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**20 CFR Part 645
Welfare-to-Work (WtW) Grants; Final Rule;
Interim Final Rule**

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 645**

RIN 1205-AB15

Welfare-to-Work (WtW) Grants**AGENCY:** Employment and Training Administration (ETA), DOL.**ACTION:** Final Rule; Interim Final Rule, Request for comments.

SUMMARY: The Department of Labor (the Department) hereby issues a Final Rule implementing the Welfare-to-Work (WtW) grant provisions of Title IV, Part A of the Social Security Act. This action completes the rulemaking initiated by the publication of the Interim Final Rule (IFR1) on November 18, 1997. The Final Rule revises the IFR1 to reflect public comment, where appropriate. In addition, many matters of concern raised by commenters have been the subject of legislative changes to the WtW statute. Changes have been made to reflect new statutory requirements for these matters. Final Rule revisions to IFR1 are discussed in detail in Section II of this preamble.

In addition, the Department hereby issues a new Interim Final Rule (IFR2) implementing the Welfare-to-Work and Child Support Amendments of 1999 (1999 Amendments) which Congress passed on November 29, 1999 with the Administration's support. The 1999 Amendments, among other things, significantly changed the eligibility criteria for the Welfare-to-Work program. In IFR2, we have made the regulatory changes required by the 1999 Amendments. These changes are discussed in Section III of this preamble. The Department requests public comment only on these new provisions and changes.

So that all new changes to the WtW regulations are contained in one place, we are publishing the Final Rule and IFR2 in one package.

DATES: Effective Dates: These amendments will become effective on February 12, 2001.

Comment Date: We invite comments only on those changes that are the result of the 1999 Amendments, contained in IFR2. These changes are described in Section III of this preamble. All comments must be received by the Department on or before March 12, 2001.

ADDRESSES: Written comments on the changes to the regulations contained in IFR2 (described in Section III of this

preamble) may be mailed or delivered to the Division of Welfare-to-Work, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4671, Washington, DC 20210, *Attention:* Dennis Lieberman. Comments may also be submitted electronically by accessing the WtW web address at <http://wtw.doleta.gov/amendcomments/default.htm>.

All comments will be made available for public inspection and copying during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Lieberman, Division of Welfare-to-Work, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-4671, Washington, DC 20210. Telephone: (202) 693-3910 (voice) (this is not a toll-free number) or 1-800-326-2577 (TDD).

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections. Section I provides general background information. Section II discusses the Final Rule promulgated in response to comments received on the November 18, 1997, IFR1. Section III discusses the new IFR2, implementing changes to the WtW statute made by the 1999 Amendments. Section IV discusses miscellaneous administrative requirements, e.g., Paperwork Reduction Act requirements.

In addition to the changes made based upon the comments received, in order to clarify policy and interpretation, we have also made technical changes to correct typographical errors, such as consistent capitalization, abbreviations, grammatical corrections and citations, consistency with the regulations implementing the nondiscrimination and equal opportunity provisions of WIA section 188, which was first published in the **Federal Register** on November 12, 1999 (64 FR 61692 through 61738, 29 CFR part 37). When publishing a final rule following comment period, it is customary to publish only changes made to the rule, however, in order to be more user-friendly, we are publishing the entire Rule, including the changes made by IFR2 as well as those parts that have not been changed from IFR1. This means that one document which contains all of the regulations may be consulted rather than needing to compare various documents.

I. Background*Final Rule*

On November 18, 1997, the Employment and Training Administration (ETA) published IFR1 in

the **Federal Register** to establish the administrative framework for the Department's Welfare-to-Work (WtW) program. IFR1 also provided an opportunity for public comment. Comments were received from 88 entities. The commenters included: 25 State government agencies, 6 city and/or local government agencies, 3 Federal agencies, 10 Private Industry Councils (PICs), 14 local service providers, 4 private companies, 2 labor unions, 1 university and 16 non-profit associations. Of the 16 non-profit associations, 3 are national, bipartisan associations representing State legislatures, governors, or county agencies, 7 are legal-aid associations, and 2 are research institutions. Responses also came from 7 other sources, including private citizens.

We have reviewed and fully considered these comments in developing the Final Rule. The issues raised are addressed, where appropriate, in the Summary and Explanation of this Final Rule (Section II, below). Provisions of the IFR1 that neither elicited comments nor were affected by subsequent legislative action are not addressed in the discussion the Final Rule. Those provisions are addressed in the Summary and Explanation of IFR1, published at 62 FR 61589-61602 (Nov. 18, 1997).

Interim Final Rule (IFR2)

The Clinton-Gore Administration worked closely with Congress to enact the 1999 Amendments that make several significant changes to the WtW grant programs. These significant changes include changes in the eligibility requirements for both long-term welfare recipients and non-custodial parents of low-income children, an addition to the list of allowable activities that may be conducted under WtW, and the streamlining of WtW reporting requirements. The 1999 Amendments took effect on January 1, 2000, for competitive grantees and on July 1, 2000, for formula grantees, although with certain restrictions on outlays of Federal WtW funds until October 1, 2000. For Indian and Native American WtW grantees, the 1999 Amendments were effective on the day of enactment, November 29, 1999.

To allow for public comment, we are issuing the regulatory provisions promulgated as a direct result of the 1999 Amendments as a new Interim Final Rule. The new provisions open for comment under the IFR2 are discussed below in Section III of this preamble.

Note: As this document went to press, the DOL/HHS/Education Appropriations bill for FY 2001 was enacted, containing provisions

to extend by two years the period in which WtW grant funds may be spent and to delete the authority for the \$50 million for performance bonuses. We have retained the performance bonus criteria in this Rule in the event of future funding for this purpose, but no bonus grants will be made in FY 2001.

II. Summary and Explanation—Final Rule

This section contains a discussion of the comments we received during the comment period established in the November 18, 1997, IFR1. The headings in this section are the same as they appeared in the IFR1 for ease of reference. Many of the comments on IFR1 addressed areas which were changed by intervening technical amendments to the WtW statute. For example, on November 13, 1997, shortly before the publication of the IFR1, Congress extended, to three years, the time period for the expenditure of WtW matching funds (originally discussed in § 645.320) (Pub. L. 105-78). Congress also changed the time period for obligating WtW funds after a grant award (originally discussed in § 645.320) from one to three years, and made this change retroactive to the date of passage of the Balanced Budget Act of 1997 (Pub. L. 105-33), *i.e.*, August 5, 1997. The main concerns commenters raised about the eligibility criteria for noncustodial parents in § 645.212 were initially resolved through a technical amendment included in the Child Support Performance and Incentive Act of 1998 (Pub. L. 105-200) and later superseded by the 1999 Amendments discussed in Section III of this preamble. President Clinton's FY 2001 budget has proposed providing grantees an additional two years to spend existing resources.

The Transportation Equity Act for the 21st century (TEA-21) (Pub. L. 105-178) allows the Federal WtW funds to be used as matching funds for the Department of Transportation's "Job Access and Reverse Commute" program.

Under Pub. L. 105-277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999), Congress made changes to the WtW program to reflect the transition from the Job Training Partnership Act (JTPA) (Pub. L. 97-300, as amended, 29 U.S.C. 1501, *et seq.*) to the Workforce Investment Act of 1998 (WIA) (Pub. L. 105-220, 29 U.S.C. 2801, *et seq.*). These changes are reflected in new or revised definitions under § 645.120 regarding the particular circumstances of the different service areas.

Summary of Changes in the Final Rule

Some commenters suggested that we provide more specific direction, especially about identifying allowable program activities and allowable items for State matching funds. Other commenters recommended that we clarify and expand the workforce protections available to the participants in the program. Those recommendations received careful consideration and revisions were made, where appropriate, as discussed in the Summary and Explanation (Section II, below).

Many commenters recommended changes in the IFR1 provisions, such as those establishing eligibility and the "work first" approach, that could not be accommodated because the suggested changes would be inconsistent with the underlying statute. Congressional action would be required to accommodate these comments.

The WtW program will operate during the period in which the Workforce Investment Act supersedes the Job Training Partnership Act. WIA requires significant changes in the workforce development system at the State and local levels. The WtW program is a required partner in the One-Stop system, which is the basic service delivery system for the new workforce investment system. This system is intended to provide services to all individuals seeking assistance, including welfare recipients. The participation of the WtW program in the One-Stop system will entail cooperative relationships with other agency partners through memoranda of understanding (MOU). Although WtW is separately funded, One-Stop centers will operate so that individuals receive a seamless array of services. A final rule implementing WIA was published in the **Federal Register** on August 11, 2000 (20 CFR parts 652, 660-671). The WtW Final Rule adds guidance at §§ 645.220 and 645.430 about the relationship between WtW and the One-Stop delivery system under WIA in response to comments on how the two programs will interact. Also, the WtW IFR1 definition of "administrative costs" has been revised so that it more closely parallels the concept of functionality in the definition of this term at 20 CFR 667.220 of the WIA regulations.

Also, this Final Rule acknowledges the definitions contained in the new Temporary Assistance for Needy Families (TANF) regulations published in the **Federal Register** on April 12, 1999 (45 CFR part 260, *et seq.*). Specifically, the TANF regulations define "cash assistance" at 45 CFR

260.30, and explain the terms "assistance" and "WtW cash assistance" at 45 CFR 260.31 and 260.32, respectively. Many comments on the WtW IFR1 related to the subject of "assistance" due to its effect on the TANF five-year time limit and WtW eligibility. We formulated a definition of "TANF assistance" for use in WtW eligibility determination guided by the Department of Health and Human Services' (DHHS) new TANF regulations and we refer to that rule in our response to comments. This change is discussed in more detail below.

Finally, we note that the 1999 Amendments have superseded, in some cases, changes we might have made strictly in response to the comments. The 1999 Amendments have made significant changes which simplify the WtW eligibility criteria, for example, which require new provisions, those are established in the IFR2. Section III of this preamble discusses the new regulatory provisions which are open to public comment as a result of the 1999 Amendments.

Responses to Specific Comments on IFR1

Subpart A—Scope and Purpose

What Definitions Apply to this Part? (§ 645.120)

Section 645.120 sets forth definitions applicable to the Welfare-to-Work program. The phrase "political subdivisions of a State," identified in § 645.500 as eligible applicants for competitive grants, was not defined. One commenter notes that the varied terms for "political subdivision" used in the Solicitation for Grant Applications (SGA) for competitive grants, such as "political subdivision of a State," and "unit of general purpose local government," are confusing, and suggested that we define this phrase.

Response: We agree that the terms used to describe eligible applicants for competitive grants should be consistently defined in the SGA and the regulations, and have included a definition for the phrase "political subdivision" in the Final Rule. Under this new provision, "political subdivision" means a unit of general purpose local government, as provided for in State laws and/or Constitution, which has the power to levy taxes and spend funds and which also has general corporate and police powers. This definition is consistent with the definition in the SGA for Welfare-to-Work Competitive Grants published in the **Federal Register** on January 26, 1999.

For similar reasons, the definition of "private entity" which appeared in the January 26, 1999, SGA has been added to § 645.120 in the Final Rule, so that the meaning of the term is clearly expressed. "Private entity" means any organization, public or private, which is not a Local Board, PIC or alternate administering agency or a political subdivision of a State.

Another commenter suggested that the Department amend language used throughout the IFR1 to include "or alternate administering agency" after each reference to a (PIC). The commenter was concerned that readers would believe that only PICs serve as WtW administering agencies. As noted in § 645.210 of the IFR1, an alternate administering agency is one designated by the Governor and approved by the Secretary under § 645.400 of this part.

Response: For the sake of clarity, we have made the suggested change, but have generally replaced the term "PIC" with the WIA term "local board" in this phrase. Under WIA (Pub. L. 105-220) (20 CFR, Part 652, et al.) passed in August, 1998, local workforce investment boards (local boards) have replaced PIC's in most places, and the JTPA service delivery areas used by the WtW program may undergo change as WIA is implemented and local workforce investment areas are designated in their place. Also, Pub. L. 105-277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) amended the Social Security Act (SSA) to revise the WtW definitions of PIC (section 403(5)(D)(ii)), Service Delivery Area (section 403(5)(D)(iii)), and Chief Elected Official (section 403(5)(A)(vii)(I)). Therefore, in light of the legislative changes and the comment discussed above, the corresponding IFR1 definitions have been revised so that they refer to both the JTPA and WIA terminology in order to bridge the transition from JTPA to WIA. In this preamble, however, we generally use the term "local board" to refer to these entities.

Definition of TANF Assistance. The WtW program exists within the larger framework of the TANF program administered by DHHS which provides benefits in the form of cash or other assistance to eligible families and individuals, as well as a range of benefits and services consistent with the goals of the TANF law. In the preamble of IFR1, we stated that we would follow the lead of DHHS in defining certain terms, including "assistance." What constitutes "assistance" is a major consideration both in applying the Federal 60-month time limit on receipt

of TANF benefits and in determining eligibility for WtW. Therefore, we received numerous comments seeking clarification, particularly with regard to what constituted "WtW cash assistance."

One commenter stated that the definition proposed by DHHS showed intent to include wage subsidies in the definition of assistance, including payments to employers to help cover the costs of employment or on-the-job training. The commenter disagreed with this approach and requested that such subsidies not be treated as assistance. Rather, the commenter suggested, they should be viewed as tax incentives which would not be considered assistance even if funded with TANF funds. Since DHHS defines assistance as benefits or services that would be considered welfare, the commenter suggested that activities under TANF that help pay for jobs that pay wages and confer employee status should be considered non-assistance, as should wage-paying publicly funded jobs created for recipients.

Another comment stated that Congress distinguished between cash and non-cash assistance when it established the WtW program and that cash assistance, not non-cash assistance, should count against the five-year TANF limit. Further, the comment indicated that it is unclear whether child care would be considered cash assistance and thus count against the time limit. It suggested that the Final Rule provide clearly that child care is non-cash assistance, citing the precedent of the Food Stamp Program. This would enable WtW participants to receive child care through WtW without exhausting their TANF eligibility.

Response: The DHHS has issued definitions for "assistance" and "WtW cash assistance" for use in the TANF program, at 45 CFR 260.31 and 260.32, respectively, published in the **Federal Register** on April 12, 1999 (64 FR 17720). In 45 CFR 260.31, the DHHS defines the term "assistance" to generally mean cash payments, vouchers, and other forms of benefits to meet a family's basic needs for food, clothing, shelter, etc. Exclusions from "assistance" include non-recurrent short-term benefits, wage subsidies to employers, supportive services for families who are employed, services such as counseling, case management, child care, and other job retention and employment-related services that do not provide basic income support. However, supportive services such as transportation and child care are included for families who are not

employed. (See TANF Final Rule for full text).

The term "WtW cash assistance," as defined in 45 CFR 260.32, includes the benefits defined as assistance in 45 CFR 260.31 that are directed at basic needs. Such benefits are included when they are provided in the form of cash payments, checks, reimbursements, electronic fund transfers, or any other form that can legally be converted to currency. The TANF Final Rule became effective on October 1, 1999. The TANF definitions are promulgated by DHHS; we cannot change them for purposes of TANF.

However, we have determined that a definition of what it means to receive "TANF assistance" for the purposes of determining eligibility for the WtW program, as distinct from the definition as it relates to TANF time limits, work participation and other requirements, is necessary in order to respond to the comments and concerns about the potential negative impact the final DHHS definition could pose for certain individuals in the WtW target groups. The DHHS definition of "assistance" and "Welfare-to-Work cash assistance" in the TANF Final Rule would preclude from participation in WtW persons who are receiving services such as counseling and case management and/or employment-related services such as job retention, that do not provide basic income support. Although the definition of "WtW cash assistance" in the TANF final regulations still stands for the purpose if the TANF time clock, for the purposes of determining if a person is receiving TANF assistance as a condition of WtW eligibility, we consider the phrase "TANF assistance" to mean "any TANF benefits and services for the financially needy according to the appropriate income and resource criteria (if applicable) specified in the State TANF plan."

The funding sources for the TANF benefits and services an individual receives may be either Federal TANF funds or State Maintenance of Effort (MOE) funds expended in the TANF program.

As this phrase is applicable to WtW for narrow eligibility purposes only, we have not added it to the definition section of this rule at § 645.120. Rather, it is incorporated into the Rule at § 645.212(d) and applies only to eligibility determinations under §§ 645.212(a)(1) and 645.213(a).

This provision should allow these otherwise eligible individuals to participate in WtW and alleviate some of the main concerns commenters had about how "assistance" is defined. Those who are served under WtW

because of the new provision at § 645.212(d) must be among the financially needy as determined by the State TANF plan. If there is no means test for the benefits and services a particular individual receives under TANF, the individual will be considered to be financially needy for purposes of eligibility under this provision at § 645.212(d). If there is a means test, the individual must meet the income and resource criteria established by the State for the particular benefits or services.

Subpart B—General Program and Administrative Requirements

Who May be Served as a Hard-to-Employ Individual Under the 70 Percent Provision? (§ 645.212)

The 70 percent eligibility criteria for a “hard-to-employ” individual under § 645.212 of IFR1 tracked the underlying statutory language then in place. Paragraph 645.212(a) required that the individual must be receiving TANF; must face at least two of three specified barriers to employment (has not completed secondary school or obtained a certificate of general equivalency; requires substance abuse treatment for employment; and/or has a poor work history); and must be a long-term TANF recipient (at least 30 months receipt of TANF or must be within 12 months of a Federal or State time limit on TANF eligibility). Paragraphs 645.212(b) and (c) set the criteria for serving non-custodial parents and individuals who no longer receive TANF due to a Federal or State time limit on eligibility. Also, we have added a new paragraph (d) to reflect that for purposes of WtW eligibility, TANF assistance will mean, “any TANF benefits and services for the financially needy according to the appropriate income and resource criteria (if applicable) specified in the State TANF plan.” For a full discussion of this meaning of assistance that is applicable to WtW for eligibility determination purposes, see “Definition of Assistance” above in the discussion of § 645.120.

The 1999 Amendments significantly changed the eligibility criteria for participants served under § 645.212 by removing the barrier requirements, but, as described in the discussion of § 645.211 in Section III of this preamble, retained the requirement that at least 70 percent of a project’s funds be used to serve participants meeting the criteria of § 645.212. Generally, at least 70 percent of a project’s WtW funds must be spent on long-term welfare recipients (without a requirement that they face barriers to employment) and noncustodial parents

meeting certain criteria. Our discussion of these changes in Section III of the preamble presents a complete analysis of these changes and the resulting changes to the regulatory eligibility criteria in § 645.212. Many of the comments on the hard-to-employ criteria of IFR1, summarized below, are no longer relevant because the 1999 Amendments eliminated the criteria addressed by the comments, but we have presented them to reflect the concerns expressed by the interested parties. Some of the comments on IFR1, however, raise issues regarding the length of receipt of TANF assistance, which are still relevant to the revised § 645.212. In response to these, we have made two other changes to § 645.212.

Under IFR1, among the eligibility criteria under the 70 percent provision, § 645.212(a)(3)(ii) provided that an individual must be within 12 months of a Federal or State-imposed durational time limit on eligibility. An individual could meet this requirement if (s)he would have been within 12 months of such a durational time limit but was exempted from the limit due to a hardship exemption under section 408(a)(7)(C) of the Act. Section 645.212(c) provides that an individual who otherwise meets the criteria of § 645.212 may be served if (s)he is no longer receiving assistance due to a Federal or State-imposed lifetime limit on assistance.

We received several comments regarding the use of the terms “State-imposed durational time limit” and “State-imposed lifetime limit” in § 645.212. Commenters suggested that we replace them with a phrase such as “State-imposed time limit” because not all States impose durational time limits or lifetime limits and many States have instituted intermittent time limits within the lifetime limit of five years. A commenter noted that in one State an individual’s lifetime of TANF assistance could span a seven-year time frame, as assistance could be provided for 36 months, break for two years and then resume for an additional 24 months and that, under these circumstances, an individual would not be eligible for WtW under § 645.212.

Response: We agree that our use of these terms may have had unintended consequences due to variation in the way limits are applied throughout the States. As the lifetime limit criterion is still relevant under the 1999 Amendments, we have replaced references to “State lifetime limits” with the phrase “State-imposed time limits” in §§ 645.212 and 645.213.

A commenter suggested that we revise § 645.212 to provide that victims of

domestic violence, addressed by section 402(a)(7) of the Act, would be eligible for WtW services even if exempt from the durational limits on receipt of TANF services.

Response: Section 402(a)(7) of the Act provides that State TANF plans may provide for waiver of certain requirements, including time limits, when compliance with the time limits would make it more difficult for the TANF recipient to escape from domestic violence. We agree that where an individual is within 12 months of the State limit, but has received such a waiver, it would make no sense to deprive the person of WtW assistance simply because the individual is exempt from the State limit due to a domestic violence waiver instead of a hardship exemption. Accordingly, we have revised § 645.212(a) to refer to section 402(a)(7) of the Act, to make it clear that victims of domestic violence who have received a waiver of the State-imposed time limit, like individuals who are exempted from the limit because they have been battered or subjected to extreme abuse, may be served under WtW (other changes to § 645.212(a) made by IFR2 are discussed in Section III of this preamble).

Many of the other comments we received on § 645.212 made valid points, but the issues raised are no longer relevant because of the simplification of the eligibility criteria under the 1999 Amendments. In particular, the barriers to employment provisions of sect; 645.212(a)(2) generated significant comment. Under the new eligibility criteria, long-term welfare recipients who are served under the 70 percent provisions are not required to demonstrate that they face these barriers. Below, we have briefly summarized and discussed comments on the 70 percent criteria in general and the barriers to employment in particular, but, because they are no longer required as eligibility criteria, we have not responded in great detail.

While most comments addressed the specific barriers to employment, several comments were more general in nature. Comments suggested that we revise the regulations to provide that an individual would be eligible if the individual satisfied any one of the three barriers instead of at least two of the three barriers. A commenter stated that persons with disabilities should be included among the hard-to-employ, because many people with disabilities are long-term welfare recipients. The commenter suggested that we amend 645.212(a)(2) by adding a fourth barrier to specifically cover persons with disabilities that affect their ability to

obtain/retain employment or by expanding the definition of poor work history to include poor work history due to a disability.

Response: Prior to the 1999 Amendments we could not have made these changes, although an individual meeting the poor work history criterion could be served regardless of the reason for the poor work history. Thus, an individual with a poor work history caused by a disability could be eligible if the other criteria were met. Under the 1999 Amendments, the barriers criterion is eliminated. We expect that long term welfare recipients with disabilities will be served under the new eligibility criteria. Moreover, our competitive grant SGA's and formula grant planning instructions have encouraged State and local operating entities to give priority consideration to individuals with disabilities.

Education Level (§ 645.212(a)(2)(i)). IFR1 provided that individuals who had neither completed secondary school nor obtained a certificate of general equivalency and who had low skills in reading or mathematics satisfied the education level eligibility criterion of § 645.212(a)(2)(i). Several commenters viewed this provision as overly restrictive, and suggested we revise the criterion so that it can be met by a showing that a participant meets either of the criteria. Commenters supported this suggestion with the observation that a high school diploma or equivalency did *not* guarantee that an individual had the requisite skills.

Other comments recommended that the reading and mathematics skill level not be defined at the 8.9 grade level or below, but that operating entities be able to set grade skill levels based upon local labor market requirements, or that the threshold be raised to a higher grade level. Commenters recognized that the 8.9 grade level was consistent with similar criteria in JTPA, but suggested that WtW's relationship with TANF argued for flexibility to diverge from JTPA.

Response: Based upon these comments, we tend to agree that the regulatory definition standards for the educational ability criterion may have been overly restrictive. In any event, under the new criteria set forth in IFR2, educational ability is no longer a criterion for eligibility of long-term welfare recipients.

Poor Work History (§ 645.212(a)(2)(iii)). The IFR1, at § 645.212(a)(2)(iii), defined "poor work history" generally as no more than 3 consecutive months worked in the past 12 calendar months. Commenters opined that this definition was overly

restrictive and/or not an appropriate indicator of a poor work history. Some commenters provided anecdotes regarding individuals who, having worked part-time or through a program, would be ineligible for WtW under this definition, and proposed that States should be permitted to adopt their own definitions of poor work history.

Commenters identified other perceived problems with the regulatory definition of poor work history:

- Individuals who have had a series of short spells of work covering three consecutive months would be ineligible despite demonstrating an inability to keep a job;
- The definition did not establish a required number of work hours in the three-month period;
- The definition would exclude hard-to-employ individuals who had only a part-time summer job within the last 12 months as well as the working poor and seasonal workers.

Other commenters recommended revisions, some to conform with the JTPA and some to follow the pre-TANF Unemployed Parents regulations. Most requested that the Department obtain a more complete picture of an individual's work history by going back further in time.

Several commenters asserted that the three consecutive months criterion is inconsistent with the requirement that at least half of the payment to service providers for job placement services occur after a participant placed in a job has worked for six months. To these commenters, those provisions indicated a Congressional determination that holding a job for less than six months was evidence of a poor work history.

Response: Like the educational ability criterion, we tend to agree with commenters that the regulatory definition of "poor work history" may have been overly restrictive. In any event, under the new criteria set forth in IFR2, poor work history is no longer a criterion for eligibility of long-term welfare recipients.

Length of Receipt of TANF Assistance (§ 645.212(a)(3)). A commenter asked if individuals who have been diverted from receiving TANF as part of a State's diversion strategy are eligible for WtW.

Response: Individuals who might otherwise be eligible for WtW services, but who have been diverted (may have received one-time only financial assistance, for example) are not eligible for WtW under the old or new provisions of § 645.212 because they are not eligible for TANF. Even as amended, receipt of TANF assistance is the basic criterion for WtW eligibility. Operating entities should assess whether diverted

individuals may qualify under other criteria, such as the criteria for noncustodial parents at § 645.212(c) or under § 645.213 as an individual formerly in foster care or a low income custodial parent. These new eligibility criteria are more fully discussed in Section III of this preamble.

Noncustodial Parents (§ 645.212(b)). The IFR1 stated that a noncustodial parent would be eligible if the custodial parent met the eligibility requirements of paragraph (a) of § 645.212. Commenters asserted that this approach posed insurmountable difficulties for those entities who were in contact only with the noncustodial parent.

Response: The 1999 Amendments address this issue. The statutory and regulatory changes that address these concerns are described below.

A technical amendment, enacted on July 16, 1998, as part of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105-200), changed the eligibility criteria for noncustodial parents under § 645.212. This amendment revised the language of SSA section 403(a)(5)(C)(ii) to apply the barriers to employment criteria to all participants, including noncustodial parents. In addition, the amendment clarified that the required length of receipt of cash assistance under TANF applies to either the custodial parent or the minor children of the noncustodial parent. The addition of the reference to the minor child of the noncustodial parent addresses those "child only" cases where there is no custodial parent and also allows WtW to provide services to a noncustodial parent whose children are less than 30 months old, if the custodial parent has been on TANF for a longer period.

We issued Training and Employment Guidance Letter (TEGL) No. 6-98 on September 21, 1998, to convey this change and have posted this information on the WtW website. Subsequently, we issued TEGL 6-98 Change 1 on December 17, 1998, to address those cases where there are custodial caretaker relatives who receive TANF benefits for themselves and on behalf of the children in their custody. While the number of these cases nationwide is small, these custodial caretaker relatives are subject to the same TANF participation requirements and time limitations as other TANF recipients and therefore may be eligible for the WtW program.

The 1999 Amendments contain eligibility criteria pertaining to noncustodial parents that supersede the earlier statutory and subsequent technical changes. Section III of this preamble fully discusses the new

eligibility criteria for noncustodial parents.

Who May Be Served as an Individual With Long-Term Welfare Dependence Characteristics Under the 30 Percent Provision? (§ 645.213)

This section of IFR1 stated the requirements for enrolling participants, under the 30 percent provision, as “individuals with long-term welfare dependence characteristics.” As with § 645.212, commenters raised issues regarding time limits and State-to-State eligibility variations.

A commenter recommended that we revise this section to provide that individuals would be eligible if they *either* are receiving TANF assistance or have one or more characteristic of long-term welfare dependence. Another commenter suggested that we include a history of domestic violence as an example of a characteristic associated with long-term welfare dependence, citing studies in support of that viewpoint. Another suggested that we add having a disability affecting the ability to obtain and retain employment to the list of characteristics associated with or predictive of long-term welfare dependency.

Response: These changes have not been made, because they are not needed. Under IFR1, States, in consultation with the operating entities, already have the flexibility to identify characteristics associated with or predictive of long-term welfare dependence such as those suggested, in addition to those provided in the regulation. Under the 1999 Amendments, discussed in Section III of this preamble, this flexibility is maintained.

How Will Welfare-to-Work Eligibility Be Determined? (§ 645.214)

A commenter recommended that we change the language in § 645.214 (b)(2), to permit a determination of eligibility to be “based on information collected by the operating entity *and/or* the TANF agency”, in order to address those situations where State TANF agencies and operating entities share responsibility.

Response: This editorial change has been made for the sake of clarity.

What Activities Are Allowable Under This Part? (§ 645.220)

A significant number of commenters asserted that the “work first” philosophy undermines the successful transition of WtW participants to unsubsidized employment, by placing participants into jobs before they have received the training in basic and

occupational skills needed to prepare them to succeed at those jobs.

Response: We have not made any changes to the regulations based on these comments, because the “work first” requirements implement our understanding of the intent of the WtW legislation and the purpose of the program. While we acknowledge that the design and implementation of work-first programs can pose challenges, the purpose of the WtW program is to place participants in employment activities which will then lead to unsubsidized employment and long-term self-sufficiency. We also believe that the statute and the rule provide significant flexibility to combine work with training and other post-employment services that will help participants to build skills needed to succeed and advance in the workforce.

Some commenters supported the IFR1’s flexibility in the definitions of allowable activities, while others favored a more prescriptive approach. The terms that elicited particular interest were “job readiness”, “job placement”, “on-the-job training”, “community service”, “work experience”, “job creation”, “post-employment activities”, “job retention”, “supportive services”, “assessment”, and “Individual Development Accounts” (IDAs).

Response: We continue to believe that the States and localities should have the flexibility to develop definitions that fit their circumstances, therefore, we have not further defined these terms. We have formalized this flexibility in IFR2 by adding a new § 645.125 to describe the roles of Federal, State and local governmental partners in the governance of the WtW program. This section is discussed in section III of this preamble.

Several commenters recommended we modify § 645.220(e) so that supportive services could be provided to participants who are receiving job placement services.

Response: We agree that it is appropriate for operating entities to be able to provide supportive services for individuals participating in job placement activities. Section § 645.220 has been modified accordingly.

A commenter noted that language used throughout WtW and JTPA recommends and mandates coordination of program activities and non-duplication of services. This principle is also true of the Workforce Investment Act, under which workforce investment systems have replaced the job training systems created under JTPA. Under JTPA, the goal of coordination was achieved by utilizing

resources outside of the funding source to supplement and extend services to the greatest number of participants possible, the commenter points out. The commenter recommends that funds from programs under WIA or JTPA or others available through the One Stop system should be available for WtW activities, and that WtW funds be used to provide supportive services for individuals engaged in activities under WIA, JTPA or other funding streams.

Response: We concur that better coordination between the WtW system and the One-Stop system developed under JTPA/WIA is beneficial to all programs, and have added language to § 645.220(f) that explains that job retention and support services may be provided to eligible WtW participants who are enrolled in WIA or JTPA activities (including occupational skills training). We seek to foster such coordination, especially as the WtW program is a required partner in the One-Stop system created under WIA. These services can be provided with WtW funds when they are not otherwise available to the participant. Furthermore, we have added a new section 645.430 (which is discussed below in this section II of the preamble) to more fully describe the role of WtW in the One-Stop system.

Several commenters indicated support for the expanded use of WtW funds to provide medical services.

Response: Section 408(a)(6)(A) of the SSA specifically prohibits the use of any TANF funds, including WtW funds, for medical services, so we have not made the suggested change. An explanation of this prohibition is available in the Q & A’s on the WtW website, at number AA8, under “Allowable Activities.”

Based upon inquiries received from other sources, the Department has posted a Q&A to set forth our interpretation that § 645.220(h) permits outreach and recruitment activities as part of the allowable program activities listed in paragraphs (a) through (f) of § 645.220. Costs associated with these activities must be reported in the same category as intake, assessment, eligibility determination, development of an individualized service strategy and case management identified at § 645.220(h). We have changed § 645.220(h) to clarify that these outreach and recruitment activities are allowable uses of WtW funds.

Under IFR1, occupational skills training activities could only be provided as a post-employment activity for individuals placed in a job or a WtW employment activity. Under the 1999 Amendments, short-term vocational educational training or job training are

permissible activities. This is discussed in more detail in section III of this preamble.

Finally, as a technical correction, we have removed the phrase "but not limited to" from this the list of suggested post-employment services and job retention and support services in this section. This does not change the meaning of this provision. Here, as throughout the regulations, the term "include" is used to indicate an illustrative, but not exhaustive list of examples. We also removed the reference to SSA section 404(h) in § 645.220(f) to emphasize that IDAs established in accordance with statutory purposes or uses of TANF and WtW are allowable WtW activities.

What General Fiscal and Administrative Rules Apply to the Use of Federal Funds? (§ 645.230)

The information technology provision of § 645.235(c)(3) has been moved to § 645.230(d) to relate it to the discussion of allowable costs. As a result, paragraph 645.230(d) is redesignated as paragraph (g) in the Final Rule and the remaining paragraphs have been redesignated accordingly. This is discussed further in the discussion of § 645.235, below.

Commercial Organizations. A commenter noted that the IFR1 did not specify fiscal and administrative requirements for commercial organizations.

Response: The final rule clarifies, in § 645.230 (a)(2), that commercial organizations, along with non-profit organizations, must follow OMB Circular A-110, codified at 20 CFR, Part 95. A similar provision, clarifying the audit requirements for commercial organizations, has been added at § 645.230(b).

Six-Month, 50 Percent Hold-back on Contracts and Vouchers. Several commenters asked for clarification and guidance on § 645.230(a)(3), requiring that contracts and vouchers include a provision that at least one-half of the payment for job placement services occur after an eligible individual has been placed into the workforce for six (6) months. For example, some comments raised questions about the meaning of the phrase "placement in the workforce" during the six-month hold-back period. Others wondered whether the six months must be either continuous or cumulative, whether participants had to remain with a single employer during the entire period, whether part-time or subsidized employment could count towards the six months and whether reasonable transition time between jobs could be

considered part of the six-month hold-back period.

Response: We have provided guidance that retention for six months in the workforce is achieved when a participant is placed in unsubsidized employment and receives earnings in the two consecutive quarters following the quarter in which placement occurred in the instructions for the WtW Formula Grant Cumulative Quarterly Financial Status Report (ETA 9068). Under these instructions, participants do not have to remain with a single employer during the entire period, and no minimum number of hours or level of earnings is specified.

A commenter asked for guidance as to which contracts and vouchers are subject to the six-month hold-back provision. Other commenters suggested that we waive the six-month hold-back requirement under certain circumstances.

Response: The mandatory six-month hold-back provision applies to all contracts and vouchers for placement services into unsubsidized jobs, except for those placement services that are provided to individual participants as a reasonable and necessary part of the operating entity's work experience, community service and/or on-the-job training program. This provision is mandated by statute and can not be waived for PICs and local boards. Under the 1999 Amendments, competitive grantees who are not PICs or local boards may provide services directly. See further discussion in section III of the preamble.

A number of commenters inquired whether fixed unit price performance-based contracting can be used under WtW. One commenter questioned whether the regulations reflect DOL policy with regard to fixed-unit-price contracts. Another commenter recommended that the regulations not impose additional restrictions upon fixed-unit-price contracts over and above the hold-back requirement.

Response: We see this contracting method as appropriate, especially in conjunction with the six-month hold-back requirement for performance. We have provided guidance on fixed unit price performance-based contracts and the requisite reporting requirements in the Q & A's on the WtW website (<http://wtw.doleta.gov/q&a/administrative.htm>) at numbers AF17 and AF18, under "Administrative/Fiscal."

Program Income. Commenters expressed concern that the regulations prohibit profits as an allowable use of funds, and asked whether a non-profit may earn a profit or whether all

earnings must be reported as program income.

Response: For the sake of clarity, a new paragraph has been added to § 645.230(a)(6) which requires governmental or non-profit organizations that earn excess revenue over costs incurred to treat the excess revenue as program income earned, and report it as such. The regulation imposes no additional restrictions on fixed-unit-priced contracts or on program income derived from such contracts. It only clarifies the treatment of income earned by governments or non-profit organizations from fixed-unit-price contracts or other sources.

One commenter requested further clarification of the addition method, which is addressed in § 645.230(a)(5).

Response: The Final Rule adds a reference, in this section, to 29 CFR 97.25(g)(2), which describes the addition method. 29 CFR 97.25(g)(2) clarifies that under the addition method, program income is added to the available WtW grant funds and must be used for the purposes and under the conditions set forth by the grant agreement. Section 97.25(g)(2) also explains both the net and gross income methodologies for determining the amount of program income to be credited to the grant program.

Audit Requirements. As some comments noted, the IFR1 did not address the responsibility for audits of commercial organizations. Section 645.230(b) has been revised accordingly. A new paragraph (b)(3) is added to § 645.230 to establish that the Department is responsible for audits of commercial organizations that are direct recipients of WtW grants. In addition, commercial subrecipient organizations that spend more than the threshold level specified in 29 CFR part 99, which implements OMB Circular A-133 (\$300,000 as of publication of this rule), must conduct either an organization-wide audit or a program-specific financial and compliance audit, as required by 29 CFR part 99.

Drug-Free Workplace Requirements. Paragraph (d) in § 645.230 of the IFR1 establishes that all WtW recipients and subrecipients must comply with government-wide requirements for a drug-free workplace. One comment, citing the provisions at 29 CFR 98.600, questioned whether the drug-free requirements should apply to both the recipient and subrecipient level, or should apply only to the recipient level.

Response: We have divided § 645.230(g) into two paragraphs, (g)(1) and (g)(2), to clarify how drug-free workplace requirements are to be

applied, at the recipient and subrecipient levels, respectively.

Prohibition on the Construction or Purchase of Facilities and Business Start-up Costs. The WtW statute specifies the allowable activities for the formula and competitive grant programs at section 403(a)(5)(C)(i). The statute does not include the construction or purchase of facilities or buildings as allowable activities. Section 645.300(b)(1)(i) elaborates on this general prohibition on facilities expenses by specifying that the cost of constructing or purchasing facilities or buildings is not acceptable as match for a WtW formula grant. This is because match expenditures are only acceptable when spent on those costs which would be allowable if paid for with WtW grant funds, and because Federal funds may be used for such facilities expenses only where there is specific legislative authorization. Since WtW does not specifically authorize these expenses, they are not allowable WtW expenditures nor acceptable match. However, the IFR1 inadvertently failed to include comparable language explicitly barring the use of formula grant funds or competitive grant funds to construct or purchase facilities or buildings.

We are concerned that the apparent discrepancy could be misunderstood. Therefore, we added a provision at § 645.230(e) to fix this oversight and indicate clearly that the same limitations on the use of WtW funds for the construction or purchase of facilities or buildings apply to competitive grant funds and to formula grant funds.

Similarly, we wish to clarify that WtW funds generally may not be used to cover the costs of starting a business or for capital ventures. In response to a recommendation by a commenter that business start-up funds be provided by the WtW program, we have added a new provision in the Final Rule at § 645.230(f) that states that WtW funds may not be used to cover these types of costs. We note, however, that there is a limited exception to this prohibition when WtW funds are used for Individual Development Accounts. These accounts, which are established by or for participants under § 645.220(f), are permitted for the purpose of business capitalization, as well as other specified purposes.

What Types of Activities Are Subject to the Administrative Cost Limit on Welfare-to-Work Grants? (§ 645.235)

WtW Definition of Administrative Costs. The IFR1 adopted the definition of "Costs of Administration" from the JTPA regulations at 20 CFR 627.440, and

noted that the Secretary might issue further rules to conform to similar provisions in the final regulations governing the TANF program. Two commenters recommended adopting the TANF description of administrative costs to reduce administrative confusion and costs and to encourage cooperation between TANF-funded and WtW-funded programs. Other commenters recommended not adopting the TANF definition of administrative costs, because of the number of activities that are considered administrative costs under TANF. One commenter considered the adoption of JTPA administrative cost definition as too permissive given the WtW 15 percent limit on administrative costs. Another commenter recommended adopting the Child Care Development Block Grant definition for administrative costs. Another commenter suggested using a single administrative cost definition for all three welfare-related programs, WtW, TANF and Child Care Development Block Grant.

Response: Since the issuance of the IFR1, WIA was signed into law, reforming the employment and training service delivery system and replacing PIC's with local workforce investment boards. Because the WtW program will be operated through the workforce investment system under WIA, as areas make the transition from JTPA to WIA, we have decided that it makes more sense to coordinate the administrative cost definition with the WIA definition rather than the TANF definition. The WIA regulations provide a definition of administrative costs that is less restrictive than the JTPA definition. To minimize burden on the local boards, by providing consistency between WtW and WIA, § 645.235 has been revised to set forth a new WtW definition of administrative costs that is to a great extent based on the WIA definition at 20 CFR 667.220. The WIA definition of administrative costs relies on the concept of function as the method to determine how a particular cost would be charged. Under this principle, administrative costs are defined as costs incurred for enumerated administrative functions by identified administrative entities for overall program management purposes. The administrative functions include but are not limited to the following activities undertaken for overall program management purposes: accounting and budgeting, financial and cash management, procurement and property management, and developing and operating systems and procedures required for administrative functions. The administrative entities include

State and local workforce boards, direct WIA grant recipients, and local grant subrecipients. For additional information on covered activities and entities, see the Workforce Investment Act Final Rule.

As part of the new definition, we no longer require first-line supervisory costs to be treated as administrative costs because this function is more closely related to the provision of direct services to participants than to overall management. Similarly, we no longer require data processing costs to be charged as administrative costs; rather, these costs must be allocated based on whether the functions they support are administrative or programmatic.

Allowable Information Technology Costs. We received several comments on the composition and classification of information technology costs, but none on the allowability of such costs. As discussed above, in the discussion of § 645.230, upon reviewing these comments we decided to clarify the Year 2000 limitations applicable to the allowability of information technology costs and to move this paragraph from § 645.235(c)(3) to § 645.230(d) to follow the paragraphs on allowable costs.

The administrative cost definition at § 645.235(d) of the Final Rule details the certain information technology costs that can be excepted from the administrative cost category. A commenter asked under which cost category are information technology systems development (above and beyond costs excluded from administrative cost limit) charged.

Response: Costs that can be excepted from the administrative cost limit are any costs incurred for the lease or purchase of hardware, including installation costs, and software needed for tracking and monitoring participant activities under a WtW grant. The cost of software development related to the tracking and monitoring functions, including personnel costs associated with such software development, can also be charged to the program cost category. Those costs of systems development that do not fall under the information technology cost exemption (i.e., information technology systems that are *not* used for tracking and monitoring) may be charged to administrative costs until the administrative cap is reached. Once the administrative cap is reached, such costs must be charged to a non-Federal source.

What are the Reporting Requirements for Welfare-to-Work Programs? (§ 645.240)

The IFR1 stated that grantees would be required to provide the Department with financial data and to provide DHHS with participant data. As discussed in Section III of this preamble, the 1999 Amendments transferred the responsibility for collecting participant data to the Department and simplified these requirements. The IFR1 indicated that the Department would issue instructions for financial reporting. We received many comments with suggestions for the financial reporting instructions.

Several comments suggested that reporting requirements conform to TANF requirements as closely as possible, while others recommended that WtW establish a reporting mechanism different from TANF, in order to avoid having WtW activities count towards the 60-month TANF clock. Some comments recommended that reporting requirements should differ from those required under the One-Stop system, while others recommended using the JTPA format for reporting requirements.

Other comments recommended against requiring reporting by Fiscal Year, recommended that we minimize our reporting requirements, and suggested that the reporting instructions require the reporting of post-employment services, unsubsidized employment, and wage data.

Response: We have issued instructions and formats for on-line financial reporting that have been approved by the Office of Management and Budget (OMB). These financial reporting instructions and formats are available at the WtW website (<http://www.eta-reports.doleta.gov>). Reference to this website has been added to the Final Rule. Overall, grantee response has been favorable to on-line financial reporting, as it reduces the burden on recipients and subrecipients. While the Department considered other program reporting formats, such as TANF and JTPA, as we developed the WtW reporting instructions, our intention was to remain consistent with statutory requirements. Establishing a reporting system either similar to or different from TANF's would have no impact upon the applicability of the 60-month limit on TANF for WtW participants.

In addition, electronic reporting has simplified cumulative reporting by fiscal year of appropriation. Grantees are required to report expenditure data for post-employment services. Grantees are

also required to report cumulative number of placements in unsubsidized employment, broken out by greater than or less than 30 hours a week. For purposes of calculating an "earnings gain" percentage, wage data is reported, both at the time of placement and when the participant is retained six months in unsubsidized employment.

Several comments suggested easing reporting requirements on tracking expenditures according to the 70 percent and the 30 percent eligibility categories. Two comments noted that the WtW statute imposes significant administrative and reporting burdens. They recommended that we consider the 70 percent criteria to be satisfied when 70 percent of the participants are hard-to-employ individuals, citing a precedent in JTPA Title II where at least 65 percent of participants must be "hard-to-serve individuals."

Response: The 1999 Amendments have resulted in a change in the original 70/30 requirements which is discussed in section III under § 645.211.

Some comments stated that the accounting requirements were overly burdensome. One comment suggested allowing States the option to choose the accounting method, employing either a cash method or an accrual method. One comment supported the use of the accrual method.

Response: States already have the option to choose which accounting method they use. However, if they use a cash method of accounting, they need to develop accrual information for reporting purposes.

The 1999 Amendments called for the simplification and coordination of reporting requirements. The Department was given the responsibility of establishing requirements for both financial and participant information. To fulfill this mandate, the Department has prepared revised reporting formats for formula and competitive grantees to include both participant and financial information.

The existing format was redesigned to reflect a streamlined approach in the reporting of both financial and participant data on one form. This data collection package will be submitted to OMB for approval separately from this rule. The status of the submission is discussed in section IV. A. Paperwork Reduction Act. Section 645.240 in IFR2 also discusses the changes in reporting due to the 1999 Amendments.

The proposed WtW reporting requirements reflect the Department's efforts to strike a balance between minimizing the burden on recipients and subrecipients while obtaining necessary information on the status of

funds and program outcomes required by various Federal laws concerned with integrity, accountability, and the measurement of program results.

What Procedures Apply to the Resolution of Findings Arising From Audits, Investigations, Monitoring and Oversight Reviews? (§ 645.250)

We received comments about the liability of the States and local entities. One commenter recommended that the regulations specify local liability for all categories of disallowed costs associated with the funds allocated to the substate areas.

Response: Because the IFR1 did not explicitly address the relationship between grantees and their subgrantees, we have revised § 645.250(a) to indicate clearly that the State or competitive grantee must establish the necessary rules and procedures.

Other comments asked that we clarify that the State is not liable for disallowed costs resulting from local entities' use of competitive grant funds, and suggested that we revise the regulations to require that the State share equitably with the substate entity in any disallowed costs.

Response: Under the regulations as written, a State is not responsible for disallowed costs under WtW competitive grants awarded to local governments, as it is not a party to the grant agreement. Our position on the suggestion that we specify the distribution of liability for disallowed costs as between recipients and subrecipients, and particularly as between States and local governments, is that we do not have the authority to do so without explicit direction in the statute. Accordingly, the suggested changes have not been made.

What Nondiscrimination Protections Apply to Participants in Welfare-to-Work Programs? (§ 645.255)

Section 645.255 provides that participants in WtW programs have such rights as are available under all applicable Federal, State and local laws prohibiting discrimination, and lists four such laws specifically identified in the WtW statute. We received comments from several human rights organizations strongly suggesting that ETA add the Civil Rights Act of 1964 (Title VII) and the Education Amendment of 1972 Title (IX) to the list of statutes in § 645.255(a).

Response: The list in § 645.255(a) contains those laws identified in section 408(d) of the WtW statute, so the suggested statutes could not be added to that section. However, we have reordered the paragraphs in § 645.255 and have explained in a new paragraph (c) that complaints alleging

discrimination in violation of any applicable Federal, State or local laws, such as Titles VII and IX, as well as the Pregnancy Discrimination Act (42 U.S.C. 2000e (paragraph k)), are to be processed in accordance with those laws and their implementing regulations.

A few commenters expressed concern that IFR1 limits WtW participants' protection under gender discrimination laws to "job readiness and employment activities".

Response: The WtW statute, at section 403(a)(5)(j)(iii), specifies that participants in "work activities" are protected under gender discrimination laws. To be consistent with the language in the law, the Final Rule replaces the phrase "job readiness and employment activities" in § 645.255(d) with the phrase "work activities, as defined in section 407(d) of the Social Security Act."

In addition, Section 188 of the Workforce Investment Act and its implementing regulations prohibit discrimination on a number of bases, including sex, in all programs and activities, including WtW programs, that are part of the One-Stop delivery system and that are operated by One-Stop partners to the extent that the program activities are being conducted as part of the One-Stop delivery system. The programs and activities covered under these WIA nondiscrimination provisions include those that qualify as "work activities" under the WtW statute, as well as the broader range of programs and activities that are offered within the One-Stop system.

We have added new language to the Final Rule in §§ 645.230(i), 645.255, and 645.430, to acknowledge that the DOL regulations implementing WIA section 188, at 29 CFR part 37, are applicable to WtW activities conducted as part of the One-Stop delivery system. 29 CFR 37.2(a)(2) provides that the WIA nondiscrimination regulations apply to "[p]rograms and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system." Since the WtW program is one of the required One-Stop partners identified in WIA sec. 121(b), part 37 is applicable to WtW activities carried out as part of the One-Stop delivery system. Similarly, under 29 CFR 37.2(a)(3), the employment practices of such WtW One-Stop partner programs are covered by part 37. WtW One-Stop partner programs should be mindful of their responsibilities under 29 CFR part 37. For example, specific

requirements relating to outreach and recruitment, sectarian activities, participant data collections and record-keeping, monitoring, and discrimination complaints processing apply to WtW One-Stop partner programs carrying out WtW activities as part of the One-Stop delivery system. We intend to work closely with the Department's Civil Rights Center, to provide guidance so that WtW programs can meet their responsibilities under part 37.

What Safeguards are There to Ensure that Participants in Welfare to Work Employment Activities do not Displace Other Employees? (§ 645.265)

A comment expressed concern about the interpretation of "employment activity," in the first sentence of § 645.265(b), as it pertains to the prohibition on the use of WtW funds in violation of existing contracts for services or collective bargaining agreements, and recommended that we indicate which elements of § 645.220 would constitute employment activities for purposes of the non-displacement requirement.

Response: We recognize that IFR1 may be unclear about which employment activities are covered under § 645.220. Therefore, we have added a cross reference to § 645.220(b) and (c) in the first sentence of § 645.265 to more clearly indicate what is meant by "employment activities." These activities are as follows: vocational educational and job training, community service programs, work experience programs, job creation through public or private sector employment wage subsidies, and on-the-job training.

One commenter urged that we specify the amount of time that an employer must wait before filling a position that became available due to a lay-off.

Response: Upon review, we believe that it is not appropriate for us to set a minimum waiting period. In our view, individual States and localities should be accorded the discretion to take their particular circumstances into account.

What Procedures are There to Ensure that Currently Employed Workers May File Grievances Regarding Displacement and that Welfare-to-Work Participants in Employment Activities May File Grievances Regarding Displacement, Health and Safety Standards and Gender Discrimination? (§ 645.270)

A number of comments from union and labor management organizations stated that the regulatory procedures for establishing and maintaining grievance procedures are either overly prescriptive or too broadly defined.

Response: We have written the regulations governing grievance procedures to precisely reflect the language of the Act at section 403(a)(5)(j)(iv), while seeking to make the complaint filing system sufficiently clear and to provide State and local governments with the maximum flexibility to establish grievance procedures that adequately address State and local needs. Therefore, no changes have been made in the Final Rule. However, we have added a new section (i) to provide that participants alleging discrimination by WtW programs that are part of the One-Stop system may file a complaint using the procedures developed by the State under the WIA nondiscrimination regulations at 29CFR 37.70–37.80.

Subpart C—Additional Formula Grant Administrative Standards and Procedures

What Constitutes an Allowable Match? (§ 645.300)

Several commenters opined that the match provisions were overly burdensome and impeded program implementation, and requested more flexibility to meet the match requirement with non-cash funds.

Response: While the amount of the required match is statutory, we have provided flexibility by changing the 50 percent limit in § 645.300(b)(3), to allow up to 75 percent of matching funds to be third party in-kind match. At least 25 percent of matching funds must be cash match.

Several commenters recommended expanding the universe of resources that can qualify as match. Some commenters suggested that capital costs, donated property, and funds spent on renovation of existing facilities be considered allowable match.

Response: The Balanced Budget Act of 1997 established WtW as a short-term program. Resources which would be expected to outlast the WtW program, such as those mentioned above, therefore, are not allowable WtW program costs and are not acceptable as match. We have not made the suggested change. However, under the regulations as written, depreciation or use allowances which reflect the use or consumption of capital assets during a reporting period are allowable WtW costs and allowable as match.

Matching funds must be spent on WtW allowable activities for WtW eligible individuals, whether or not the individuals are actually enrolled in a WtW program. Some commenters opined that in their view this definition was overly restrictive and suggested that

any funds spent on training, support or assistance for any individuals should be permitted as allowable match. Other commenters suggested that we permit in-kind contributions, employer-paid wages or employer-paid benefits as allowable match.

Response: Because the purpose of the WtW program is targeted to a specific population and has the specific goal of moving welfare recipients and certain noncustodial parents into unsubsidized employment, matching funds must support the overall design of the program. The purpose of the matching requirement is to leverage these targeted Federal funds and expand services to this population. Thus, while the individuals served with matching funds need not be enrolled in the WtW program, we believe it is important that only funds spent on individuals within the WtW target populations are counted toward the matching requirement. Likewise, we do not believe it is appropriate to eliminate the prohibition in § 645.300(c)(1) on using the employer share of participant wage payments, because it also is intended to ensure that matching funds are spent on expanded services that might not otherwise be provided. On the other hand, as discussed above, we have increased the limit on third-party in-kind contributions to 75 percent. As discussed in Section III of the preamble, the eligibility criteria for the program have been simplified. Any non-Federal dollars spent on the activities identified in § 645.220 for individuals in the new eligible population would count as match. In addition, any excess of funds spent to meet TANF maintenance-of-effort would count as match. We believe that States will now have sufficient flexibility to meet their matching requirement in a manner that will effectively serve the needs of the target population.

A number of commenters have inquired whether Community Development Block Grant funds may be used as match.

Response: As the underlying statute at sections 403(a)(5)(A)(i)(I) and 409(a)(7)(B)(iv)(I) and (IV) does not allow other Federal funds to be used as match, these funds are not an allowable source of match funds. No change to this provision is warranted.

Paragraph 645.300(e)(2) mandates that third-party donations of equipment or space be valued at the fair rental rate. One commenter noted that in certain cases this rule may conflict with OMB Circular A-87, which allows space donated by governmental third parties to be charged based on a use allowance.

Response: The provision has been modified to clarify the distinction between valuation of equipment and space donated by a governmental third party from that donated by a non-governmental third party.

What Actions are to be Taken if a State Fails to Make the Required Matching Expenditures? (§ 645.315)

Section 645.315 provided that we would implement an annual reconciliation of match expenditures and, if necessary, adjust those grants for which the match requirement has not been met. On November 13, 1997, a technical amendment affecting the expenditure of matching funds became law as part of the Labor, Health and Human Services and Education Appropriations Act (Pub. L. 105-78). As requested by comments, the technical amendment changed the period of expenditure for matching funds from one year to three years. States may now spend matching funds over the course of the same three-year period during which they spend the Federal WtW funds. The technical amendment became law immediately after the publication of the November 18, 1997 IFR1 and we received many comments asking that we change the expenditure period from one to three years and pointing out that the regulation had been superseded by the technical amendment.

Response: As a result of this technical amendment, § 645.315, which provided for annual reconciliation and grant adjustment, is superfluous. We have deleted the provision at § 645.315(a). Section 645.315(b) has been revised and redesignated as § 645.315(a) to describe the process that will be followed if a State fails to meet its match requirements at the end of the three-year expenditure period. We have added a new § 645.315(b) to clarify the impact on the administrative cost limit of any failure to satisfy the match requirements.

When Will Formula Funds be Reallocated and What Reallocation Procedures will the Secretary Use? (§ 645.320)

Section 645.320 described the circumstances under which we would reallocate formula funds. Funds that were subject to reallocation included those formula funds returned to the Department after a State had expended matching funds within a fiscal year, or had failed to fully obligate formula funds. Some commenters noted that under the technical amendment (Pub. L. 105-78) described above in the discussion of § 645.315, States may now expend required matching funds over a

three-year period. In addition, another technical amendment was enacted on October 28, 1998, (Pub. L. 105-306) which altered the obligation requirement for States. Under this amendment, States are not required to obligate certain funds within the fiscal year of appropriation. Under SSA section 403(a)(5)(A)(iv)(II), these funds are the 15 percent funds reserved for the Governor's special projects and the funds allocated within single SDA States.

Response: As a result of the technical amendments identified by the commenters, we will not reallocate any formula funds during the course of the program. Therefore, § 645.320 is no longer relevant and has been deleted.

Subpart D—State Formula Grants Administration

Under What Conditions May the Governor Request a Waiver to Designate an Alternate Local Administering Agency? (§ 645.400)

Waiver Authority. Some commenters stated that the case-by-case review process established by the IFR1 was inflexible, cumbersome, and fraught with delay. The commenters proposed that we modify the system to allow approval of waivers on a statewide basis.

Response: The case-by-case approach is prescribed by the statute at section 403(a)(5)(A)(vii)(III), so the suggested change has not been made. Furthermore, we have determined that, while perhaps somewhat burdensome, the mandated process has functioned adequately.

What Elements Will the State Use in Distributing Funds Within the State? (§ 645.410)

Many comments opposed the § 645.410(a)(7) requirement that a State distribute its SDAs' allocations within thirty days after the State's allotment was received. These comments suggested that the thirty-day deadline for distribution curtailed the States' ability to achieve coordination with local level plans and reduced the States' ability to ensure optimal utilization of funds.

Response: We agree that the 30-day deadline may be overly restrictive and could compromise the States' ability to distribute the funds in an efficient and equitable manner. However, since all of the FY 1998 and FY 1999 formula funds authorized have now been distributed to the local level, such a change would be moot. Therefore, we have made no change in this provision. Further, because all funds have been distributed in a timely manner, we will not be

retroactively looking into whether the 30 day requirement had been met.

What Factors will be Used in Measuring State Performance? (§ 645.420)

Section 645.220(a) provides that we will issue a performance measurement formula following consultation with DHHS, the National Governors Association and the American Public Welfare Association. We have completed the necessary consultation process and received approval of the performance measures from OMB. The Performance Bonus Criteria were published in the **Federal Register** at 63 FR 64832 (Nov. 23, 1998). The formula and data elements used for measuring State performance are included on the OMB-approved *WtW Formula Cumulative Quarterly Financial Status Report* (ETA 9068). Section 645.420(a) is revised to specify that job placement (job entry rate), retention in employment and earnings gain are the elements that will be used to measure performance.

Section 645.420(b) is revised to identify the weights to be accorded the factors included in the performance bonus formula. The formula is based on four factors: (1) Job entry rate as measured by the proportion of WtW participants who enter either subsidized employment or unsubsidized employment; (2) Substantive job entry rate as measured by the proportion of WtW participants who are placed in or who have moved into subsidized or unsubsidized employment of 30 hours or more per week; (3) Retention as measured by the proportion of WtW participants who remain in unsubsidized employment six months after initial placement; and (4) Measured earnings gains of WtW participants who remain in unsubsidized employment six months after initial placement.

How Does the Welfare-to-Work Program Relate to the One-Stop Delivery System and Workforce Investment Act (WIA) Programs? (§ 645.430)

We received several comments about One-Stop systems. Generally, they pointed out the need to address the role of the WtW program in the new One-Stop delivery system initiated under JTPA, and now being implemented under WIA. Specifically, one commenter suggested that intake, assessment, eligibility determination and development of an Individual Service Strategy should be part of the One-Stop system.

Response: The advent of WIA resulted in the inclusion of the WtW program in the One-Stop delivery system as a

required partner, and the transition from PIC's to local workforce boards. As discussed above, in relation to § 645.220, we agree with the comments that close coordination between the WtW program and the One-Stop system will be beneficial to all programs that are partners in the system. While the IFR1 delineated the roles and responsibilities of the State(s) and PIC(s) at § 645.425, and that the WtW roles of State and local entities will be the same under WIA as they have been under JTPA, we agree that it is advisable to also provide acknowledgment and guidance about the interaction of the WtW program with WIA programs and other programs delivered through the One-Stop delivery system. We added a new § 645.430 to foster this coordination. As a required partner in the One-Stop delivery system, the WtW program and the local board will enter into a Memorandum of Understanding that includes provisions relating to the services to be provided through the One Stop system and the methods for referring individuals between the One-Stop and the partner WtW program. We expect that WtW participants will have access to the broad range of services available in the One-Stop system. Individuals eligible for WtW who need skill training may receive that service through the One-Stop system and will also be eligible to receive services under WtW such as child care assistance and transportation assistance while participating in the WIA activity. WIA participants who are also eligible for WtW may be referred to WtW for assistance such as job placement and other services.

Also, paragraph (d) of this section explains that 29 CFR part 37 applies to recipients of WtW financial assistance who operate programs that are part of the One-Stop system established under WIA to the extent that the WtW programs and activities are being conducted as part of the One-Stop delivery system.

Subpart E—Welfare-to-Work Competitive Grants

Who Are Eligible Applicants for Competitive Grants? (§ 645.500)

Several comments suggested changes to the categories of entities eligible to apply for competitive grants. Comments proposed the addition of specific types of entities (e.g.) labor unions, women's organizations, area vocational schools and public transit agencies) to the list of entities which can apply as a "private entity" in conjunction with a local PIC or political subdivision.

Response: As noted above in the discussion of the definitions at § 645.120, we have added the definition of "private entity" contained in the WtW competitive grant SGA. Under this definition, a "private entity" is any organization, public or private, which is not a Local Board, PIC or alternate administering agency or a political subdivision of a State. The types of organizations that commenters suggested adding meet this definition and are eligible to apply as private entities. Moreover, § 645.500(a)(3) provides an illustrative list of types of private entities that would include the suggested entities as "nonprofit organizations" or as "other qualified private organizations." Therefore, because the suggested entities are eligible to apply for WtW competitive grants under the existing IFR1, we do not believe it is necessary to make any other changes to this section.

What Is the Required Consultation With the Governor? (§ 645.510)

Three comments expressed concern about the State-level consultation process. One commenter stated that States should have the same amount of time for comment on competitive grant proposals as the PIC or political subdivision. One commenter argued that the State and local reviews should be concurrent rather than consecutive. One commenter asserted that the Governor's review was counter-productive.

Response: While the reviews of competitive grant applications at the local level and at the State level serve different purposes, they operate sequentially to further the goals of the competitive grant program. We consider it important that the Governor be aware of any concerns about an application that the local board or PIC may have so that the Governor is able to foster cooperation and coordination of resources at the local level. Furthermore, while we acknowledge that the volume of competitive grant proposals has placed a considerable burden on some States, we do not believe that the burden imposed has compromised the competitive grant program.

III. Summary and Explanation—Interim Final Rule (IFR2)

Substantive Changes Under the Welfare-to-Work and Child Support Amendments of 1999

As a result of the Welfare-to-Work and Child Support Amendments of 1999 (1999 Amendments) (introduced as Title VIII of H.R. 3424, and enacted as part of

the Consolidated Appropriations Act for FY 2000, (Pub. L. 106-113)), we have made significant changes to the regulations implementing the WtW grant program. These changes are implemented as an Interim Final Rule (IFR2), published with the Final Rule discussed in Section II of this preamble. These revisions provide WtW grantees with greater flexibility to serve both long-term welfare recipients and noncustodial parents of low-income children. The effective dates of the changes made by the 1999 Amendments are discussed in new §§ 645.130 and 645.135, which are discussed later in this section of the preamble.

The most significant of these changes removes the requirement that long-term TANF recipients must meet additional barriers to employment in order to be eligible for program services, as described in § 645.212. Also, under the 30 percent provision at § 645.213, as provided by the 1999 Amendments, we have added two new categories of eligible participants: former foster care recipients, and custodial parents with income below the poverty line. Among the regulatory definitions in § 645.120, we have defined "local workforce investment board" to include former "PICs" and "alternative administrative agencies" to cover all possible entities operating the WtW program.

We wish to emphasize that we are implementing the changes resulting from the 1999 Amendments as an Interim Final Rule to afford the opportunity for public comment. The preamble also contains guidance to the WtW system in areas where regulations are not promulgated but clarification may be needed.

We invite public comments on the provisions discussed below:

What Definitions Apply to This Part? (§ 645.120)

As a result of the 1999 Amendments, this section has been amended to include additional definitions of terms, acronyms and phrases where needed. To maintain the program's underlying principle of providing State/local governments with maximum flexibility in designing and implementing program objectives, we generally allow State/local discretion in defining most terms.

However, we believe it is necessary to define the term "unemployed" for purposes of determining the eligibility of a noncustodial parent at § 645.212(c)(1). For consistency, we are defining this term as it is defined under Title I of the Workforce Investment Act. Under this definition, the term "unemployed individual" means an "individual who is without a job and

who wants and is available for work." The determination of whether an individual is without a job must be made in accordance with criteria established by the Bureau of Labor Statistics. Information can be found in the BLS publication, *How the Government Measures Unemployment*, at http://stats.bls.gov/cps_htgm.htm.

We have not defined the term "underemployed," which permits the State to define it, in consultation with local entities, including competitive grantees within their jurisdiction. Similarly, States, in consultation with local entities, including competitive grantees within their jurisdiction, may define the term "having difficulty paying child support obligations." In developing this definition, State agencies should also consult with the State or local child support enforcement entity. We discuss the terms "underemployed" and "having difficulty paying child support" in more detail in the discussion of § 645.212 in this section of the preamble.

Additionally, the phrase "PIC or alternate administering agency" has been added after each reference to a local workforce investment board throughout 20 CFR part 645. While local workforce investment boards (local boards) are the presumed administering entities under transition from JTPA to WIA, we believe it is important to recognize the administering role of PIC's in the WtW system. We have included these additional terms to emphasize that entities other than local workforce investment boards may serve as WtW administering agencies and that PIC's may still retain their role as the operating entity until such time as WIA is fully implemented, and in some cases, afterward. In accordance with § 661.300 of WIA, we anticipate that most PIC's will be replaced by local workforce investment boards, for purposes of WtW and WIA.

We have also added a definition of "IV-D Agency" to clarify that this means the organizational unit in a State that has responsibility for the plan under title IV-D of the SSA which is child support enforcement. The 1999 Amendments have given such entities a definite role in the development of personal responsibility contracts and other matters relating to noncustodial parents.

What Are the Roles of the State and Local Governmental Partners in the Governance of the WtW Program? (§ 645.125)

As we discussed in the preamble to IFR1 (62 FR 61588, 61589), we have tried to limit WtW regulations to only

those instances where they are necessary to clarify or explain how we interpret the statute. IFR1 provided States and local governments with the primary responsibility for developing program and policy guidance for this program. We have tried to maintain this flexibility in the changes we have made under the 1999 Amendments. The WIA regulations were drafted under the same principle and, at 20 CFR 661.120, codify this flexibility by providing authority to States and local governments to establish such policy guidance and interpretations, as long as they are not inconsistent with the statutory and regulatory requirements. For consistency, we added a similar regulation to part 645 to reiterate our intention that States and local governments have this policy-making flexibility in administering the WtW program.

What Are the Effective Dates for Implementation of the Welfare-to-Work Amendments? (§ 645.130)

The 1999 Amendments to the WtW eligibility criteria and allowable activities have staggered effective dates depending on the type of funds (competitive, formula, or Indian and Native American) used to pay for the activities. Section 645.130 explains when the various changes made by the 1999 Amendments and this IFR2 took effect:

- For Indian and Native American (INA) grantees, all of the 1999 Amendments took effect upon enactment of the legislation on November 29, 1999.
- For WtW competitive grants, provisions relating to the new eligibility and allowable activities took effect on January 1, 2000, while the other provisions of the 1999 Amendments were effective upon enactment of the legislation on November 29, 1999.
- For WtW formula grantees, provisions relating to the new eligibility and allowable activities took effect on July 1, 2000, except that expenditures could not be made from State allotments until October 1, 2000, as provided in § 645.135.

What is the Effective Date for Spending Federal Welfare-to-Work Formula Funds on Newly Eligible Participants and Newly Authorized Services? (§ 645.135)

As stated above in the discussion of § 645.130, the changes made under the 1999 Amendments became effective for formula grants on July 1, 2000, except that expenditures could not be made from Federal WtW formula allotments until October 1, 2000. The intent of this provision is to prevent the outlay of

Federal WtW formula funds until the first day of fiscal year 2001. It is not intended to prevent the normal incurrence of unpaid obligations until that date, provided that Federal WtW formula funds were not drawn down to liquidate the obligations until October 1, 2000. Therefore States could not draw down WtW formula funds from the Federal Treasury until that date. During the period of July 1, 2000 to September 30, 2000, States could expend matching funds and incur unpaid obligations within the normal course of business, provided that the timing of those transactions ensure that the draw down of Federal WtW formula funds to liquidate the obligations did not occur until October 1, 2000.

How Must Welfare-to-Work Funds be Spent by the Operating Entity? (§ 645.211)

Before the 1999 Amendments, the WtW statute and IFR1 provided for two categories of eligible individuals, those served under the 70 percent provisions and those served under the 30 percent provisions. Noncustodial parents could qualify under either provision, if they met the appropriate criteria. IFR1 required operating entities to expend at least 70 percent of the grant funds awarded on hard-to-employ individuals enrolled under the "70 percent provision," according to the eligibility criteria at § 645.212 of IFR1, and no more than 30 percent on individuals with characteristics associated with long-term welfare dependence under the criteria at § 645.213 of IFR1.

A practical effect of this requirement was that if an operating entity spent up to 30 percent of its funds on individuals with characteristics associated with long-term welfare dependence, but was only able to spend 69 percent of the total funds (or less) on hard-to-employ individuals under the 70 percent provision, it could be penalized with disallowed costs for failure to expend at least 70 percent of its funds on these hard-to-employ individuals. The costs to be disallowed could be otherwise allowable expenditures for the 30 percent "other eligibles" individuals. While it was certainly the intent of Congress to insure that the bulk of WtW grant funds be spent on the hardest-to-serve, we do not believe it intended to unnecessarily penalize grantees by disallowing what otherwise would be legitimate expenditures to help other eligible individuals solely on the basis of the fact that the 70/30 ratio was not met. But because of the language of the original statute, this was a possible result.

The 1999 Amendments divide the WtW eligible population into three groups:

1. Hard-to-employ individuals served under "general eligibility" provisions at section 403(a)(5)(C)(ii);

2. A separate category for noncustodial parents at section 403(a)(5)(C)(iii); and

3. Others, including individuals with characteristics of long-term welfare dependence, served under the 30 percent provisions at section 403(a)(5)(C)(iv).

The 1999 Amendments alter the eligibility requirements for hard-to-employ individuals and for noncustodial parents and eliminate language referring to any mandatory expenditure level of 70 percent for these groups. The 1999 Amendments do, however, retain the 30 percent maximum expenditure provision for individuals with the characteristics of long-term welfare dependence at section 403(a)(5)(C)(iv).

Note: For ease of identification, IFR2 refers to the group of individuals served under the 30 percent provision as "other eligibles," at § 645.212, and IFR2 refers to the "general eligibility and noncustodial parent" category at § 645.212 as the "primary" eligibility category (formerly the 70 percent category).

Since the statute no longer specifies a 70 percent expenditure requirement and says only that no more than 30 percent of grant funds may be spent on individuals served under the "other eligibles" category, we interpret it to mean that all other expended funds must be spent on individuals enrolled under the primary "general eligibility and noncustodial parents" category.

Thus, an operating entity which does not quite spend all of its grant funds, resulting in an expenditure ratio slightly below 70 percent for the general and noncustodial (primary) population, will still be in compliance with the expenditure requirements as long as its expenditures on the other eligibles does not exceed 30 percent of the total grant funds allotted. An operating entity may in fact spend up to 100 percent of its grant funds to benefit individuals in the general eligibility and noncustodial parents (primary) category, as described in § 645.212, as the provision of "no more than" 30 percent of the funds spent on "other eligibles" would have been met.

This change in the 1999 Amendments allows operating entities more of an opportunity to achieve the intended goal of targeting the hardest-to-employ individuals in the program by the end of the grant period without unintended punitive consequences. To be in compliance, an operating entity must

have spent no more than 30 percent of the funds allotted or awarded on the "other eligibles" in § 645.213, even if the operating entity has not expended all of its funds.

We see this change as a move away from an arbitrarily punitive way of assessing compliance towards a more realistic approach that recognizes that overall expenditure rates may have been suppressed by the original WtW eligibility criteria. Operating entities are not absolved of the underlying requirement that spending is to be targeted to the hardest-to-serve primary eligibility category and that poor performance in this area will be cited through routine monitoring and oversight. Such poor performance may lead to sanctions such as termination, reduction in grant amount or other actions warranted by the circumstances as determined by the Grant Officer. Falling short of expenditure goals due to lack of effort in serving the primary eligibles will be viewed far differently from a good faith effort to achieve those goals. This change, coupled with the more flexible eligibility criteria in the 1999 Amendments, should encourage grantees to move ahead on enrollments and expenditures in the remaining years of the program without the previous overcaution and concern about how the original 70 percent expenditure requirement would be applied at the closeout of the grant.

The 30 percent maximum expenditure requirement applies to all WtW funds, i.e., to substate formula funds, Governors' funds for long-term recipients of assistance, and competitive funds. The requirement does not apply to the proportion of WtW participants served; rather, it applies to the percentage of WtW funds expended on the participants in each category of eligibility.

The "general eligibility and noncustodial parents" (primary) category may include participants who were originally enrolled as individuals with characteristics of long-term welfare dependence under the 30 percent category and transferred to the "general eligibility and noncustodial parents" (primary) category after the effective date of the 1999 Amendments. Operating entities should note that expenditures on these individuals prior to their transfer to the "general eligibility/noncustodial parents" (primary) category may not be reported as and will not count as expenditures under the new primary category. We intend to provide more guidance on tracking and reporting expenditures under § 645.212 (primary eligibility) and § 645.213 ("other eligibles" eligibility)

in revised WtW participant and financial reporting instructions to be issued separately.

Who May Be Served Under the General Eligibility and Noncustodial Parent Eligibility (Primary Eligibility) Provision? (§ 645.212)

As discussed above, under the 1999 Amendments, 30 percent of WtW funds may be spent on individuals served under the "other eligibles" category, and the remaining funds must be spent on the "general eligibility and noncustodial parents" (primary) category of eligibility. The main purpose of the 1999 Amendments was to simplify the WtW eligibility requirements by eliminating the requirement that long-term TANF recipients or exhautees demonstrate two of three specified barriers to employment (education level and low skills in reading or math; requires substance abuse treatment for employment; and poor work history). The comments from a variety of public and private entities about these barriers are discussed in detail in Section II of this preamble in the discussion of § 645.212.

General Eligibility. The general eligibility portion of the primary eligibility provision focuses on the target groups expected to constitute the majority of those served in WtW due to their status as TANF recipients. The regulations reflect the statute in describing these target groups as follows:

1. Current TANF recipients who have received TANF assistance for at least 30 months;
2. Current TANF recipients who will become ineligible for TANF assistance within 12 months; or
3. Former TANF recipients who are no longer receiving TANF assistance because they reached the Federal or State-imposed time limit.

As these groups were already included in the groups possibly eligible for the the primary eligibility portion of WtW, the 1999 Amendment's elimination of the barriers to employment requirements should significantly increase the number of participants eligible for the program, without requiring the addition of any verification procedures not already in place.

Noncustodial Parent Eligibility. Under the 1999 Amendments, operating entities now serve noncustodial parents in the WtW program under separate noncustodial parent eligibility criteria, set forth in the primary eligibility provision for general eligibility and noncustodial parents at § 645.212. Most

often, noncustodial parents are fathers with minor children who do not live in the same household as the child. To be eligible under this provision, noncustodial parents must meet three criteria (generally, the noncustodial parent must be unemployed, underemployed or having difficulty making child support payments; the minor child must be receiving or be eligible for TANF or other specified assistance; and the noncustodial parent must enter into a personal responsibility contract).

The first requirement is that the noncustodial parent be "unemployed, underemployed, or having difficulty making child support payments." Since the WtW program is a required partner in the workforce investment system established under WIA, we believe it is important to coordinate WtW program definitions or requirements with those set forth under WIA wherever possible or appropriate. Therefore, the definition for "unemployed" set forth in the WtW regulations at § 645.120 corresponds to the definition of "unemployed individual" in section 101(47) of WIA. This is discussed in more detail above under the discussion of § 645.120 in this section of the preamble. We have not defined the other two terms in this criterion.

We allow the States to determine how to define the term "underemployed," in consultation with local operating entities, including local competitive grantees. We suggest that States consider the definition used in the Indian and Native American WIA program at 20 CFR 668.150, where underemployed means an individual who is working part time but desires full time employment, or who is working in employment not commensurate with the individuals' demonstrated level of educational and/or skill achievement.

States, in consultation with local entities, including competitive grantees within their jurisdiction, and the State Child Support Enforcement (IV-D) Agency, may define what constitutes "having difficulty paying child support obligations," and should coordinate with the State or local child support enforcement entity. For example, a State may decide that if a noncustodial parent is behind in his/her payments as specified in a child support order for one or more months, this constitutes "having difficulty paying child support obligations," as the noncustodial parent is now in arrears. In such cases, the child support enforcement entity would be able to assist in identifying such arrearages. Another example of a definition of "having difficulty paying

child support" would be any noncustodial parent that has not yet established paternity or who does not have a child support order but is not working and hence, has no ability to pay child support, if ordered.

Effective dates for the implementation of the 1999 Amendments are discussed in this section of the preamble at § 645.130 and § 645.135. However, entities operating competitive grants have expressed concern that there may be a delay before States articulate definitions for these and other terms under the 1999 Amendments, given the later effective date for formula grantees.

States and local workforce investment boards may establish definitions for the WtW program. Competitive grantees are encouraged to provide input in the development of these definitions, as they will be required to follow these definitions once established by the State and local area, as was the case in the establishment of definitions for "characteristics of long-term welfare dependence" under IFR1. When terms are not defined by the State or local board in the area in which a competitive grantee operates, competitive grantees may establish their own definitions for "underemployed" and "having difficulty making child support payments." However, once State or local board definitions become effective, competitive grantees are required to follow them.

The second requirement for the enrollment of a noncustodial parent in the WtW program relates to the financial status of the minor child (or, in certain cases, the custodial parent). The noncustodial parent may be eligible if the minor child or custodial parent is a long-term TANF recipient. The noncustodial parent may also establish eligibility if the minor child is a current or recent TANF recipient, or is receiving or is eligible for Food Stamps, Supplemental Security Income, Medicaid, or State Children's Health Insurance Program (SCHIP).

Operating entities must first attempt to determine whether a noncustodial parent's child(ren) is actually receiving any of the above benefits by obtaining documentation of such benefits from the custodial parent or by confirmation from the agency that the minor child or custodial parent, for purposes of determining long-term TANF receipt, is receiving services under the program.

It is important to note, however, that the 1999 Amendments explicitly state that in order to protect custodial parents and children at risk of domestic violence, the custodial parent may not be required to cooperate in the establishment of the noncustodial

parent's eligibility based upon the custodial parent's or minor child's receipt of certain benefits and services. The cooperation of the custodial parent is not to be construed as a condition for participation in the program of either parent, as the safety of the custodial parent and/or child takes precedence over the direct gathering of information from a custodial parent when domestic violence or risk of domestic violence is a factor. If a grantee wishing to enroll a noncustodial parent under the above eligibility criterion is not able to verify receipt of benefits and services from the custodial parent due to the risk of domestic violence, the grantee should attempt to get this information from the responsible agency, or should employ the presumptive eligibility determination methods outlined below.

Presumptive Eligibility Determination. We are especially seeking comments on the IFR2's method of determining if a minor child is eligible for assistance under the Food Stamps Act of 1977, benefits under the supplemental security income program under Title XVI (SSI), medical assistance under Title XIX (Medicaid), or child health assistance under title XXI of the Social Security Act (SCHIP). For purposes of this new IFR2, we offer the following method.

In cases where the child or custodial parent is not receiving benefits, or when there is not a timely response from the responsible agency, the State or the operating entity must develop its own reasonable method for determining whether a child is eligible for benefits under any of the above-specified programs. The method devised by the operating entity may include an objective standard to be used as a proxy determination for eligibility for the specified programs. For example, the State may adopt an income test under which an individual or family would be eligible for one or more of these programs for purposes of determining WtW noncustodial parent eligibility.

In general, SCHIP has the simplest eligibility of the four programs, requiring only an income determination. In most States, the SCHIP program is also the most generous program (*i.e.*, it has the highest minimum income level for eligibility purposes), with 30 States providing benefits for children with family incomes up to 200 percent of the poverty guidelines. To determine eligibility for SCHIP, and hence qualification of the noncustodial parent as meeting this portion of the criteria in these States, it makes sense for the State or an operating entity to establish a presumptive eligibility guideline for WtW purposes based on the SCHIP

income level for that State since this program likely has the largest group of potentially eligible individuals and families. For those States where SCHIP eligibility is set at a level lower than 200 percent of poverty, or where another of the programs identified may have more generous eligibility criteria, States and operating entities should consider adopting the eligibility criteria which is most generous of the four specified programs as a presumptive eligibility guideline for determining eligibility for noncustodial parents under WtW. The website which discusses State income eligibility limits for SCHIP may be found at <http://www.insurekidsnow.gov/childhealth/states/states.asp>.

Upon determining presumptive eligibility for the WtW program based on any of the relevant programs, operating entities should notify the noncustodial parent or the custodial parent, if the address is known, that his/her children may be eligible for additional services. Determining presumptive eligibility for WtW under this provision does not change the application or eligibility requirements for any other programs. In most programs, only the custodial parent or child's caretaker is able to make application for benefits or services.

Additional Eligibility Requirement for Noncustodial Parents: Personal Responsibility Contracts. The third factor in the eligibility determination process for noncustodial parents under the 1999 Amendments is participation in a personal responsibility contract. This essential element for the enrollment of noncustodial parents is covered in a new section of the regulations. A description of the contents, the parties to the contract, and time frames is contained in a new § 645.215, and is discussed in this section of the preamble under that designation.

Who May Be Served as an Individual in the "Other Eligibles" (30 percent) Provision? (§ 645.213)

This section describes the new eligibility criteria for individuals under the 30 percent provision as required by the 1999 Amendments. The new 30 percent criteria retain eligibility for individuals who are receiving TANF assistance and who have characteristics associated with, or predictive of long term welfare dependence, as determined by the State in consultation with the local operating entities. The examples given in IFR1 of school dropout, teenage pregnancy or having a poor work history remain as guidance. The 1999 Amendments also allow local boards to establish criteria for determining if an

individual has significant barriers to self-sufficiency.

New provisions in the amendments also add two new groups of eligible individuals to those who may be served under the "other eligibles" provisions of § 645.213. These are certain individuals who have been in foster care and custodial parents with incomes below the poverty line.

The provision at § 645.213(c) of IFR1 provided eligibility under the 30 percent provision for individuals with characteristics associated with long-term welfare dependence but who were not TANF recipients because they had reached federal or State-imposed time limits. We have deleted this provision because these individuals can be served under the 70 percent provisions at § 645.212(b) as a result of the 1999 Amendments.

Individuals Who Have Been in Foster Care. Section 645.213(c) provides that an individual who is at least 18 but not yet 25 years of age, who was in foster care before age 18, is eligible for the WtW program under the "other eligibles" portion. The 1999 Amendments provide that the individual must have been a recipient of foster care maintenance payments, as defined in section 475(4) of the Social Security Act (42 U.S.C. 675(4)), or was in foster care under the responsibility of the State. This foster care could have occurred in, but is not limited to, family homes, group homes or child care institutions.

Section 475(4) of the Social Security Act contains a definition of "foster care maintenance payments." Section 472 of the Social Security Act describes the Federal Foster Care Maintenance Payments Program itself.

It should be noted that the definition of foster care under the responsibility of the State includes children on whose behalf Federal foster care payments were made. Thus, for WtW eligibility purposes, all individuals under foster care in the State, whether or not State or Federal funds are paid on the individuals' behalf, are considered to have been under the responsibility of the State. For assistance in determining eligibility for WtW, operating entities should contact the appropriate State Child Welfare or Child Protective Services Agency to verify whether, in fact, an individual was in its foster care system.

Recruiting Youth Who Have Been in Foster Care. We suggest that operating entities contact their State's Independent Living Coordinator to ensure that former foster care individuals who meet the eligibility requirement are referred to WtW

programs. Grantees can find the Independent Living Coordinator in their area by calling their State Department of Health and Human Services.

Custodial Parents With Incomes Below the Poverty Line. A new category of eligible WtW participants under the "other eligibles" provision is custodial parents with incomes below the poverty line. Receipt of TANF or other public assistance is not a requirement for eligibility under this provision. To ensure consistency with other Federal programs and among States, § 645.213(c)(1) provides that operating entities must use the most recent DHHS Poverty Guidelines to determine whether an individual's income is below the poverty line. The Guidelines are updated annually, as required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97-35). The 1999 DHHS Poverty Guidelines are available in the **Federal Register**, at 64 FR 13428-13430 (Mar. 18, 1999), or on the following website: <http://aspe.hhs.gov/poverty/00poverty.htm>.

Determination of Income. To determine whether an individual's income is below the poverty line, § 645.213(c) provides a method that is based upon the WIA method for determining income under the definition of "low income individual," at WIA section 101(25). This method entails utilizing total family income for the last six months with exclusions for unemployment compensation, child support payments, cash payments under a Federal, State or local income-based public assistance program, and old-age, survivors benefits received under section 202 of the Social Security Act (42 U.S.C. 402), and other amounts specifically excluded by any other Federal statute for consideration as income.

Allowing each State to determine income could lead to many variations on what is considered income as there are a variety of income requirements among the various entitlement programs such as Food Stamps and Medicaid. There are also variations within the same programs from one State to another. The WIA-based method adapted here would provide consistency among operating entities while fulfilling the intent of serving low income custodial parents.

Receipt of cash payments for a Federal, State, or local income-based public assistance program might be an acceptable indication that an individual's income is below the poverty line for purposes of meeting the eligibility criteria in § 645.213(c)(1). However, it is acknowledged that some

States benefits and services are provided to individuals and families whose income may be above the poverty line. If the operating entity is able to confirm that receipt of a particular kind of assistance is limited to individuals with incomes below the poverty line, receipt of assistance from that program would be an acceptable proxy for income below the poverty line. If the program used as a proxy income test also serves individuals or families with incomes above the poverty line, then operating entities must take care to determine that individuals served with WtW funds meet the income test of § 645.213(c)(1). For programs limited to individuals or families below the poverty line, documented receipt of assistance will suffice for purposes of complying with § 645.213(c)(1).

Finally, as provided in WIA low income guidelines, a custodial parent with a disability whose own income includes receipt of cash payments under a Federal, State or local income-based public assistance program, or whose own income for the prior six month period with the exclusions discussed above, does not exceed the poverty line would be eligible under this provision. The disabled individual may be a member of a family whose income does not meet these requirements. The overall consistency with WIA's definition of "low-income individual" should enhance the partnership at the local level required between WtW and WIA.

How Will Welfare-to-Work Participant Eligibility Be Determined? (§ 645.214)

Section 645.214 has been revised to reflect the 1999 Amendments' addition of new groups of eligible individuals, and its removal of the barriers to employment formerly required under § 645.212(a)(2). As amended, the IFR2 requires that operating entities have mechanisms in place to determine the eligibility of all participants. It is especially important that operating entities have effective mechanisms in place to determine the eligibility of noncustodial parents as well as individuals formerly in foster care, because these groups have not traditionally been closely attached to the TANF system. As described above, this section provides States and operating entities with authority to use a presumptive eligibility determination procedure for purposes of noncustodial parent eligibility under § 645.212(c)(2)(iii), when WtW eligibility is based upon the minor child's eligibility for other programs.

What Must a WtW Operating Entity That Serves Noncustodial Parents Do? (§ 645.215)

Preference. According to the 1999 Amendments, among all eligible noncustodial parents, preference for admission must be given to those noncustodial parents of minor children who are, or whose custodial parents are, long-term TANF recipients (i.e., received TANF for at least 30 months or will become ineligible for TANF within 12 months due to time limits). However, these noncustodial parents eligible under § 645.212(c)(2)(i) do not have preference over all other categories of eligible participants, just over other noncustodial parents.

In order to satisfy this requirement for preference to noncustodial parents of minor children who are, or whose custodial parents are, long-term recipients of TANF, § 645.214 requires that operating entities must create a mechanism to implement this preference. However, in creating this mechanism to establish preference for these noncustodial parents, we would like to make clear that this does not mean that this category of eligible noncustodial parents must be exhausted before any other category of eligible noncustodial parents may be served. The operating entity may establish a process that gives preference to noncustodial parents eligible under § 645.212(c)(2)(i) and that also provides services to noncustodial parents eligible under the other provisions of § 645.212(c)(2).

Personal Responsibility Contracts. The WtW operating entity must ensure the fulfillment of the personal responsibility contract provision of section 403(a)(5)(C)(iii)(III) of the Act. Section 645.215(c) requires that noncustodial parents participating in a Welfare-to-Work program must comply with the terms of a personal responsibility contract as a condition of their eligibility and continued participation in the WtW program. The parties to the contract are (1) the noncustodial parent, (2) the entity operating the WtW program and (3) the agency responsible for administering the State child support enforcement plan under title IV, part D of the Social Security Act (IV-D agency, or Child Support Enforcement agency). In drawing up the personal responsibility contract, the parties must take into consideration the employment and child support status of the noncustodial parent.

The State IV-D agency has an important role in establishing personal responsibility contracts, because these

contracts involve matters relating to paternity (if the participant is male), establishing and monitoring child support orders, and modification of such orders as program participation warrants. Section 645.215(c)(2) requires that the State IV-D agency be a party to the personal responsibility contract. We expect that the WtW operating entity and the IV-D agency will develop a working relationship at the local level so that personal responsibility contracts are executed in a timely fashion. However, the Secretary may permit the WtW operating entity to enter into a personal responsibility contract with a noncustodial parent, without the State IV-D agency as a party to that contract, if the operating entity demonstrates, through written documentation, that it is not able to coordinate with the IV-D agency. We expect that this will be a rare occurrence, and will issue guidance on how to demonstrate this in the future.

Content of the Personal Responsibility Contract. Section 645.215(c)(3) requires that the personal responsibility contract contain certain specified elements. The first required element is a commitment by the noncustodial parent to cooperate, at the earliest opportunity, in the establishment of the paternity of the minor child (if the participant is male). Paternity may be established through voluntary acknowledgment or through other procedures that may be pursued by the WtW operating entity and/or the State IV-D agency. The noncustodial parent must commit to cooperate with the State IV-D agency in establishing a child support order, if one is not already in place.

It is very important to remember that the cooperation of the custodial parent must not be required as a condition of the noncustodial parent's eligibility. The 1999 Amendments expressly state that in order to protect custodial parents and children at risk of domestic violence, the custodial parent may not be required to cooperate in the establishment of paternity or establishing and enforcing a support order with regard to a child. The cooperation of the custodial parent is not a condition for participation in the program of either parent, as the safety of the custodial parent and/or child takes precedence over the establishment of paternity when domestic violence or the risk of domestic violence is a factor. However, because voluntary paternity establishment can only be accomplished with the consent and signatures of both parents, issues of how to approach custodial parents should be part of the consultation that WtW programs have

with domestic violence organizations (see discussion below in this section).

The second required element in the personal responsibility contract is the noncustodial parent's commitment to cooperate in the payment of child support for the minor child. The parties should take into consideration the ability of the parent to pay the child support during participation in the WtW program. The IV-D agency might be able to provide flexibility within their State guidelines on the payment of child support such as the establishment or modification of a child support order while noncustodial parents are participating in the program, suspension or reduction in the order, suspension of interest accruing on arrears, suspension of enforcement actions, such as driver's license suspension; and compromise of child support debt owed to the State.

The third required element in the personal responsibility contract is a commitment from the noncustodial parent to participate in the WtW program in order to meet these child support obligations. We expect that the noncustodial parents will generally be engaged in employment or work-related activities that provide income at a level that will allow these obligations to be met in a timely fashion to benefit the minor child. If a noncustodial parent is less than 20 years of age, the individual may engage in activities that relate to obtaining a high school diploma or a general equivalency degree, or other education directly related to employment. Because of the overall intent to engage noncustodial parents in the provision of monetary support to a child, this other pre-employment education must be directly related to employment and should not exceed six months in duration. This time limit is consistent with the time limit on vocational educational training and job training which occur prior to employment as provided in § 645.220 of the IFR2, which is described below in this section of the preamble. Education directly related to obtaining a high school diploma or a general equivalency degree has no specific time limit but the duration of participation should be estimated and monitored by the operating entity.

The fourth required element in the personal responsibility contract is a description of the services to be provided by the WtW program to the noncustodial parent which are designed to assist the noncustodial parent to obtain and retain employment and increase his or her earnings to enhance his or her financial and emotional contributions to the well-being of the child.

Documentation of the Personal Responsibility Contract. Section 645.212(c)(3) provides that the personal responsibility contract may be either an oral or written agreement. We believe it is in the best interest of all parties that the agreed-upon terms of the personal responsibility contract be clearly described in a written document. However, if all the required parties choose to enter into an oral personal responsibility contract, meeting all the required conditions, we strongly encourage WtW operating entities to document the oral personal responsibility contract so that there is a record of what agreements the parties reached. An example of such documentation would be a notation in the participant's file noting the date the oral contract was made, the parties to the contract, and the terms of the contract. We also strongly recommend that the noncustodial parent be given a copy of the documentation or a letter summarizing the terms agreed upon for the sake of consistency in following up on the oral contract during the period of enrollment in the program.

Timeframe for the Establishment of Personal Responsibility Contracts. Under § 645.215(c)(4), the parties must enter into a personal responsibility contract no later than 30 days after the noncustodial parent enrolls in a WtW program and is receiving services through a Federally funded WtW project. When there is good cause, the operating entity has the option of extending this time period to no later than 90 days for itself or its subrecipients. The entity has the discretion to grant such an extension on an individual or a broader basis. It is up to the operating entity to decide what is good cause for the extension. For example, the entity may require a showing of a particular reason why more than 30 days is needed in individual cases, or may determine that more than 30 days is generally needed and grant an across-the-board extension.

Pre-existing Personal Responsibility Contracts. For participants for whom similar personal responsibility agreements already exist, these pre-existing agreements may be used for WtW purposes, as long as they contain the elements described in § 645.215(c). Therefore, any pre-existing agreements may be adapted to incorporate a commitment on the part of the noncustodial parent to cooperate in establishing paternity (if male), paying child support, and participating in WtW services designed increase his/her employment and earnings if it does not already contain these elements.

Domestic Violence Consultation. WtW entities that operate a program serving noncustodial parents under the new noncustodial parent eligibility criteria in § 645.212(c) must take certain precautions when determining eligibility for the program and establishing personal responsibility contracts with noncustodial parents. As described above, the statute explicitly states that, to protect custodial parents and children at risk of domestic violence, the custodial parent cannot be required to cooperate in the establishment of paternity or establishing and enforcing a support order with regard to a child. To assist the WtW operating entity with developing such precautions, § 645.215(b) requires that it must consult with domestic violence prevention and intervention organizations before operating a project to serve noncustodial parents under § 645.212(c). This consultation is intended to raise the awareness of operating entities about the issues associated with domestic violence, and to provide operating entities with the practical knowledge and resources needed to safely and effectively address domestic violence issues as they arise in programs where noncustodial parents are served.

Operating entities who have been serving noncustodial parents in their WtW programs prior to the passage of the 1999 Amendments are strongly encouraged to amend their operating procedures to include regular and continuing consultation with domestic violence organizations regarding their services to these individuals. This consultation is mandatory if the operating entity wishes to continue to enroll noncustodial parents under the criteria set forth in this IFR2.

Domestic violence information, including assessment and intervention resources, hotline and referral telephone numbers, confidentiality protections information, legal, supportive services, and safety planning resources; and contact information for domestic violence organizations, will be posted on the WtW web site shortly (<http://wtw.doleta.gov>). Operating entities may use this information to locate domestic violence organizations in their areas and fulfill the consultation requirement. We urge WtW operating entities to use these resources to help meet the consultation requirement and to ensure that their programs fully address domestic violence issues and concerns in the context of the provision of services to noncustodial parents, and the provision of services to custodial parents and children at risk for domestic violence.

What Activities are Allowable Under this Part? (§ 645.220)

As provided in the 1999 Amendments, new § 645.220(b) adds short-term vocational educational training and job training to the list of allowable WtW activities. Under this provision, operating entities may provide these activities before the participant enters into employment or a WtW employment activity (as specified in § 645.220(c), formerly § 645.220(b)). These training activities have been allowed as post-employment services since the inception of the WtW program. We have not defined the terms “vocational educational training” and “job training,” to permit the States and competitive grantees to define them. However, under any such definition, these activities must be related to preparing a participant for employment. Therefore, for example, English-as-a-Second Language training must be directly tied to the needs of the workplace, such as by teaching the terms a participant will need for a particular job, in order to be allowable vocational educational training.

A participant may only receive up to six calendar months of vocational educational training or job training prior to entering employment or beginning a WtW employment activity. The six month period begins on the date the participant enters a training activity and must end no later than six calendar months from the beginning date, unless the participant enters into employment or a WtW employment activity before the conclusion of the six month period. In that case, the six month “clock” stops. If a participant leaves the employment activity or ceases to be employed, the participant could again enroll in vocational educational training or job training. Re-enrollment restarts the “clock” and is available for the time remaining in the six month period. In no case may a participant receive, in aggregate, greater than six months of pre-employment vocational educational training or job training.

Although vocational education and job training are new additions to the list of allowable activities, these activities may, in some cases, be the same as those provided by an operating entity as post-employment services to participants who are employed or participating in a WtW employment activity. The important distinction is that no time limit applies to any type of vocational educational training or job training when the participant is employed or engaged in an employment activity, as described in § 645.220(c).

For What Activities Must Local Workforce Investment Boards and PICs Use Contracts or Vouchers? (§ 645.221)

When enacted in 1997, the WtW statute required that all WtW operating entities, both competitive and formula, provide job readiness, job placement and post-employment activities through job vouchers or through contracts with public or private providers. This requirement anticipated the subsequent passage of the WIA by generally putting PIC's into the role of oversight, planning and policy direction as opposed to program operations. Under WIA, PIC's will be replaced by local workforce investment boards. Unlike PIC's under JTPA, local workforce investment boards generally may not directly provide WIA services. The Balanced Budget Act's attempt to anticipate WIA had several unintended consequences.

Although PIC's were the presumed local operating entities under the WtW formula grant program, they have not been in all cases. In addition, most WtW competitive grantees are not PIC's. WtW competitive grantees are mostly local community-based public or private organizations with special capabilities, innovations or partnerships that allow them to operate an effective program at the community level. By prohibiting *all* WtW grantees from directly providing job readiness, job placement, and post-employment services in order to anticipate a changing local board role under WIA, the WtW statute unintentionally restricts community-based organization grantees from providing direct services which they are uniquely qualified to deliver.

The 1999 Amendments correct this unintended consequence by allowing WtW operating entities that are not PIC's or local workforce investment boards to provide services directly, including the previously limited job readiness, job placement, and post-employment services.

Prior to the passage of the 1999 Amendments, we issued a Q and A in Training and Employment Guidance Letter (TEGL) No. 5-98 in an attempt to clarify this issue. In TEGL 5-98, we said that a WtW operating entity may not directly operate a program to provide job readiness, job placement or post-employment services. However, a WtW operating entity may directly operate a work experience program, a community service program or an on-the-job training program. TEGL 5-98 states that where job readiness, job placement or post-employment services are a reasonable and necessary component of the operating entity's work experience program, a community service program

or an on-the-job training program, then the operating entity could provide those services as part of the overall program. We have found that this guidance was widely misinterpreted in the field, and that many operating entities may have provided direct services where the circumstances would not have allowed this under the narrow circumstances permitted under TEGL 5-98. We now recognize that our guidance was not clear enough to ensure all grantees were in conformity with the contract/voucher requirement.

The 1999 Amendments have now corrected the unintended consequence of applying the contract/voucher requirement to all operating entities, by specifically permitting all WtW operating entities that are not PICs or local boards to directly provide job readiness, job placement and post-employment services. We do not intend to penalize operating entities which may have previously violated the contract/voucher requirement while relying in good faith on guidance promulgated by the Department that was open to misinterpretation. However, we do intend to ensure that operating entities that are PIC's or local boards conform with the contract/voucher requirement. Towards that end, we have added a new § 645.221 to clarify how the contract/voucher requirement applies to PIC's and local boards and other operating entities, and to provide a grace period for entities that may have violated this requirement in reliance on our guidance. Section 645.221(b) provides that all PIC's and local boards operating WtW programs must come into compliance with the contracts and vouchers requirements in this section by February 12, 2001.

What are the Reporting Requirements for Welfare-to-Work Programs?
(§ 645.240)

The WtW Amendments of 1999 eliminated the reporting requirements for WtW formula grants found at section 411(a)(1)(A) and amended section 403(a)(5)(C) of the Act to grant responsibility for simplified WtW State formula and competitive grant financial and participant data collection and reporting to the Secretary of Labor, in consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments.

The previous participant data collection and reporting requirements mandated that States collect on a monthly basis, and report to the Department of Health and Human Services on a quarterly basis, numerous disaggregated case record data on

individuals who were receiving assistance under a State TANF program, and who were also participating in a WtW program. The Secretary of Labor was responsible for establishing participant data collection and reporting requirements for WtW competitive grant recipients and for establishing financial reporting requirements.

Under the 1999 Amendments, the Secretary of Labor will establish requirements for the collection and maintenance of financial and participant information and the reporting of that information by WtW State formula grants and WtW competitive grantees. Section 645.240 has been revised to reflect the Secretary's authority to establish these reporting requirements.

What Factors Will Be Used in Measuring State Performance?
(§ 645.420)

As originally enacted in section 403(a)(5)(E) of the Act, \$100 million was set aside from FY 1999 funds to provide a performance bonus to successful States. This bonus award was to be made in FY 2000. The 1999 Amendments reduced the amount available for performance bonuses to \$50 million, and require that no outlays of these funds occur before October 1, 2000 (FY 2001). As discussed in Section I of this preamble, we have revised § 645.420 to reflect the criteria that will be used to award performance bonuses to successfully performing States. Additionally, we have amended paragraph (c) of this section to indicate that bonus awards will not be made until FY 2001.

Under What Circumstances May States Disclose Information to Aid Administration of Welfare-to-Work Grant Funds? The 1999 Amendments made several changes to existing information disclosure requirements, in order to assist the WtW system in serving noncustodial parents. The 1999 Amendments amended sections 403(a)(5) and 454A(f) of the Act to authorize State IV-D agencies and State TANF agencies to share certain information on noncustodial parents with local workforce investment boards or PIC's for the purpose of identifying and contacting the individuals about participation in the WtW program. The State agencies may share the names, addresses, telephone numbers and identifying case number information of noncustodial parents residing in the local area/service delivery area of the local board or PIC. The information can only be shared with local boards or PICs operating WtW programs. The State IV-D agencies and State TANF agencies

disclosing this information must ensure that the recipients of this information have procedures in place for safeguarding the privacy of the information and for ensuring that the information will be used solely for WtW recruiting purposes.

We recognize the need for guidance about information sharing under the 1999 Amendments, and about the safeguards needed for protecting that information. We do not, however, intend to issue regulations on this subject, since the ultimate responsibility for ensuring that States safeguard this information lies with DHHS. Instead, we consulted with DHHS, and intend to issue information and guidance on the applicable requirements in the future, and expect that the specific safeguards to be established will be left up to each State.

In May, 2000 we distributed TEGL No. 11-99 which provides "Joint Guidance on Strategies to Enhance the Recruitment, Referral, Eligibility Determination, and Service Provision Processes Between Welfare-to-Work, Temporary Assistance for Needy Families, and Child Support Enforcement Entities." This was a product of earlier collaboration between the Department and DHHS to improve WtW program operations by presenting strategies and suggestions on cross-cutting issues including the sharing of information on noncustodial parents. This document can be found at <http://wtw.doleta.gov/11-99at.htm>.

IV. Administrative Information

A. Paperwork Reduction Act

Information collection requirements are contained in this rule at § 645.240. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department submitted pertinent reporting documents and justification separately to OMB at the time IFR1 was published. OMB has assigned Control Number 1205-0385 to the Welfare-to-Work Formula (ETA 9068) and Competitive (ETA 9068-1) Cumulative Quarterly Financial Status Reports.

Because the 1999 Amendments called for the Department to simplify reporting requirements and to collect participant data, we have revised the existing reporting formats and instructions for competitive and formula grantees, in consultation with DHHS and State and local government representatives. On August 22, 2000, we published a Notice in the **Federal Register** inviting public comment on the proposed information collection package. After the comment period, we will submit this revised

information collection to OMB for approval. Therefore, the information collection requirements associated with this rulemaking will not become effective until approved by OMB.

B. Executive Order 13132 (Federalism)

ETA has reviewed this rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have "federalism implications." While this rulemaking was begun prior to the issuance of Executive Order 13132, we have attempted to provide States with the maximum administrative discretion possible. As described in the preamble to IFR1, we have conducted extensive consultations with State and local governmental officials in the development of IFR1, and this Final Rule.

Shortly after enactment of the 1999 Amendments, the Department consulted with public interest groups and intergovernmental groups on the development of regulations necessary to implement the 1999 Amendments. Included in the consultation process were representatives of the National Association of Counties, the Conference of Mayors, the National Governors' Association, and the Interstate Conference of Employment Security Agencies.

C. Regulatory Flexibility and Regulatory Impact Analysis, SBREFA; Family Well-being

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). This rule will affect primarily the 50 States, the District of Columbia, and certain Territories. As described in the preamble to IFR1, ETA has taken a variety of measures to minimize any potential burdens for grant applicants and recipients in order to maximize the resources available to achieve the purposes of the WtW program. The Department has assessed the potential impact of the Final Rule and IFR2, consulting with a wide range of small entities, in order to identify any areas of concern. Therefore, based on that assessment, the Department certifies that these Rules, as promulgated, will not have a significant

impact on a substantial number of small entities.

In addition, under the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules", as defined in 5 U.S.C. 804(2). The Department certifies that the Final Rule and IFR2 have been assessed in accordance with Pub. L. 105-277, 112 Stat. 2681, for their effect on family well-being. The purpose of the WtW program is to provide job opportunities and support and job retention services to current or former TANF recipients, low income custodial parents, noncustodial parents and other eligible individuals so that they may attain economic self-sufficiency. Programs are designed at the State and local level to fulfill this purpose with the effect of enhancing family well-being through increased earnings and increased ability for noncustodial parents to pay child support.

D. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. We have determined that these rules are consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects our response to comments received on IFR1 that we issued on November 18, 1997.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. We consulted with the Departments of Health and Human Services, Housing and Urban Development, and Transportation, and with other responsible agencies as well as with State and local officials and their representative organizations, in addition to a broad range of advocacy groups and others to obtain their views prior to the publication of IFR2. We also considered comments received in response to IFR1. We have responded to the comments received in the "Background" and the "Summary and Explanation" sections of the preamble.

To a considerable degree, these rules reflect the comments that we received in response to IFR1. They also reflect the intent of the Act to move hard-to-employ welfare recipients and certain noncustodial parents into unsubsidized employment and economic self-sufficiency. We have determined that the revisions made by the Final Rule and IFR2 will not have an adverse effect in a material way on the nation's economy.

This is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 and, therefore, the Final Rule and IFR2 have been reviewed by the Office of Management and Budget in accordance with that Order.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the revisions made by the Final Rule and IFR2 will not require the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

F. Effective Date and Absence of Notice and Comment

In 1997, we provided a period of 60 days for public comment on IFR1. We fully reviewed all comments, and considered input from our State, local and Federal partners through our consultation process. The Final Rule will become effective on February 12, 2001.

For IFR2, we have determined, pursuant to 5 U.S.C. 553(b)(3)(B), that the statutory mandate to issue interim final regulations constitutes good cause for waiving notice and comment proceedings for IFR2. Moreover, because certain changes made by the 1999 Amendments are already in effect, it is important to have regulations implementing these provisions as soon as possible. Accordingly, we find that the issuance of a proposed rule rather than an interim final rule would be contrary to the public interest. IFR will become effective on February 12, 2001. IFR2 provides a 60-day comment

period, so that the public may submit comments on regulatory provisions implementing the 1999 Amendments. The information collection requirements associated with the rule will not be effective until approved by OMB.

G. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.253, "Employment and Training Assistance-Welfare-to-Work Grants to States & Local Entities for Hard-to-Employ Welfare Recipient Programs."

List of Subjects in 20 CFR Part 645

Employment programs, Grant programs-labor, Welfare-to-Work programs.

Signed at Washington, D.C. this 4th day of January, 2001.

Alexis M. Herman,
Secretary of Labor.

Raymond L. Bramucci,
Assistant Secretary of Labor, Employment and Training Administration.

For the reasons set out in the preamble, 20 CFR part 645 is revised to read as follows:

PART 645—PROVISIONS GOVERNING WELFARE-TO-WORK GRANTS

Subpart A—Scope and Purpose

Sec.

- 645.100 What does this part cover?
- 645.110 What are the purposes of the Welfare-to-Work program?
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Authority: 42 U.S.C. 603 (a)(5)(C)(viii).

Subpart A—Scope and Purpose

§ 645.100 What does this part cover?

(a) Subpart A establishes regulatory provisions that apply to the Welfare-to-Work (WtW) programs conducted at the State and at the local area levels.

(b) Subpart B provides general program requirements applicable to all WtW formula and competitive funds. The provisions of this subpart govern how WtW funds must be spent, who is eligible to participate in the program, allowable activities and their relationship to TANF, Governor's projects for long-term recipients, administrative and fiscal provisions, and program oversight requirements. This subpart also addresses worker protections and the establishment of a State grievance system.

(c) Subpart C sets forth additional administrative standards and procedures for WtW Formula Grants, such as matching requirements and reallocation procedures.

(d) Subpart D sets forth the conditions under which the Governor may request a waiver to designate an alternate administering agency, sets forth the formula elements that must be included in the within-State distribution formula, the submission of a State annual plan, the factors for measuring State performance, and the roles and responsibilities of the States and the local boards or alternate administering agencies.

(e) Subpart E outlines general conditions and requirements for the WtW Competitive Grants.

(f) Subpart F sets forth the administrative appeals process.

(g) Regulatory provisions applicable to the Indian and Native American

Welfare-to-Work Program (INA WtW) are found at 20 CFR part 646.

§ 645.110 What are the purposes of the Welfare-to-Work Program?

The purposes of the WtW program are:

(a) To facilitate the placement of hard-to-employ welfare recipients and certain noncustodial parents into transitional employment opportunities which will lead to lasting unsubsidized employment and self-sufficiency;

(b) To provide a variety of activities, grounded in TANF's "work first" philosophy, to prepare individuals for, and to place them in, lasting unsubsidized employment;

(c) To provide for a variety of post-employment and job retention services which will assist the hard-to-employ welfare recipient and certain noncustodial parents to secure lasting unsubsidized employment;

(d) To provide targeted WtW funds to high poverty areas with large numbers of hard-to-employ welfare recipients.

§ 645.120 What definitions apply to this part?

The following definitions apply under this part:

Act means Title IV, Part A of the Social Security Act, 42 U.S.C. 601-619.

Adult means an individual who is not a minor child.

Chief Elected Official(s) (CEOs) means:

(1) The chief elected official of the sole unit of general local government in the service delivery area,

(2) The individual or individuals selected by the chief elected officials of all units of general local government in such area as their authorized representative, or

(3) In the case of a service delivery area designated under section 101(a)(4)(A)(iii) of JTPA, the representative of the chief elected official for such area (as defined in section 4(4)(C) of JTPA) or as defined in section 101 of the Workforce Investment Act of 1998.

Competitive grants means those grants in which WtW funds have been awarded by the Department under a competitive application process to local governments, PICs, and private entities (such as community development corporations, community-based and faith-based organizations, disability community organizations, and community action agencies) who apply in conjunction with a PIC or local government.

Department or *DOL* means the U.S. Department of Labor.

Employment activities means the activities enumerated at § 645.220(b).

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Fiscal year (FY) means any 12-month period ending on September 30 of a calendar year.

Formula grants means those grants in which WtW funds have been allotted to each Welfare-to-Work State, based on a formula prescribed by the Act, which equally considers States' shares of the national number of poor individuals and of adult recipients of assistance under TANF. The State is required to distribute not less than 85 percent of the allotted formula grant funds to service delivery areas in the State; and the State may retain not more than 15 percent for projects to help long-term recipients of assistance enter unsubsidized employment. Unless otherwise specified, the term "formula grant" refers to the 85 percent and 15 percent funds.

Governor means the Chief Executive Officer of a State.

IV-D Agency (Child Support Enforcement) means the organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act (SSA).

Job Training Partnership Act or *JTPA* means Public Law (Pub. L.) 97-300, as amended, 29 U.S.C. 1501, *et seq.*

Local area means a local workforce investment area designated under section 116 of the Workforce Investment Act of 1998, or a service delivery area designated under section 101 of the Job Training Partnership Act, as appropriate.

Local workforce investment board (local board) means a local board established under section 117 of the Workforce Investment Act, or a *Private Industry Council* established under section 102 of the Job Training Partnership Act (JTPA), which performs the functions authorized at section 103 of the JTPA, or an alternate administering agency designated under section 405(a)(5)(A)(vii)(II) of the Act and § 645.400 of this part.

Minor child means an individual who has not attained 18 years of age, or has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance of effort. Under TANF, States are required to maintain a certain level of spending on welfare based on "historic" FY 1994 expenditure levels (Section 409(a)(7) of the Act).

PIC means a Private Industry Council established under Section 102 of the Job

Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

Political subdivision of a State means a unit of general purpose local government, as provided for in State laws and/or Constitution, which has the power to levy taxes and spend funds and which also has general corporate and police powers.

Private entity means any organization, public or private, which is not a local board, PIC or alternate administering agency or a political subdivision of a State.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (Pub. L.) 104-193, which established the TANF program.

SDA means a service delivery area designated under section 101 of the Job Training Partnership Act or a local area designated under section 116 of the Workforce Investment Act of 1998, as appropriate.

Secretary means the Secretary of Labor.

Separate State program means a program operated outside of TANF in which the expenditures of State funds may count for TANF MOE purposes.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State TANF Program means those funds expended under the State Family Assistance Grant (SFAG), the basic block grant allocated to the States under Section 403(a)(1) of the Act.

TANF means Temporary Assistance for Needy Families Program established under PRWORA.

TANF MOE means the expenditure of State funds that must be made in order to meet the Temporary Assistance for Needy Families Maintenance of Effort requirement.

Unemployed means the individual is without a job and wants and is available for work.

WIA means the Workforce Investment Act of 1998 (Pub. L. 105-220)(29 U.S.C. 2801 *et seq.*).

WtW means Welfare-to-Work.

WtW State means those States that the Secretary of Labor determines have met the five conditions established at Section 403(a)(5)(A)(ii) of the Act. Only States that are determined to be WtW States can receive WtW grant funds.

WtW statute means those provisions of the Balanced Budget Act of 1997 containing certain amendments to PRWORA and establishing the new Welfare-to-Work program, amending

Title IV of the Social Security Act, (codified at 42 U.S.C. 601–619).

§ 645.125 What are the roles of the local and State governmental partners in the governance of the WtW program?

(a) Local boards or alternate administering agencies, in coordination with CEO's should establish policies, interpretations, guidelines and definitions to implement provisions of the WtW statute to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the WtW statute or regulations or with State policies.

(b) States should establish policies, interpretations, guidelines and definitions to implement provisions of the WtW statute to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the WtW statute or regulations.

(c) The Secretary, in consultation with other Federal Agencies, as appropriate, may publish guidance on interpretations of statutory and regulatory provisions. State and local policies, interpretations, guidelines and definitions that are consistent with interpretations contained in such guidance will be considered to be consistent with the WtW statute for purposes of this section.

§ 645.130 What are the effective dates for the Welfare-to-Work 1999 Amendments?

The legislative changes made by the 1999 amendments:

(a) Are effective on November 29, 1999, except as provided in paragraphs (b) and (c) of this section;

(b) Provisions relating to the eligibility of participants for WtW competitive grants are effective on January 1, 2000;

(c)(1) Provisions relating to the eligibility of participants for WtW formula grants are effective on July 1, 2000, except that expenditures from allotments to the States, as discussed in § 645.135 of this subpart, must not have been made before October 1, 2000, for individuals who would not have been eligible under the criteria in effect before the changes made by the 1999 Amendments;

(2) Provisions authorizing pre-placement vocational educational training and job training for WtW formula grants, at § 645.220(b) of this part, are effective on July 1, 2000, except that expenditures from allotments to the States, as discussed in § 645.135 of this subpart, must not have been made before October 1, 2000.

§ 645.135 What is the effective date for spending Federal Welfare-to-Work formula funds on newly eligible participants and newly authorized services?

States and local areas may expend matching funds beginning July 1, 2000. States and local areas may incur unpaid obligations within the normal course of business, beginning July 1, 2000, provided that the timing of those transactions ensures that drawdown of federal Welfare-to-Work formula funds to liquidate the obligations did not occur until October 1, 2000.

Subpart B—General Program and Administrative Requirements

§ 645.200 What does this subpart cover?

This subpart provides general program and administrative requirements for WtW formula funds, including Governors' funds for long-term recipients of assistance, and for competitive grant funding (section 403(a)(5)).

§ 645.210 What is meant by the terms "entity" and "project" in the statutory phrase "an entity that operates a project" with Welfare-to-Work funds?

The terms "entity" and "project", in the statutory phrase "an entity that operates a project", means:

(a) For WtW substate formula funds:

(1) "Entity" means the PIC, local board (or the alternate administering agency designated by the Governor and approved by the Secretary pursuant to § 645.400 of this part) which administers the WtW substate formula funds in a local area(s). This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all activities, administrative and programmatic, supported by the total amount of the WtW substate formula funds allotted to the entity described in section (a)(1) of this paragraph.

(b) For WtW Governors' funds for long-term recipients of assistance:

(1) "Entity" means the agency, group, or organization to which the Governor has distributed any of the funds for long-term recipients of assistance, as described in § 645.410 (b) and (c) of this part. This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all activities, administrative and programmatic, supported by the total amount of one discrete award of WtW Governors' funds for long-term recipients of assistance awarded to the entity described in section (b)(1) of this paragraph.

(c) For competitive WtW funds:

(1) "Entity" means an eligible applicant, as described in § 645.500 of this part, which is awarded a competitive WtW grant. This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all of the activities, administrative and programmatic, supported by the total amount of one discrete WtW competitive grant awarded to the entity described in section (c)(1) of this paragraph (section 403(a)(5)(C)).

§ 645.211 How must Welfare-to-Work funds be spent by the operating entity?

An operating entity, as described in § 645.210 of this subpart, may spend not more than 30 percent of the WtW funds allotted to or awarded to the operating entity to assist individuals who meet the "other eligibles" eligibility requirements under § 645.213 of this subpart. The remaining funds allotted to or awarded to the operating entity are to be spent to benefit individuals who meet the "general eligibility" and/or "noncustodial parents" eligibility requirements, under § 645.212 of this subpart. (section 403(a)(5)(C) of the Act).

§ 645.212 Who may be served under the general eligibility and noncustodial parent eligibility (primary eligibility) provision?

An individual may be served under this provision if:

(a)(1) (S)he is currently receiving TANF assistance under a State TANF program, and/or its predecessor program, for at least 30 months, although the months do not have to be consecutive; or

(2) (S)he will become ineligible for assistance within 12 months due to either Federal or State-imposed time limits on the receipt of TANF assistance. This criterion includes individuals (as well as children of noncustodial parents) exempted from the time limits due to hardship under section 408(a)(7)(C) of the Act or due to a waiver because of domestic violence under section 402(a)(7) of the Act, who would become ineligible for assistance within 12 months without the exemption or waiver;

(b) (S)he is no longer receiving TANF assistance because (s)he has reached either the Federal five-year limit or a State-imposed time limit on receipt of TANF assistance (section 403(a)(5)(C) of the Act); or

(c) (S)he is a noncustodial parent of a minor child if:

(1) The noncustodial parent is:

(i) "Unemployed," as defined in

§ 645.120 of this part,

(ii) "Underemployed," as defined by the State in consultation with local

boards and WtW competitive grantees, or

(iii) "Having difficulty paying child support obligations," as defined by the State in consultation with local boards and WtW competitive grantees and the State Child Support Enforcement (IV-D) Agency, and

(2) At least one of the following applies:

(i) The minor child, or the custodial parent of the minor child, meets the long-term recipient of TANF requirements of paragraph (a) of this section;

(ii) The minor child is receiving or is eligible for TANF benefits and services;

(iii) The minor child received TANF benefits and services during the preceding year; or

(iv) The minor child is receiving or eligible for assistance under the Food Stamp program, the Supplemental Security Income program, Medicaid, or the Children's Health Insurance Program; and

(3) The noncustodial parent is in compliance with the terms of a written or oral personal responsibility contract meeting the requirements of § 645.215 of this subpart.

(d) For purposes of determining whether an individual is receiving TANF assistance in paragraphs (a)(1) of this section and § 645.213(a), TANF assistance means any TANF benefits and services for the financially needy according to the appropriate income and resource criteria (if applicable) specified in the State TANF plan.

§ 645.213 Who may be served as an individual in the "other eligibles" (30 percent) provision?

Any individual may be served under this provision if s(he):

(a) Is currently receiving TANF assistance (as described in § 645.212(d)) and either:

(1) Has characteristics associated with, or predictive of, long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. States, in consultation with the operating entity, may designate additional characteristics associated with, or predictive, of long term-welfare dependence; or

(2) Has significant barriers to self-sufficiency, under criteria established by the local board or alternate administering agency.

(b) Was in foster care under the responsibility of the State before s(he) attained 18 years of age and is at least 18 but not 25 years of age or older at the time of application for WtW. Eligible individuals include those who were recipients of foster care maintenance

payments as defined in section 475(4) under part E of the Social Security Act, or

(c)(1) Is a custodial parent with income below 100 percent of the poverty line, determined in accordance with the most recent HHS Poverty Guidelines established under section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), including any revisions required by such section, applicable to a family of the size involved.

(2) For purposes of paragraph (c)(1) of this section, income is defined as total family income for the last six months, exclusive of unemployment compensation, child support payments, and old-age and survivors benefits received under section 202 of the Social Security Act (42 U.S.C. 402).

(3) A custodial parent with a disability whose own income meets the requirements of a program described in paragraph (c)(1) or (c)(3)(i) but who is a member of a family whose income does not meet such requirements is considered to have met the requirements of paragraph (c)(1) of this section.

§ 645.214 How will Welfare-to-Work participant eligibility be determined?

(a) The operating entity, as described in § 645.210(a)(1), (b)(1), and (c)(1) of this subpart, is accountable for ensuring that WtW funds are spent only on individuals eligible for WtW projects.

(b) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who are receiving TANF assistance. These mechanisms:

(1) Must include arrangements with the TANF agency to ensure that a WtW eligibility determination is based on information, current at the time of the WtW eligibility determination, about whether an individual is receiving TANF assistance, the length of receipt of TANF assistance, and when an individual may become ineligible for assistance, pursuant to §§ 645.212 and 645.213 of this part (section 403(a)(5)(I)(A)(ii)(dd)).

(2) May include a determination of WtW eligibility for characteristics of long-term welfare dependence and for significant barriers to self-sufficiency under § 645.213(a) of this subpart, based on information collected by the operating entity and/or the TANF agency up to six months prior to the WtW eligibility determination.

(c) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who have reached the time limit on receipt of TANF, under

§ 645.212(b) of this subpart; individuals who are not receiving TANF assistance (i.e., noncustodial parents under § 645.212(c) of this subpart; individuals who are former foster care recipients under § 645.213(b) of this subpart, and low-income custodial parents under § 645.213(c) of this subpart). The mechanisms for establishing noncustodial parent eligibility must include a process for applying the preference required under § 645.215(a) of this subpart, and may include an objective standard to be used as a presumptive determination for establishing the eligibility of the minor child for the programs specified in § 645.212(c)(2)(iv) of this subpart.

§ 645.215 What must a WtW operating entity that serves noncustodial parent participants do?

(a) In programs that serve noncustodial parents, the operating entity must give preference to those noncustodial parents who qualify under § 645.212(c)(2)(i) of this subpart over other noncustodial parents. The preference for admission into the program applies only to noncustodial parents and not to any other group eligible under the "general eligibility" provisions of § 645.212(a) or (b) or the "other eligibles" provisions of § 645.213. The preference does not require that the category of noncustodial parents eligible under § 645.212(c)(2)(i) must be exhausted before any other category of eligible noncustodial parents may be served. The operating entity may establish a process that gives preference to noncustodial parents eligible under § 645.212(c)(2)(i) and that also provides WtW services to noncustodial parents eligible under the other provisions of § 645.212(c)(2).

(b) In order to protect custodial parents and children who may be at risk of domestic violence, the operating entity must consult with domestic violence prevention and intervention organizations in the development of its WtW project serving noncustodial parents; and must not require the cooperation of the custodial parent as a condition of participation in the WtW program for either parent; and

(c) The operating entity must ensure that personal responsibility contracts:

(1) Take into account the employment and child support status of the noncustodial parent;

(2) Include all of the following parties:

(i) The noncustodial parent,

(ii) The operating entity, and

(iii) The agency responsible for administering the State Child Support Enforcement program as described under Title IV-D of the Act, unless the

operating entity demonstrates to the Secretary of Labor with written documentation that it is not able to coordinate with the State IV-D agency;

(3) Include the following elements:

(i) A commitment by the noncustodial parent to cooperate:

(A) In the establishment of paternity (if the participant is male) of the minor child at the earliest opportunity, through voluntary acknowledgment or other procedures, and

(B) In the establishment of a child support order;

(ii) A commitment by the noncustodial parent to cooperate in the payment of child support for the minor child. This commitment may include a modification of an existing support order to take into account:

(A) The ability of the noncustodial parent to pay such support; and

(B) The participation of the noncustodial parent in the WtW program, and

(iii) A commitment by the noncustodial parent to participate in employment or related activities that will enable the noncustodial parent to make regular child support payments. For noncustodial parents who have not reached 20 years of age, such activities may include:

(A) Completion of high school,

(B) Earning a general equivalency degree, or

(C) Participating in other education directly related to employment;

(iv) A description of the services to be provided to the noncustodial parent under the WtW program;

(4) Contain a commitment by the noncustodial parent to participate in the services that are described in the personal responsibility contract under paragraph (c)(3)(iv) of this section; and

(5) Be entered into no later than thirty (30) days after the individual is enrolled in and is receiving services through a WtW project funded under this part, unless the operating entity has determined that good cause exists to extend this period. This extension may not extend to a date more than ninety (90) days after the individual is enrolled in and receiving services through a WtW project funded under this part.

§ 645.220 What activities are allowable under this part?

Entities operating WtW projects may use WtW funds for the following:

(a) Job readiness activities, subject to the requirements of § 645.221 of this subpart.

(b) Vocational educational training or job training. A participant is limited to six calendar months of such training if (s)he is not also employed or

participating in an employment activity, as described in paragraph (c) of this section.

(c) Employment activities which consist of any of the following:

(1) Community service programs;

(2) Work experience programs;

(3) Job creation through public or private sector employment wage subsidies; and

(4) On-the-job training.

(d) Job placement services subject to the requirements of § 645.221 of this subpart.

(e) Post-employment services which are provided after an individual is placed in one of the employment activities listed in paragraph (c) of this section, or in any other subsidized or unsubsidized job, subject to the requirements of § 645.221 of this subpart. Post-employment services include such services as:

(1) Basic educational skills training;

(2) Occupational skills training;

(3) English as a second language training; and

(4) Mentoring.

(f) Job retention services and support services that are provided after an individual is placed in a job readiness activity, as specified in paragraph (a) of this section; in vocational education or job training, as specified in paragraph (b) of this section; in one of the employment activities, as specified in paragraph (c) of this section, or in any other subsidized or unsubsidized job. WtW participants who are enrolled in Workforce Investment Act (WIA) or JTPA activities, such as occupational skills training, may also receive job retention and support services funded with WtW monies while they are participating in WIA activities. Job retention and support services can be provided with WtW funds only if they are not otherwise available to the participant. Job retention and support services include such services as:

(1) Transportation assistance;

(2) Substance abuse treatment (except that WtW funds may not be used to provide medical treatment);

(3) Child care assistance;

(4) Emergency or short term housing assistance; and

(5) Other supportive services.

(g) Individual development accounts which are established in accordance with the Act.

(h) Outreach, recruitment, intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in paragraphs (a) through (g) of this section (section 403(a)(5)(C) of the Act).

§ 645.221 For what activities and services must local boards use contracts or vouchers?

(a) Local boards and PIC's must provide the following activities and services through vouchers or contracts with public or private providers: the job readiness activities described in § 645.220(a) of this subpart, the job placement services described in § 645.220(d) of this subpart, and the post-employment services described in § 645.220(e) of this subpart. Job placement services provided with contracts or vouchers are subject to the payment requirements at § 645.230(a)(3) of this subpart. If an operating entity is not a local board or a PIC, it may provide such services directly.

(b) Local boards and PIC's which are directly providing job readiness activities or job placement and/or post-employment services must conform to the requirement in paragraph (a) of this section, to provide such services through contract or voucher, by February 12, 2001.

§ 645.225 How do Welfare-to-Work activities relate to activities provided through TANF and other related programs?

(a) Activities provided through WtW must be coordinated effectively at the State and local levels with activities being provided through TANF (section 403(a)(5)(A)(vii)(II)).

(b) The operating entity must ensure that there is an assessment of skills, prior work experience, employability, and other relevant information in place for each WtW participant. Where appropriate, the assessment performed by the TANF agency or JTPA should be used for this purpose.

(c) The operating entity must ensure that there is an individualized strategy for transition to unsubsidized employment in place for each participant which takes into account participant assessments, including the TANF assessment and any JTPA assessment. Where appropriate, the TANF individual responsibility plan (IRP), a WIA individual employment plan, or a JTPA individual service strategy should be used for this purpose.

(d) Coordination of resources should include not only those available through WtW and TANF grant funds, and the Child Care and Development Block Grant, but also those available through other related activities and programs such as the WIA or JTPA programs (One-Stop systems), the State employment service, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations,

transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 402(a)(5)(A)).

§ 645.230 What general fiscal and administrative rules apply to the use of Federal funds?

(a) Uniform fiscal and administrative requirements.

(1) State, local, and Indian tribal government organizations are required to follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified in the DOL regulations at 29 CFR part 97.

(2) Institutions of higher education, hospitals, and other non-profit organizations and other commercial organizations are required to follow OMB Circular A-110 which is codified in the DOL regulations at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 and 29 CFR 97.36(i), contracts or vouchers for job placement services supported by funds provided for this program must include a provision to require that at least one-half (½) of the payment occur after an eligible individual placed into the workforce has been in the workforce for six (6) months. This provision applies only to placement in unsubsidized jobs (section 403(a)(5)(C)(i)).

(4) In addition to the requirements at 29 CFR 95.42 and 29 CFR 97.36(b)(3) which address codes of conduct and conflict of interest issues related to employees, it is also required that:

(i) A local board or alternate administering agency member shall neither cast a vote on, nor participate in, any decision making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family; and

(ii) Neither membership on the local board or alternate administering agency nor the receipt of WtW funds to provide training and related services shall be construed, by itself, to violate these conflict of interest provisions.

(5) The addition method, described at 29 CFR 97.25(g)(2), is required for the use of all program income earned under WtW grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the

WtW program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WtW program.

(6) Any excess revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income earned.

(b) *Audit requirements.* All recipients and subrecipients of Department of Labor WtW awards must comply with the audit requirements codified at 29 CFR part 96.

(1) All governmental and non-profit organizations must follow the audit requirements of OMB Circular A-133 which is codified at 29 CFR part 99. This requirement is imposed at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(2) The Department is responsible for audits of commercial organizations which are direct recipients of WtW grants.

(3) Commercial organizations which are WtW subrecipients and which expend more than the minimum level specified in OMB Circular A-133 (\$300,000 as of April 15, 1999) must have either an organization-wide audit conducted in accordance with 29 CFR part 99 or a program specific financial and compliance audit.

(c) *Allowable costs/cost principles.* The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor.

(1) State, local, and Indian tribal government organizations must determine allowability of costs in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments."

(2) Non-profit organizations must determine allowability of costs in accordance with OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

(3) Institutions of higher education must determine allowability of costs in accordance with OMB Circular A-21, "Cost Principles for Education Institutions."

(4) Hospitals must determine allowability of costs in accordance with the provisions of Appendix E of 45 CFR Part 74, "Principles for Determining Costs Applicable to Research and

Development Under Grants and Contracts with Hospitals."

(5) Commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A-122 must determine allowability of costs in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.

(d) *Information technology costs.* In addition to the allowable cost provisions identified in § 645.235 of this subpart, the costs of information technology—computer hardware and software—will only be allowable under WtW grants when such computer technology is "Year 2000 compliant." To meet this requirement, information technology must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, "Year 2000 compliant" information technology when used in combination with other technology shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

(e) *Prohibition on Construction or Purchase of Facilities.* WtW federal funds may not be used to pay for the construction or purchase of facilities or buildings.

(f) *Prohibition on Business Start-up Costs.* WtW federal funds may not be used to cover the costs of business start-up and/or capital ventures.

(g) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WtW grant recipients and subrecipients are required to comply with:

(1) Government-wide requirements for debarment and suspension which are codified at 29 CFR part 98, subparts A through E; and

(2) The government-wide requirements for a drug-free workplace. Recipients and subrecipients are required to comply with 29 CFR part 98, subpart F, except that the definition of "grantee" shall be read to include recipients and subrecipients.

(h) *Restrictions on Lobbying.* All WtW grant recipients and subrecipients are required to comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR Part 93.

(i) *Nondiscrimination.* All WtW grant recipients and subrecipients are required to comply with the nondiscrimination provisions codified in the DOL regulations at 29 CFR parts 31 and 32. In addition, 29 CFR part 37 applies to recipients of WtW financial

assistance who are also WIA recipients and applies to recipients of WtW financial assistance who operate programs that are part of the One-Stop system established under the Workforce Investment Act, to the extent that the WtW programs and activities are being conducted as part of the One-Stop delivery system. Furthermore, WtW programs that are part of larger State agencies that are recipients of WIA title I financial assistance must also comply with the provisions of 29 CFR part 37. For purposes of this paragraph, the term "recipient" has the same meaning as the term is defined in 29 CFR part 37. That part also contains participant rights related to nondiscrimination.

(j) *Nepotism.* (1) No individual may be placed in a WtW employment activity if a member of that person's immediate family is engaged in an administrative capacity for the employing agency.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement shall be followed.

§ 645.233 What are the time limitations on the expenditure of Welfare-to-Work grant funds?

(a) *Formula grant funds:* The maximum time limit for the expenditure of a given fiscal year allotment is three years from the effective date of the Federal grant award to the State. The maximum time limit will be allowed and will be specified in the Department's formula grant document for each fiscal year of funds provided to the State. Any remaining funds that have not been expended at the end of the expenditure period must be returned to the Department in accordance with the applicable closeout procedures for formula grants.

(b) *Competitive grant funds:* The maximum time limit for the expenditure of these funds is three years from the effective date of award, but will, in all cases, be determined by the grant period and the terms and conditions specified in the Federal grant award agreement (including any applicable grant modification documents). Any remaining funds that have not been expended at the end of the approved grant period must be returned to the Department in accordance with the applicable closeout procedures for competitive grants (section 503(a)(5)(C)(vii)).

§ 645.235 What types of activities are subject to the administrative cost limit on Welfare-to-Work grants?

(a) *Administrative cost limitation (section 404(b)(1)).*—(1) *Formula grants*

to states. Expenditures for administrative purposes under WtW formula grants to States are limited to fifteen percent (15%) of the grant award.

(2) *Competitive grants.* The limitation on expenditures for administrative purposes under WtW competitive grants will be specified in the grant agreement but in no case shall the limitation be more than fifteen percent (15%) of the grant award.

(3) Although administrative in nature, costs of information technology—computer hardware and software—needed for tracking and monitoring of WtW program, participant, or performance requirements, are excluded from the administrative cost limit calculation.

(b) The costs of administration are that allocable portion of necessary and allowable costs associated with those specific functions identified in paragraph (c) of this section for the administration of the WtW program and which are not related to the direct provision of services to participants. These costs can be both personnel and non-personnel and both direct and indirect.

(c) The costs of administration are the costs associated with performing the following functions:

(1) Performing overall general administrative functions and coordination of those functions under WtW including:

- (i) Accounting, budgeting, financial and cash management functions;
- (ii) Procurement and purchasing functions;
- (iii) Property management functions;
- (iv) Personnel management functions;
- (v) Payroll functions;
- (vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;
- (vii) Audit functions;
- (viii) General legal services functions;

and

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

(2) Performing oversight and monitoring responsibilities related to WtW administrative functions,

(3) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the WtW system; and

(5) Costs of information systems related to administrative functions (for

example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems development and operating costs of such systems.

(d)(1) Only that portion of the costs of WtW grantees that are associated with the performance of the administrative functions described in paragraph (c) of this section and awards to subrecipients or vendors that are solely for the performance of these administrative functions are classified as administrative costs. All other costs are considered to be for the direct provision of WtW activities and are classified as program costs.

(2) Personnel and related non-personnel costs of staff who perform both administrative functions specified in paragraph (c) of this section and programmatic services or activities are to be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(3) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost may be charged as a program cost. Documentation of such charges must be maintained.

(4) Except as provided at paragraph (d)(1) of this section, all costs incurred for functions and activities of subrecipients and vendors are program costs.

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

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

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

(iii) Local area performance information.

§ 645.240 What are the reporting requirements for Welfare-to-Work programs?

(a) *General.* State formula and other direct competitive grant recipients must report financial and participant data in accordance with revised instructions that will be issued by the Department after consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments. Reports must be submitted to the Department quarterly. Existing WtW financial reporting

instructions and formats are available on the WtW web site at <http://wtw.doleta.gov/linkpages/teglein.htm>. The Internet reporting system for WtW grantees is accessible at <http://www.eta-reports.doleta.gov>.

(b) *Subrecipient reporting.* A State formula or other direct competitive grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by the Department.

(c) *Financial reports.* Each grant recipient must submit financial reports to the Department. Reported expenditures and program income must be on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual information through an analysis of the documentation on hand.

(d) *Participant reports.* Each grant recipient must submit participant reports to the Department. Participant data must be aggregate data, and, for most data elements, must be cumulative by fiscal year of appropriation.

(e) *Due dates.* Financial and participant reports are due no later than 45 days after the end of each quarter. A final financial and participant report is required 90 days after the expiration of a funding period or the termination of grant support.

§ 645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?

(a) The Secretary may monitor all recipients and subrecipients of all grants awarded and funds expended under WtW. Federal oversight will be conducted primarily at the State level for formula grants and at the recipient level for competitive grants.

(b) The Governor must monitor local boards (or other approved administrative entities) funded under the State's formula allocated grants on a periodic basis for compliance with applicable laws and regulations. The Governor must develop and make available for review a State monitoring plan.

§ 645.250 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?

(a) Resolution of subrecipient level findings.

(1) The WtW grantee is responsible for the resolution of findings that arise from its monitoring reviews, investigations

and audits (including OMB Circular A-133 audits) of subrecipients.

(2) A State or competitive grantee, as appropriate, must use the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State or competitive grantee, as appropriate, does not have such procedures, it must prescribe standards and procedures for the WtW grant program.

(b) Resolution of State level findings.

(1) The Secretary is responsible for the resolution of findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A-133 audits.

(2) The Secretary will use the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A-133.

(3) A final determination issued by a grant officer pursuant to this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 645.800.

(c) Resolution of nondiscrimination findings. Findings arising from investigations or reviews conducted under nondiscrimination laws shall be resolved in accordance with those laws and the applicable implementing regulations.

§ 645.255 What nondiscrimination protections apply to participants in Welfare-to-Work programs?

(a) All participants in WtW programs under this part shall have such rights as are available under all applicable Federal, State and local laws prohibiting discrimination, and their implementing regulations, including:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Participants in work activities, as defined in section 407(a) of the Social Security Act, operated with WtW funds, shall not be discriminated against because of gender. Participants alleging gender discrimination may file a complaint using the State's grievance system procedures as described in § 645.270 of this subpart (section 403(a)(5)(J)(iii) of the Act). Participants alleging gender discrimination in WtW programs conducted by One-Stop partners as part of the One-Stop delivery system may file a complaint using the complaint processing procedures

developed and published by the State in accordance with the requirements of 29 CFR 37.70-37.80.

(c) Complaints alleging discrimination in violation of any applicable Federal, State or local law, such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Pregnancy Discrimination Act (42 U.S.C. 2000e (paragraph k)), or Section 188 of the Workforce Investment Act of 1998 (29 U.S.C. 2938), as well as those listed in paragraph (a) of this section, shall be processed in accordance with those laws and the implementing regulations.

(d) Questions about or complaints alleging a violation of the nondiscrimination laws in paragraph (a) of this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW, Washington, D.C. 20210 for processing.

§ 645.260 What health and safety provisions apply to participants in Welfare-to-Work programs?

(a) Participants in an employment activity operated with WtW funds, as defined in § 645.220 of this part, are subject to the same health and safety standards established under State and Federal law which are applicable to similarly employed employees, of the same employer, who are not participants in programs under WtW.

(b) Participants alleging a violation of these health and safety standards may file a complaint pursuant to the procedures contained in § 645.270 of this part (section 403(a)(5)(J)(ii)).

§ 645.265 What safeguards are there to ensure that participants in Welfare-to-Work employment activities do not displace other employees?

(a) An adult participating in an employment activity operated with WtW funds, as described in § 645.220 (b) and (c) of this subpart, may fill an established position vacancy subject to the limitations in paragraph (c) of this section.

(b) An employment activity operated with WtW funds, as described in § 645.220(c) of this subpart, must not violate existing contracts for services or collective bargaining agreements. Where such an employment activity would violate a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the employment activity is undertaken.

(c) An adult participating in an employment activity operated with WtW funds, as described in § 645.220(c)

of this subpart, must not be employed or assigned:

(1) When any other individual is on layoff from the same or any substantially equivalent job within the same organizational unit;

(2) If the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WtW participant; and,

(3) If the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or substantially equivalent job within the same organizational unit.

(d) Regular employees and program participants alleging displacement may file a complaint pursuant to § 645.270 of this part (section 403(a)(5)(J)(i)).

§ 645.270 What procedures are there to ensure that currently employed workers may file grievances regarding displacement and that Welfare-to-Work participants in employment activities may file grievances regarding displacement, health and safety standards and gender discrimination?

(a) The State shall establish and maintain a grievance procedure for resolving complaints from:

(1) Regular employees that the placement of a participant in an employment activity operated with WtW funds, as described in § 645.220 of this part, violates any of the prohibitions described in § 645.265 of this part; and

(2) Program participants in an employment activity operated with WtW funds, as described in § 645.220 of this part, that any employment activity violates any of the prohibitions described in §§ 645.255(d), 645.260, or 645.265 of this part.

(b) Such grievance procedure should include an opportunity for informal resolution.

(c) If no informal resolution can be reached within the specified time as established by the State as part of its grievance procedure, such procedure shall provide an opportunity for the dissatisfied party to receive a hearing upon request.

(d) The State shall specify the time period and format for the hearing portion of the grievance procedure, as well as the time period by which the complainant will be provided the written decision by the State.

(e) A decision by the State under paragraph (d) of this section may be appealed by any dissatisfied party within 30 days of the receipt of the State's written decision, according to the time period and format for the

appeals portion of the grievance procedure as specified by the State.

(f) The State shall designate the State agency which will be responsible for hearing appeals. This agency shall be independent of the State or local agency which is administering, or supervising the administration of the State TANF and WtW programs.

(g) No later than 120 days of receipt of an individual's original grievance, the State agency, as designated in paragraph (f) of this section, shall provide a written final determination of the individual's appeal.

(h) The grievance procedure shall include remedies for violations of §§ 645.255(d), 645.260, and 645.265 of this part which may continue during the grievance process and which may include:

(1) Suspension or termination of payments from funds provided under this part;

(2) Prohibition of placement of a WtW participant with an employer that has violated §§ 645.255(b), 645.260, and 645.265 of this part;

(3) Where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and,

(4) Where appropriate, other equitable relief (section 403(a)(5)(J)(iv)).

(i) Participants alleging gender discrimination by WtW programs that are not part of the One-Stop system may file a complaint using the grievance system procedures described above. Participants alleging gender discrimination by WtW programs that are part of the One-Stop system may file a complaint using the procedures developed by the State under the WIA nondiscrimination regulations at 29 CFR 37.70–37.80.

Subpart C—Additional Formula Grant Administrative Standards and Procedures

§ 645.300 What constitutes an allowable match?

(a) A State is entitled to receive two (2) dollars of Federal funds for every one (1) dollar of State match expenditures, up to the amount available for allotment to the State based on the State's percentage for WtW formula grant for the fiscal year. The State is not required to provide a level of match necessary to support the total amount available to it based on the State's percentage for WtW formula grant. However, if the proposed match is less than the amount required to support the full level of Federal funds, the grant amount will be reduced accordingly (section 403(a)(5)(A)(i)(I)).

(b) States shall follow the match or cost-sharing requirements of the "Common Rule" *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (codified for DOL at 29 CFR 97.24). Paragraphs (b)(1)(i) and (ii), (b)(3), and (b)(4) and (c)(1) of this section are in addition to the common rule requirements. Also, paragraphs included in the common rule which relate to the use of donated buildings and other real property as match have been excluded from this provision.

(1) Only costs that would be allowable if paid for with WtW grant funds will be accepted as match.

(i) Because the use of Federal funds is prohibited for construction or purchase of facilities or buildings except where there is explicit statutory authority permitting it, costs incurred for the construction or purchase of facilities or buildings shall not be acceptable as match for a WtW grant.

(ii) Because the costs of construction or purchase of facilities or buildings are unallowable as match, the donation of a building or property as a third party in-kind contribution is also unallowable as a match for a WtW grant.

(2) A match or cost-sharing requirement may be satisfied by either or both of the following:

(i) Allowable costs incurred by the grantee, subgrantee or a cost type contractor under the assistance agreement. This includes allowable cost borne by non-Federal grants or by others and cash donations from non-Federal third parties.

(ii) The value of third party in-kind contributions applicable to the FY period to which the cost-sharing or matching requirement applies.

(3) No more than seventy-five percent (75%) of the total match expenditures may be in the form of third party in-kind contributions.

(4) Match expenditures must be recorded in the books of account of the entity that incurred the cost or received the contribution. These amounts may be rolled up and reported as aggregate State level match.

(c) Qualifications and exceptions—

(1) The matching requirements may not be met by the use of an employer's share of participant wage payments (e.g., employer share of OJT wages).

(2) Costs borne by other Federal grant agreements. A cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(3) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(4) Cost or contributions counted towards other Federal cost-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(5) Costs financed by program income. Costs financed by program income, as defined in 29 CFR 97.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in 29 CFR 97.25(g)).

(6) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(7) Records. Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(8) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Cost sharing or matching credit for such

contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes must conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it must be fair and reasonable.

(d) Valuation of donated services.

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services must be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (d)(1) of this section applies.

(e) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution must be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution must be valued at:

(i) the fair rental rate of the equipment or space for property donated by non-governmental entities, or

(ii) a depreciation or use-allowance based on the property's market value at the time it was donated for property donated by governmental entities.

§ 645.310 What assurance must a State provide that it will make the required matching expenditures?

In its State plan, a State must provide a written estimate of planned matching expenditures and describe the process by which the funds will be tracked and reported to ensure that the State meets its projected match (section 403(a)(5)(A)(i)(I)).

§ 645.315 What actions are to be taken if a State fails to make the required matching expenditures?

(a) If State match expenditures do not satisfy the requirements of the FY grant award by the end of the three year fund availability period, the grant award amount will be reduced by the appropriate corresponding amount (*i.e.*, the grant will be reduced by two (2) dollars for each one (1) dollar shortfall in State matching funds) when the grant is closed out.

(b) Compliance with the fifteen percent (15%) administrative cost limit will be recalculated based on the FY formula grant award amount, as reduced under paragraph (a) of this section.

Subpart D—State Formula Grants Administration

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

(a)(1) The Governor may include in the State's WtW Plan a waiver request to select an agency other than the local board or PIC to administer the program for one or more local areas or SDA's in a State; or

(2) When the Governor determines the local board or alternate administering agency has not coordinated its expenditures with the expenditure of funds provided to the State under TANF, pursuant to section 403(a)(5)(A)(vii)(II) of the Act, the Governor must request a waiver.

(b) The Governor shall bear the burden of proving that the designated alternate administering agency, rather than the local board or other alternate administering agency, would improve the effectiveness or efficiency of the administration of WtW funds in the SDA. The Governor's waiver request shall include information to meet that burden. The Governor shall provide a copy of the waiver request and any supporting information submitted to the Secretary to the local board and CEO of the local area for which an alternative administering agency is requested.

(c) The local board and CEO shall have fifteen (15) days in which to submit his or her written response to the Department. The local board and CEO

shall provide a copy of such response to the Governor.

(d) The Secretary will assess the waiver information submitted by the Governor, including input from the local board and CEO in reaching the decision whether to permit the use of an alternate administering agency.

(e) The Secretary shall approve a waiver request if she determines that the Governor has established that the designated alternate administering agency, rather than the local board or other administering agency, will improve the effectiveness or efficiency of the administration of WtW funds provided for the benefit of the local area.

(f) Where an alternate administering agency is approved by the Secretary, such administrative entity shall coordinate with the CEO for the applicable local area(s) regarding the expenditure of WtW grant funds in the local area(s).

(g) The decision of the Secretary to approve or deny a waiver request will be issued promptly and shall constitute final agency action.

§ 645.410 What elements will the State use in distributing funds within the State?

(a) Of the WtW funds allotted to the State, not less than 85 percent of the State allotment must be distributed to the local areas or SDA's in the State.

(1) The State shall prescribe a formula for determining the amount of funds to be distributed to each local area or SDA in the State using no factors other than the three factors described in paragraphs (2) and (3) of this paragraph;

(2) The formula prescribed by the Governor must include as one of the formula factors for distributing funds the provision at section 403(a)(5)(A)(vi)(I)(aa) of the Act. The Governor is to distribute funds to a local area or SDA based on the number by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, compared to all such numbers in all such areas in the State. The Governor must assign a weight of not less than 50 percent to this factor;

(3) The Governor shall distribute the remaining funds, if any, to the local area or SDA's utilizing only one or both of the following factors:

(i) the local area or SDA's share of the number of adults receiving assistance under TANF or the predecessor program in the local area or SDA for 30 months or more (whether consecutive or not), relative to the number of such adults residing in the State;

(ii) the local area or SDA's share of the number of unemployed individuals residing in the local area or SDA, relative to the number of such individuals residing in the State.

(4) If the amount to be distributed to a local area or SDA by the Governor's formula is less than \$100,000, the funds shall be available to be used by the Governor to fund projects described at paragraph (b) of this section.

(5) States shall use the guidance provided at section 403(a)(5)(D) of the Act in determining the number of individuals with an income that is less than the poverty line.

(6) Local Boards (or alternate administering agency) shall determine, pursuant to section 403(a)(5)(A)(vii)(I) of the Act, on which individual(s) and on which allowable activities to expend its WtW fund allocation.

(7) The State must distribute the local boards' or SDA's allocations in a timely manner, but not longer than 30 days from receipt of the State's fund allotment.

(b) Of the funds allocated to the State, up to 15 percent of the funds may be retained at the State level to fund projects that appear likely to help long-term recipients of assistance enter unsubsidized employment. Any additional funds available as a result of the process described at paragraph (a)(4) of this section, shall also be available to be used to fund projects to help long-term recipients of assistance enter unsubsidized jobs.

(c) The Governors may distribute the funds retained pursuant to paragraph (b) of this section to a variety of workforce organizations, in addition to local boards or alternate administering agencies, and other entities such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population.

§ 645.415 What planning information must a State submit in order to receive a formula grant?

(a) Each State seeking financial assistance under the formula grant portion of the WtW legislation must submit an annual plan meeting the requirements prescribed by the Secretary. This plan shall be in the form of an addendum to the TANF State plan and shall be submitted to the Secretaries

of Labor and Health and Human Services.

(b) The Secretary shall review the State plan for compliance with the statutory and regulatory provisions of the WtW program. The Secretary's decision whether to accept a State plan as in compliance with the Act shall constitute final agency action.

(c) If the Governor has requested a waiver to permit the selection of an alternate administering agency in the State plan, the provisions of § 645.400 of this part shall apply (section 403(a)(5)(A)(ii)).

§ 645.420 What factors will be used in measuring State performance?

(a) The Department will use the following factors to measure State performance:

(1) Job entry rate as measured by the proportion of WtW participants who enter either subsidized employment or unsubsidized employment,

(2) Substantive job entry rate as measured by the proportion of WtW participants who are placed in or who have moved into subsidized or unsubsidized employment of 30 hours or more per week,

(3) Retention as measured by the proportion of WtW participants who remain in unsubsidized employment six months in the second subsequent quarter after the quarter in which placement occurred after initial placement, and

(4) Measured earnings gains of WtW participants who remain in unsubsidized employment six months after initial placement.

(b) The formula for calculating the performance bonus is weighted as follows:

(1) 30 percent on job entry rate,

(2) 30 percent on substantive job entry rate,

(3) 20 percent on retention in unsubsidized employment,

(4) 20 percent on earnings gains in unsubsidized employment.

The formula will reflect general economic conditions on a State-by-State basis.

(c) The formula shall serve as the basis for the award of FY 2000 bonus grants based on successful performance to be made in FY 2001 (section 403(a)(5)(E)).

§ 645.425 What are the roles and responsibilities of the State(s) and local boards or alternate administering agencies?

(a) State roles and responsibilities. A State:

(1) Designates State WtW administering agency;

(2) Provides overall administration of WtW funds, consistent with the WtW statute, WtW regulations and the State's WtW Plan;

(3) Develops the State WtW Plan in consultation and coordination with appropriate entities in substate areas, such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 403(a)(5)(A)(ii)(I)(cc));

(4) Distributes funds to SDAs, consistent with the provisions described at § 645.410(a) (section 403(a)(5)(A)(ii)(I)(bb));

(5) Conducts oversight and monitoring of WtW activities and fund expenditures at the State and local levels for compliance with applicable laws and regulations, consistent with the provisions at § 645.245 and provides technical assistance as appropriate;

(6) Ensures coordination of local board or alternate administering agency fund expenditures with the State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(I)(dd));

(7) Determines whether to request waivers to select an alternate administering agency consistent with the provisions described at § 645.400 of this part (sections 403(a)(5)(A)(ii)(I)(ee) and 403(a)(5)(A)(vii)(III));

(8) Manages and distributes State level WtW funds (15 percent), consistent with the provisions at § 645.410(b) and (c) (section 403(a)(5)(A)(vi)(III));

(9) Ensures that the 15 percent administration limitation and the match requirement are met;

(10) Ensures that worker protections provisions are observed and establishes an appropriate grievance process, consistent with §§ 645.255 through 645.270 of this part (section 403(a)(5)(J));

(11) Provides comments on Competitive Grant Application(s) from eligible entities within the State, consistent with § 645.510 of this part (section 403(a)(5)(B)(ii));

(12) Cooperates with the Department of Health and Human Services on the evaluation of WtW programs (section 403(a)(5)(A)(ii)(III));

(13) Provides technical assistance to PIC's, local boards or alternate administering agencies; and

(14) Establishes internal reporting requirements to ensure Federal reports are accurate, complete and are submitted on a timely basis, consistent with § 645.240 of this part.

(b) Local Boards (or alternate administering agency) roles and responsibilities. A local board:

(1) Has sole authority, in coordination with CEOs, to expend formula funds (section 403(a)(5)(A)(vii)(I));

(2) Has authority to determine the individuals to be served in the local area (section 403(a)(5)(A)(vii)(I));

(3) Has authority to determine the services to be provided in the local area (section 403(a)(5)(A)(vii)(I));

(4) Ensures funds are expended on eligible recipients and on allowable activities, consistent with § 645.410(a)(5) of this part;

(5) Coordinates WtW fund expenditures with State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(dd));

(6) Ensures that there is an assessment and an individual service strategy in place for each WtW participant, consistent with § 645.225(a) and (b) of this part;

(7) Conducts oversight and monitoring of subrecipients, consistent with the provisions at § 645.245 of this part;

(8) Ensures worker protection provisions and grievance process are observed, consistent with State guidelines (section 403(a)(5)(J)); and

(9) Consults with and provides comments on private entity Competitive Grant Application(s), consistent with the provisions at § 645.500(b)(1)(i) of this part.

§ 645.430 How does the Welfare-to-Work program relate to the One-Stop system and Workforce Investment Act (WIA) programs?

(a) As provided in the Workforce Investment Act regulations at 20 CFR 663.620, the local WtW formula grant program operator is a required partner in the One-Stop system. 20 CFR part 662 describes the roles of such partners in the One-Stop system and applies to the WtW formula grant program operators. A Memorandum of Understanding must be developed between the Local Workforce Investment Board and the WtW program that meets the requirements of 20 CFR 662.300, such as containing provisions relating to the services to be provided through the One-Stop system and methods for referring individuals between the One-Stop operator and the partner WtW program.

(b) WtW participants may also be served by the WIA programs and, through appropriate linkages and

referrals, these individuals will have access to a broader range of activities and services through the cooperation of the WtW and WIA programs in the One-Stop system. For example, WtW participants, who are also determined eligible for WIA, and who need occupational skills training, may be referred through the One-Stop system to receive WIA training. These participants are also eligible to receive services available under WtW, such as transportation and child care while participating in the WIA activity.

(c) WIA participants, who are determined to be eligible for WtW, may also be served by the WtW programs through cooperation with the WIA programs in the One-Stop system. For example, WIA participants, who are also determined eligible for WtW, may be referred to the WtW program for job placement and other WtW assistance.

(d) 29 CFR part 37 applies to recipients of WtW financial assistance who operate programs that are part of the One-Stop system established under WIA to the extent that the WtW programs and activities are being conducted as part of the One-Stop delivery system.

Subpart E—Welfare-To-Work Competitive Grants

§ 645.500 Who are eligible applicants for competitive grants?

(a) Eligible applicants for competitive grants are:

(1) Local boards or alternate administering agencies

(2) Political subdivisions of a State; and

(3) Private entities, as defined in § 645.120 of this part, including nonprofit organizations such as community development corporations, community-based and faith-based organizations, disability community organizations, community action agencies, and public and private colleges and universities, and other qualified private organizations.

(b) Entities other than a local board or alternate administering agency or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the applicable local board or alternate administering agency or political subdivision.

(1) The term "in conjunction with" shall mean that the application submitted by such an entity must include a signed certification by both the applicant and either the applicable local board or alternate administering agency or political subdivision that:

(i) The applicant has consulted with the applicable local board or alternate

administering agency or political subdivision during the development of the application; and

(ii) The activities proposed in the application are consistent with, and will be coordinated with, WtW efforts of the local board or alternate administering agency or political subdivision.

(2) If the applicant is unable to include such a certification in its application, the applicant will be required to certify, and provide information indicating that efforts were undertaken to consult with the local board or alternate administering agency or political subdivision and that the local board or alternate administering agency or political subdivision was provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Secretary. "Sufficient opportunity for local Board or alternate administering agency or political subdivision review and comment" shall mean at least 30 calendar days.

(3) The certification described in paragraph (b)(1) of this section, or the evidence of efforts to consult described in paragraph (b)(2), must be with each local board or alternate administering agency or political subdivision included in the geographic area in which the project proposed in the application is to operate (section 403(a)(5)(B)(ii)).

§ 645.510 What is the required consultation with the Governor?

(a) All applicants for competitive grants, including local boards or alternate administering agencies and political subdivisions, must consult with the Governor by submitting their application to the Governor or the designated State administrative entity for the WtW program for review and comment prior to submission of the application to the Secretary. The application submitted to the Secretary must include:

(1) Comments on the application from the State; or

(2) Information indicating that the State was provided a sufficient opportunity for review and comment prior to submission to the Secretary. "Sufficient opportunity for State review and comment" shall mean at least 15 calendar days.

(b) For private entity applicants, the submission of the application for State review and comment must follow the 30

day period provided for local board or alternate administering agency/political subdivision review. Evidence of local board or alternate administering agency or political subdivision review should be included in the submission to the State (section 403(a)(5)(B)(ii)).

§ 645.515 What are the program and administrative requirements that apply to both the formula grants and competitive grants?

(a) All of the general program requirements and administrative standards set by 29 CFR Part 645 Subpart B apply (section 403(a)(5)(C) and section 404(b)).

(b) In addition, competitive grants will be subject to:

(1) Supplemental reporting requirements; and

(2) Additional monitoring and oversight requirements based on the negotiated scope-of-work of individual grant awards (section 403(a)(5)(B)(iii) and (v)).

§ 645.520 What are the application procedures and timeframes for competitive grant funds?

(a) The Secretary shall establish appropriate application procedures, selection criteria and an approval process to ensure that grant awards accomplish the purpose of the competitive grant funds and that available funds are used in an effective manner.

(b) The Secretary shall publish such procedures in the **Federal Register** and establish submission timeframes in a manner that allows eligible applicants sufficient time to develop and submit quality project plans (section 403(a)(5)(B)(i) and (iii)).

§ 645.525 What special consideration will be given to rural areas and cities with large concentrations of poverty?

(a) Competitive grant awards will be targeted to geographic areas of significant need. In developing application procedures, special consideration will be given to rural areas and cities with large concentrations of residents living in poverty.

(b) Grant application guidelines will clarify specific requirements for documenting need in the local area (section 403(a)(5)(B)(iv)).

Subpart F—Administrative Appeal Process

§ 645.800 What administrative remedies are available under this Part?

(a) Within 21 days of receipt of a final determination that has directly imposed a sanction or corrective action pursuant to § 645.250(b) of this part, a recipient, subrecipient, or a vendor directly against which the Grant Officer has imposed a sanction or corrective action, may request a hearing before the Department of Labor Office of Administrative Law Judges, pursuant to the provisions of 29 CFR part 96 subpart 96.6.

(b) In accordance with 29 CFR 96.603(b)(2), the rules of practice and procedure published at 29 CFR part 18 shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency is required. Technical rules of evidence shall not apply to a hearing conducted pursuant to this part; however, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall apply.

(c) The decision of the Administrative Law Judge (ALJ) shall constitute final agency action unless, within 20 days of the decision, a party dissatisfied with the decision of the ALJ has filed a petition for review with the Administrative Review Board (ARB) (established pursuant to the provisions of Secretary's Order No. 2-96, published at 61 FR 19977 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ shall constitute final agency action unless the ARB, within 30 days of the filing of the petition for review, has notified the parties that the case has been accepted for review. Any case accepted by the ARB shall be decided within 120 days of such acceptance. If not so decided, the decision of the ALJ shall constitute final agency action.

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