations at 29 CFR parts 31, 32, 34, 93, 96, and 98. In addition, projects and activities administered by State, local or Indian tribal governments are also subject to the Department's administrative requirements regulations at 29 CFR part 97; projects and activities administered by institutions of higher education, hospitals, or other non-profit organizations are subject to the Department's administrative requirements regulations at 29 CFR part 95. Grantees of title V funds shall be subject to any revisions of any implementing regulations cited in this paragraph (a) on the effective date of such revisions.

(b) The administration of interagency agreements set forth in subpart E of this part is not subject to paragraph (a) of this section.

**§ 641.403 Allowable costs.**

(a) *General.* The allowability of costs shall be determined in accordance with the cost principles indicated in paragraph (b) of this section, except as otherwise provided in this part.

(b) *Applicable Cost Principles.*

(1) The cost principles set forth in paragraphs (b)(1) through (4) of this section apply to the organization incurring the costs:

(i) OMB Circular A-87—State, local or Indian tribal government;

(ii) OMB Circular A-122—Private, non-profit organization other than:

(A) Institutions of higher education;

(B) Hospitals; or

(C) Other organizations named in OMB Circular A-122 (see sections 4.a. (Definitions) and 5 (Exclusions) of OMB Circular A-122);

(iii) OMB Circular A-21—Educational institution; or

(iv) 48 CFR part 31, subpart 31.2—Commercial organization (for-profit organization, other than a hospital or other organizations named in OMB Circular A-122).

(2) The OMB Circulars are available by writing to the Office of Management

and Budget, Office of Administration, Publications Unit, Room G-236, New Executive Office Building, Washington, DC 20503, or by calling 202-395-7332.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93 and in accordance with limitations on the use of appropriated funds in Department of Labor Appropriation Acts, title V funds shall 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.

(d) *Building repairs and acquisition costs.* No federal grant funds provided to a grantee or subgrantee under title V of the OAA or this part may be expended directly or indirectly for the purchase, erection, or repair of any building except for the labor involved in:

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

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

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

(4) *Accessibility and Reasonable Accommodation.* Funds may be used to meet a grantee or subgrantee's obligations to provide physical and programmatic accessibility and reasonable accommodation as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(e) *Allowable fringe benefit costs.* The cost of the following fringe benefits are allowable: initial and annual physical assessments, annual leave, sick leave, holidays, health insurance, social security, worker's compensation and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A-87 and A-122, except as limited for retirement costs by § 641.311(c).

**§ 641.404 Classification of costs.**

All costs must be charged to one of the following three cost categories:

(a) *Administration.* The cost category of Administration shall include, but need not be limited to, the direct and indirect costs of providing:

(1) Administration, management, and direction of a program or project;

(2) Reports on evaluation, management, community benefits, and other aspects of project activity;

(3) Assistance of an advisory council, if any;

- (4) Accounting and management information systems;
- (5) Training and technical assistance for grantee or subgrantee staff;
- (6) Bonding; and
- (7) Audits.

(b) *Enrollee wages and fringe benefits.* The cost category of Enrollee Wages and Fringe Benefits shall include wages paid to enrollees for hours of community service assignments, as described in § 641.311, including hours of training related to a community service assignment, and the costs of fringe benefits provided in accordance with § 641.311.

(c) *Other enrollee costs.* The cost category of Other enrollee costs shall include all costs of functions, services, and benefits not categorized as administration or enrollee wages and fringe benefits. Other enrollee costs shall include, but shall not be limited to, the direct and indirect costs of providing:

- (1) Recruitment and selection of eligible enrollees as provided in §§ 641.304 and 641.305;
- (2) Orientation of enrollees and host agencies as provided in § 641.308;
- (3) Assessment of enrollees for participation in community service assignments and evaluation of enrollees for continued participation or transition to unsubsidized employment as provided in § 641.309;
- (4) Development of appropriate community service assignments as provided in § 641.310;
- (5) Supportive services for enrollees, including transportation, as provided in § 641.312;
- (6) Training for enrollees, including tuition; and
- (7) Development of unsubsidized employment opportunities for enrollees as provided in § 641.314.

(d) *Cost reductions.* Grantees may lower administration costs or other enrollee costs by assigning enrollees to activities which normally would be charged to either of these cost categories. In such instances, the costs of enrollees' wages and fringe benefits shall be charged to the cost category of enrollee wages and fringe benefits. [Section 502(b)(1)(A) of the OAA.]

**§ 641.405 Limitations on federal funds.**

(a) The limitations on federal funds set forth in this section shall apply to SCSEP funds allotted to grantees for community service activities. Cost categories, limitations, and periods during which different limitations shall apply are set forth in paragraph (b) of this section.

(b) The cost categories and the limitations which apply to them shall be:

(1) *Administration.* The amount of federal funds expended for the cost of administration during the program year shall be no more than 13.5 percent of the grant. The Department may increase the amount available for the cost of administration to no more than 15 percent of the project in accordance with section 502(c)(3) of the OAA.

(2) *Enrollee wages and fringe benefits.* The amount of federal funds budgeted for enrollee wages and fringe benefits shall be no less than 75 percent of the grant.

**§ 641.406 Administrative cost waiver.**

(a) Based upon information submitted by a public or private nonprofit agency or organization with which the Department has or proposes to have an agreement, as set forth under section 502(b) of the OAA, the Department may waive § 641.405(b)(1) and increase the amount available for paying the costs of administration to an amount not to exceed 15 percent of the proposed federal costs of the grant. Each waiver shall be in writing. The Department shall administer this section in accordance with section 502(c)(3) (A) and (B) of the OAA.

(b) The waiver may be provided to grantees that demonstrate and document reasonable and necessary:

- (1) Major administrative cost increases;
- (2) Operational requirements imposed by the Department;
- (3) Increased costs associated with unsubsidized placement;
- (4) Increased costs of providing specialized services to minority groups; and
- (5) The minimum amount necessary to administer the grant relative to the available funds.

**§ 641.407 Non-federal share of project costs.**

The non-federal share of costs may be in cash or in-kind, or a combination of the two, and shall be calculated in accordance with 29 CFR 97.24 or 29 CFR 95.23, as appropriate. The Department shall pay not more than 90 percent of the cost of any project which is the subject of an agreement entered into under the OAA, except that the Department is authorized to pay all of the costs of any such project which is:

- (a) An emergency or disaster project;
- (b) A project located in an economically depressed area as determined by the Secretary of Labor in consultation with the Secretary of Commerce and the Director of the Office of Community Services of the Department of Health and Human Services;

(c) A project which is exempted by law; or

(d) A project serving an Indian reservation that can demonstrate it cannot provide adequate non-federal resources. [Sections 502(c) and 502(e) of the OAA.]

**§ 641.408 Budget changes.**

As an exception to 29 CFR 97.30(c)(1), Budget changes, 29 CFR 95.25, Revision of budget and program plans, the movement of Enrollee wages and fringe benefits to any other budget category shall not be permitted without prior written approval of the awarding agency. The Department shall not approve any budget change which would result in non-compliance with § 641.405(b)(2).

**§ 641.409 Grantee fiscal and performance reporting requirements.**

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each grantee shall submit a Senior Community Service Employment Program *Quarterly Progress Report* (QPR). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period unless a waiver is provided. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period shall be submitted no later than 30 days after the ending date unless a waiver is provided. The Department shall provide instructions for the preparation of this report.

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, as appropriate, the following financial reporting requirements apply to title V grants:

(1) An SF-269, *Financial Status Report* (FSR), shall be submitted to the Department within 30 days after the ending of each quarter of the program year unless a waiver is provided. A final FSR shall be submitted within 90 days after the end of the grant unless a waiver is provided.

(2) All FSR's shall be prepared on an accrual basis.

(c) In accordance with Departmental instructions, an equitable distribution report of SCSEP positions by all grantees in each State shall be submitted annually by the State agency receiving title V funds or another project sponsor designated by the Department. (Approved under the Office of Management and Budget Control No. 1205-0040)

**§ 641.410 Subgrant agreements.**

(a) The grantee is responsible for the performance of all activities implemented under subgrant agreements and for compliance by the subgrantee with the OAA and this part.

(b) No subgrant or other subagreement may provide for any expenditure of funds beyond the ending date of the grant agreement.

(c) For purposes of this part, procurement, as described in 29 CFR part 97 and 29 CFR 95.40 through 95.48, does not include the award or administration of subgrant agreements.

**§ 641.411 Program income accountability.**

Any of the methods described at 29 CFR 97.25 or 29 CFR 95.24, as appropriate, may be used to account for program income.

**§ 641.412 Equipment.**

Equipment purchased by a State grantee with title V funds prior to July 1, 1989, shall be subject to 29 CFR 97.32.

**§ 641.413 Audits.**

Each grantee is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and 29 CFR part 96, the Department of Labor regulation which implements Office of Management and Budget Circular A-128, "Audits of State and Local Governments"; or OMB Circular 133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions", as appropriate.

**§ 641.414 Grant closeout procedures.**

Grantees shall follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. As necessary, the Department shall issue supplementary closeout instructions for all title V grantees.

**§ 641.415 Department of Labor appeals procedures for grantees.**

(a) This section sets forth the procedures by which the grantee may appeal a SCSEP final determination by the Department relating to costs, payments, notices of suspension, and notices of termination other than those resulting from an audit. Appeals of suspensions and terminations for discrimination shall be processed under 29 CFR part 31, 32, or 34, as appropriate.

(b) Appeals from a final disallowance of cost as a result of an audit shall be made pursuant to 29 CFR part 96, subpart 96.6.

(c) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of cost as a result of an

audit), payments, suspension or termination, 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, 800 K Street, NW., room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(2) The request for hearing shall be accompanied by a copy of the final determination, if issued, and shall 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, shall be 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*, set forth at 29 CFR part 18, shall govern the conduct of hearings under this section, except that:

(i) The appeal shall not be considered a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, shall not apply to any hearing conducted pursuant to this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the administrative law judge conducting the hearing. The certified copy of the administrative file transmitted to the administrative law judge by the official issuing the final determination shall 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.

(5) The decision of the administrative law judge shall constitute final action by the Secretary of Labor unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision, or any part thereof, has filed exceptions with the Secretary of Labor specifically identifying the procedures, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be

deemed to have been waived.

Thereafter, the decision of the administrative law judge shall become the decision of the Secretary unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(6) Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

**Subpart E—Interagency Agreements****§ 641.501 Administration.**

(a) Federal establishments other than the Department of Labor which receive and use funds under title V of the OAA or this part shall submit to DOL project fiscal and progress reports as described in § 641.409.

(b) Non-DOL federal establishments which receive and use funds under title V shall maintain the standard records on individual enrollees and enrollee activities, in accordance with this part.

(c) The Department may provide title V funds to another federal agency by a non-expenditure transfer authorization or by payments on an advance or reimbursement basis.

(d) In aspects of project administration other than those described in paragraphs (a) and (b) of this section, federal establishments which receive and use funds under title V of the OAA may use their normal administrative procedures.

**Subpart F—Assessment and Evaluation****§ 641.601 General.**

The Department shall assess each grantee and subgrantee to determine whether it is carrying out the purposes and provisions of title V of the OAA and this part in accordance with the OAA, this part and the grant or other agreements. The Department also shall evaluate the overall program conducted under title V of the OAA or this part to aid in the administration of the SCSEP. The Department and individuals designated by the Department may make site visits and conduct such other monitoring activities as determined by SCSEP needs.

**§ 641.602 Limitation.**

In arranging for the assessment of a grantee, or the evaluation of a subgrantee, or the evaluation of the overall program under title V of the OAA or this part, the Department shall not use any individual, institution, or

organization associated with any project under title V of the OAA.

Signed at Washington, DC, this 5th day of May, 1995.

**Robert B. Reich,**

*Secretary of Labor.*

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