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20 CFR Part 641

Senior Community Service Employment Program; Notice of Proposed Rulemaking; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

RIN 1205–AB48

Senior Community Service Employment Program; Notice of Proposed Rulemaking

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Employment and Training Administration of the Department of Labor (Department) is issuing this Notice of Proposed Rulemaking (NPRM) to propose changes in the Senior Community Service Employment Program resulting from the 2006 Amendments to title V of the Older Americans Act, and to clarify various policies. Key proposed changes include the introduction of a 48-month limit on participation, regular competition for national grants, and an available increase in the proportion of grant funds that can be used for participant training and supportive services. Comments on this proposed rule are welcome according to the dates listed below.

DATES: Interested persons are invited to submit comments on this proposed rule. To ensure consideration, comments must be received on or before October 14, 2008. Comments received after that date will be considered to the extent possible. Comments should be limited to the proposed changes and additions to the current regulations, all of which are discussed in the preamble to this NPRM, or to other changes to the current regulations which flow from the 2006 Amendments.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB48, by either of the following methods:

- *Federal e-Rulemaking Portal: www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail and hand delivery/courier:* Written comments, disk, and CD–Rom submissions may be mailed to Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Instructions: Label all submissions with RIN 1205–AB48.

Please be advised that the Department will post all comments received on *www.regulations.gov* without making any change to the comments, or redacting any information. The *www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters safeguard any personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such may become easily available to the public via the *www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC, may be delayed. Therefore, the Department encourages the public to submit comments via the Internet as indicated above.

Docket: The Department will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. The Department will consider providing the rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (not a toll-free number). You may also contact this office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Sherril Hurd, Acting Team Leader, Regulations Unit, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210; telephone (202) 693–3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

I. Background—Provides a Brief Description of the Development of the Proposed Rule
II. Section-By-Section Review of the Proposed Rule—Summarizes and Discusses Proposed Changes to the Senior Community Service Employment Program (SCSEP) Regulations
III. Administrative Information—Sets Forth the Applicable Regulatory Requirements

I. Background

On October 17, 2006, President Bush signed the Older Americans Act (OAA) Amendments of 2006, Public Law 109–365 (2006 OAA). This law amended the statute authorizing SCSEP and necessitates changes to the SCSEP regulations. The Department's Employment and Training Administration (ETA) promulgated an IFR on June 29, 2007 that implemented changes in the SCSEP performance measurement system required by the 2006 OAA. This proposed rule proposes to implement the remainder of the changes in the SCSEP necessitated by the 2006 OAA, and to clarify various program policies.

The SCSEP, authorized by title V of the OAA, is the only Federally-sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be unemployed, 55 years of age or older, and have incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service employment assignments in public and non-profit agencies. The goals of the program are to move SCSEP participants into unsubsidized employment so that they can achieve economic self-sufficiency, and to promote useful opportunities in community service activities. In the 2006 OAA, Congress expressed its sense of the benefits of the SCSEP, stating, ''placing older individuals in community service positions strengthens the ability of the individuals to become self-sufficient, provides much-needed support to organizations that benefit from increased civic engagement, and strengthens the communities that are served by such organizations.'' OAA section 516(2).

Many of the policy initiatives contained in the 2000 OAA, Public Law 106–501, and reflected in the 2004 SCSEP final rule, 69 FR 19014, Apr. 19, 2004, are maintained in the 2006 OAA and this proposed rule. Other policies are amplified. Most notably, there is a greater emphasis on placing individuals in unsubsidized employment, as evidenced by the new 48-month limitation on participation in the SCSEP (OAA sec. 518(a)(3)(B); § 641.570 of this part); the new limitations on benefits (OAA sec. 502(c)(6)(A)(i); § 641.565 of this part); and the increase in available funds for training and supportive services to prepare participants for the unsubsidized workforce (OAA sec. 502(c)(6)(C); § 641.874 of this part). A focus on the transition of participants

into unsubsidized employment allows more eligible individuals to be served by the SCSEP and thus to potentially benefit from employment opportunities and income gains.

Coordination between the SCSEP and the programs under the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.*, continues to be an important objective of the 2006 OAA. With the enactment of WIA in 1998, the SCSEP became a required partner in the workforce investment system. 29 U.S.C. 2841(b)(1)(B)(vi). In 2000, Congress amended the SCSEP to require coordination with the WIA One-Stop Delivery System (Pub. L. 106–501 sec. 505(c)(1)), including reciprocal use of assessment mechanisms and Individual Employment Plans (Pub. L. 106–501 sec. 502(b)(4)). The underlying notion of the One-Stop Delivery System is the coordination of programs, services, and governance structures, so that the customer has access to a seamless system of workforce investment services.

Consistent with current SCSEP practice, both WIA and the 2006 OAA require any grantee operating a SCSEP project in a local area to negotiate a Memorandum of Understanding (MOU) with the Local Workforce Investment Board. WIA section 121; OAA section 511(b); see also OAA section 502(b)(1)(O). The MOU must detail the SCSEP project's involvement in the One-Stop Delivery System. In particular, SCSEP grantees/sub-recipients must make arrangements to provide their participants, eligible individuals the grantees are unable to serve, as well as SCSEP-ineligible individuals, with access to services available in the One-Stop Centers. OAA secs. 510, 511; §§ 641.210, 641.220 of this part.

Because the SCSEP is a required partner under WIA, SCSEP grantees and sub-recipients must ensure that they are familiar with WIA's statutory and regulatory provisions. Congress is considering legislation to reauthorize WIA, and reauthorization may bring changes to the law. SCSEP grantees and sub-recipients must ensure that they keep current on any changes in WIA law that could impact their program.

The 2006 OAA also increases the accountability of grantees by clearly requiring a competitive process for grant awards. This proposed rule implements the statute's requirement that the national SCSEP grants be re-competed regularly, generally every four years. OAA section 514(a); § 641.490(a) of this part. This proposed rule also implements the statute's requirement that a State compete its SCSEP grant if the current State grantee fails to meet its core performance goals for three consecutive years. OAA sec. 513(d)(3)(B)(iii); § 641.490(b) of this part.

In addition, the 2006 OAA establishes new funding opportunities for pilot, demonstration, and evaluation projects (OAA sec. 502(e); § 641.600–640 of this part), expands the priority-for-service categories (OAA sec. 518(b); § 641.520 of this part), and modifies how the program determines income eligibility (OAA sec. 518(3)(A); § 641.510 of this part).

To the extent that the 2006 OAA does not change the 2000 OAA, these proposed regulations do not change the statutory interpretations or policy positions that supported the current regulations. The SCSEP is an established program; we do not propose to begin anew with this proposed rule but rather build upon the regulatory framework that has developed over the years. The proposed changes, mostly necessitated by statutory revisions, are discussed further in the next section of the preamble.

The Department notes that it will continue to use the name ''Senior Community Service Employment Program'' for this program, although the OAA refers to it in various terms.

The Department solicits comments on this proposed rule. For ease of reading, the Department is publishing the full regulatory text for subparts B–F, H and I. The regulatory text that was amended in the IFR, which includes all of subpart G and some definitions in subpart A, is not reprinted here. With the exception of § 641.140 (definitions), the regulatory text herein includes the proposed changes as well as the several provisions that are unchanged. We are not reprinting unchanged definitions. The Department solicits comments on the proposed changes in this notice. We particularly invite comments, in accordance with the requirements of section 514(f) of the 2006 OAA, addressing any concerns that these proposed regulations significantly compromise the ability of grantees to serve their targeted populations of minority older individuals, in areas where substantial populations of minority individuals reside.

II. Section-by-Section Review of the Proposed Rule

This proposed rule amends subparts A–F, H, and I of part 641 of Title 20 of the Code of Federal Regulations. It proposes changes required by the 2006 OAA, and proposes to clarify various policies. The Department previously promulgated an IFR, 72 FR 35832, June 29, 2007, which addressed changes in the SCSEP performance measurement system required by the 2006 OAA. The IFR revised subpart G, which addresses performance accountability, and added several definitions to, and revised certain definitions within, subpart A that relate to the performance measures. The amendments that were contained in the IFR are not repeated here.

The Department proposes to make two changes that affect many of the subparts. We now refer to sub-recipients along with grantees where the responsibility or requirement being discussed applies to not just the grantees, but their sub-recipients as well. We also change from the term ''community service assignment'' to ''community service employment assignment'' throughout this part to be consistent with a similar change in the language of the statute (see, e.g., OAA section 502(b)(1)(A)), and to emphasize the SCSEP's goal of employment in addition to community service (OAA sec. 502(a)(1)). By including ''employment'' in the phrase ''community service employment assignment,'' the Department does not mean that participants have a right to long-term employment under the SCSEP, however. The SCSEP provides temporary, subsidized, part-time employment assignments to prepare older workers for unsubsidized employment as well as to provide valuable community services.

Subpart A—Purpose and Definitions

What Does This Part Cover? (§ 641.100)

Section 641.100 provides an overview of each subpart of the SCSEP regulations. As reflected in paragraph (c) the Department proposes to change the name of the State Plan, and to include a reference to the Plan's four-year strategy, both in accordance with the 2006 OAA and as further described in the preamble for subpart C, below. We propose to add a phrase to the description of subpart D to clarify that subpart D contains provisions relating to the grant application and responsibility review requirements for ''the Department's award of SCSEP funds for State and National grants.'' Subpart D does not apply to the pilot, demonstration, and evaluation grants described in subpart F. As is the case in the current regulations, proposed subpart F contains its own provision about applying for those grants (see § 641.620).

The Department proposes to revise paragraph (f) of the overview to indicate that subpart F provides the rules for pilot, demonstration, and evaluation projects as provided at section 502(e) of

the 2006 OAA. These projects replace the private sector training projects that were authorized under section 502(e) of the 2000 OAA, Public Law 106–501. In paragraph (g) we propose to replace the reference to sanctions with a reference to corrective actions for failure to meet core performance measures, to mirror the language of the 2006 OAA (see, e.g., OAA section 513(d)). Finally, in paragraph (h), we describe subpart H as concerning the administrative requirements for SCSEP ''funds'' rather than SCSEP ''grants'' because many of the requirements contained in subpart H are not limited to grantees.

What Is the SCSEP? (§ 641.110)

This section briefly describes the SCSEP. We propose to add the word ''unemployed'' to the description of individuals served to more thoroughly describe the program. In the past, grantees and applicants/participants have asked whether a person has to be unemployed to be eligible for the SCSEP. Unemployed is—and has been—an eligibility requirement. Also, whereas in the current regulations the program description speaks of ''placing'' participants in ''community service positions,'' the Department now proposes to state that the SCSEP ''trains'' participants in ''community service employment assignments.'' And, whereas the current regulations state that the SCSEP serves participants by ''assisting them to transition to unsubsidized employment,'' we propose to clarify that the SCSEP serves participants by ''assisting them in developing skills and experience to facilitate their transition to unsubsidized employment.'' We propose this change to provide more specificity about the services the SCSEP provides and how these services advance the goal of unsubsidized employment.

What Are the Purposes of the SCSEP? (§ 641.120)

This section describes the purposes of the SCSEP, and is based on the statement establishing the program in section 502(a)(1) of the OAA. The Department proposes to revise this section in accordance with changes in the 2006 OAA, which rearranges the ordering of the purposes. In the 2006 OAA, ''foster[ing] individual economic self-sufficiency'' is listed first among the purposes of the SCSEP; fostering and promoting useful community service activities was listed first in the 2000 OAA. We propose to amend our description accordingly. The Department interprets the placement of this purpose at the front of the list of purposes as consistent with an increased focus on placing participants in unsubsidized employment.

We also propose to alter the statement of the goal concerning community service. The current regulations state that a purpose of the SCSEP is to ''foster and promote useful part-time opportunities in community service activities.'' We propose to change this to: ''Promote useful part-time opportunities in community service employment assignments.'' We omit the word ''foster'' from this phrase to be consistent with the language of the statute. Our use of the term community service employment assignment was discussed above, and is changed consistently in the rest of this proposed rule.

What Is the Scope of This Part? (§ 641.130)

The proposed change in this section concerns administrative issuances. The current regulations indicate that administrative guidance and information will be provided via ''SCSEP Bulletins, technical assistance guides, and other SCSEP directives.'' We propose to revise this section to reflect the current ETA advisory system. We now issue administrative guidance and information for the SCSEP through Training and Employment Guidance Letters (TEGLs), Training and Employment Notices (TENs), technical assistance guides, and other SCSEP guidance. The Department no longer uses Older Worker Bulletins to issue administrative guidance; however, previously issued Bulletins that have not been rescinded, and have not been superseded by the 2006 OAA, are still in effect. All valid administrative issuances, as well as an abundance of other program information, may be viewed at the SCSEP Web site, *http://www.doleta.gov/seniors*.

What Definitions Apply to This Part? (§ 641.140)

The Department proposes to amend several SCSEP definitions.

New Definitions

We propose to add the following five definitions:

Pacific Island and Asian Americans: The Department adds the definition of Pacific Island and Asian Americans that appears in section 518(a)(5) of the 2006 OAA.

Program operator: We move the definition of ''first tier sub-recipient'' from § 641.856 to the definitions section, rename it ''program operators,'' and expand it to make clear that it applies to all entities that operate a SCSEP program, not just to those entities that receive their funds directly from the grantee. Our intent is to clarify that all entities operating a SCSEP program, and not just those one tier down from direct SCSEP grantees, must adhere to program laws and regulations such as the requirement to track, record, and report administrative costs, and must limit those costs to comply with the administrative costs cap.

Secretary: We clarify that Secretary means the Secretary of the Department of Labor.

Supportive services: Section 518(a)(7) of the 2006 OAA defines supportive services and we adopt the statutory definition here.

Unemployed: We adopt the definition from section 518(a)(8) of the 2006 OAA.

Revised Definitions

We propose to revise the following definitions:

Authorized position level: We remove the sentence that appears at the end of the definition in the current regulations, which states that the authorized position level is calculated by dividing a grantee's total award by the national unit cost, because it is repetitive of other language in the definition.

Community service: We revise the definition of community service to align more precisely with the statutory definition. We omit the opening phrase, ''includes, but is not limited to,'' and replace it with a provision at the end of the definition allowing the Secretary to include in the definition other services by rule as appropriate. In addition, we have included a lettered listing of the 2006 OAA's grouping of services.

Equitable distribution report: In the phrase, ''taking the needs of underserved counties into account,'' we replace the word ''counties'' with ''jurisdictions'' to be inclusive of entities other than counties, such as incorporated cities, which may also be underserved.

Grantee: We alter the list of possible entities that may serve as grantees to more closely follow the language of the 2006 OAA at section 502(b)(1). Accordingly, whereas the current regulations list both ''States'' and ''agencies of a State government'' as possible grantees, we now list only ''State agencies.'' Also, the 2006 OAA dropped language indicating that political subdivisions of a State, or a combination of such political subdivisions, could serve as a grantee; we therefore delete such language from this definition. We also modify the definition of grantee to eliminate the reference to section 502(e) grantees, since private sector training projects are

no longer authorized, and to make technical corrections.

Greatest economic need: We update the citation for this definition.

Greatest social need: We alter the definition of greatest social need to make technical corrections and to update the statutory citation.

Host agency: The Department revises the definition of host agency three ways. First, we insert the word ''training'' before ''work site'' to underscore that the community service employment assignment is a venue for training SCSEP participants. We also create a stand-alone sentence stating that political parties cannot be host agencies, for clarity. Concerning political parties, we note that we interpret section 502(b)(1)(D) of the 2006 OAA as containing a misplaced ending parenthesis. As political parties are not covered by section 501(c)(3) of the Internal Revenue Code, we consider that the final parenthesis should appear after the word ''parties.'' Our interpretation here simply maintains the same understanding of host agencies as existed under the 2000 OAA—political parties cannot be host agencies, and non-profit agencies that are 501(c)(3) may be host agencies. Finally, we include the word ''sectarian'' before ''religious'' to more closely adhere to the language of the OAA.

Indian: We update the citation.

Indian tribe: We insert a citation to the Alaska Native Claims Settlement Act in the definition of Indian tribe, as is done in the statutory definition. We also update the citation.

Individual Employment Plan or IEP: We modify the definition of Individual Employment Plan by moving to the beginning of the definition the statement that the IEP is based on an assessment of the participant, because that fact is fundamental to the development of an IEP. We have added language to acknowledge that a recent assessment or IEP prepared by another employment and training program may be used in lieu of one prepared by the grantee or sub-recipient, reflecting language in the statute and in § 641.230, related to an assessment or IEP completed by the One-Stop delivery system. We delete the language concerning the ''appropriate sequence of services'' and add language referring to ''a related service strategy,'' reflecting language that has been added to the 2006 OAA. We add the word ''appropriate'' before ''employment goal'' to indicate that the employment goal should be one that reflects the assessment of the skills, talents, and training needs of the individual, and may need to be modified over time. We replace the phrase, ''achievement of objectives,'' with the phrase, ''objectives that lead to the goal,'' for increased clarity. We have added ''a timeline for the achievement of the objectives'' because we believe it is useful for the IEP to include target timeframes for the achievement of the identified objectives. We also make grammatical changes.

Jobs for Veterans Act: We revise the definition of the Jobs for Veterans Act to clarify that the Jobs for Veterans Act is a distinct statute from the priority of service provision in the OAA, although we use the definition of veteran contained in the Jobs for Veterans Act to determine which participants qualify for the veterans' priority for service (§ 641.520). We also modify the description of which participants qualify for the veterans' preference to more closely follow the language of the Jobs for Veterans Act.

OAA: We revise the definition of the Older Americans Act (OAA) to account for all amendments.

Other participant (enrollee) costs: We revise the definition of other participant (enrollee) costs to make certain technical corrections, we replace the phrase ''supportive services to assist'' with ''supportive services to enable,'' to track the language of the statute, and we clarify that training costs may be incurred prior to commencing or concurrent with a community service employment assignment.

Participant: We revise the definition of participant to clarify that an individual must be given a community service employment assignment to be considered a SCSEP participant, though the person need not have begun that assignment to be considered a SCSEP participant. This change makes it possible for participants to get paid their hourly wage for time spent on activities such as orientation and training before they begin working at their community service employment assignment.

Poor employment prospects: The phrase ''poor employment prospects'' appeared in the 2000 OAA and the Department defines it in the 2004 SCSEP final rule. The Department used the definition of poor employment prospects in the current regulations as the basis for developing this revised definition which provides that a person with poor employment prospects is one who has a significant barrier to employment. The barriers listed in the definition are mainly the same characteristics that appear in this definition in the current regulations, but with minor changes to reduce redundancy. The Department interprets the 2006 OAA's term ''poor employment prospects'' to have the same meaning as the similar phrase which also appears in the 2006 OAA, ''low employment prospects.'' Thus, the same definition is used for the term low employment prospects, which is also part of this section, but was published in the Senior Community Service Employment Program; Performance Accountability IFR at 72 FR 35832, Jun. 29, 2007.

Program Year: We alter the definition of Program Year to remove the statutory reference which no longer exists and to add the word ''on'' before ''July 1.'' The substance of the definition is not affected by these changes.

Project: We revise the definition of project for increased readability, to remove the unnecessary phrase, ''in a particular location within a State,'' and to make technical corrections. We also change the phrase, ''community service'' to ''service to communities'' in light of the Sense of Congress provision at section 516 of the 2006 OAA which indicates that one benefit of SCSEP projects is their impact on communities.

Recipient: We make technical corrections to the definition of recipient.

Service area: We revise the definition of service area by adding the clarifying phrase, ''in accordance with a grant agreement,'' for increased accuracy.

State grantee: We revise the definition of State grantee by adding the phrase, ''or the highest government official,'' after the word ''Governor,'' to account for those governmental jurisdictions that receive State SCSEP grants but do not have a Governor.

State Plan: We revise the definition of State Plan to specify that the State Plan now includes a four-year strategy for, and describes the planning and implementation process for, the statewide provision of SCSEP services, in accordance with section 503(a)(1) of the 2006 OAA.

Sub-recipient: Although in the current regulations the Department treats the terms sub-grantee and sub-recipient as synonymous, we now clarify that sub-recipient is the preferred term to use when referring to entities that receive SCSEP funds from grantees. Not all entities that receive SCSEP funds from grantees do so pursuant to a grant; in some cases the mechanism is a contract. Because the term sub-recipient is inclusive of both sub-grantees and sub-contractors, we do not provide separate definitions for these terms. The definition of sub-recipient that we employ is largely the same as the definition of sub-grantee that appears in the current regulations; we deleted one phrase referring to subcontracts because the definition now includes all varieties of sub-awards.

Title V of the OAA: We revise the definition of title V of the OAA to account for all amendments.

Tribal organization: We update the citation.

Workforce Investment Act (WIA): We clarify in the definition of the Workforce Investment Act that references to this law include any and all amendments, and we make technical corrections to the citations.

Deleted Definitions

The Department proposes to omit several definitions that appear in the current regulations. First, we remove definitions of ''placement into public or private unsubsidized employment'' and ''retention in public or private unsubsidized employment'' because those performance measures no longer exist. They were replaced in the IFR by the common measures entry and six-months retention indicators. We also eliminate the definition of co-enrollment because it related to private sector 502(e) projects which are no longer authorized. We eliminate the definition of State workforce agency because that phrase no longer appears in this rule. Finally, we remove the definition of sub-grantee and replace it with the more technically accurate term: ''sub-recipient.''

Unchanged Definitions

Definitions that remain unchanged are not reprinted.

The Department added and amended some SCSEP definitions related to performance accountability in the SCSEP; Performance Accountability; IFR, 72 FR 35832, Jun. 29, 2007. Those new and amended definitions do not appear in this proposed rule, and comments on those amendments were sought in the IFR.

Subpart B—Coordination With the Workforce Investment Act

This subpart covers those provisions of the OAA that require coordination with WIA. Please note that WIA contains additional provisions that are relevant to the SCSEP. The 2006 OAA requires changes to § 641.240 of this part. In addition, the Department proposes several clarifying changes to the regulatory text.

What Is the Relationship Between the SCSEP and the Workforce Investment Act? (§ 641.200)

The only proposed changes we make in this section are to clarify that sub-recipients (and not just grantees) are included in the requirement to follow all WIA rules and regulations, and to make certain technical corrections to the citations.

What Services, in Addition to the Applicable Core Services, Must SCSEP Grantees/Sub-Recipients Provide Through the One-Stop Delivery System? (§ 641.210)

This section requires SCSEP grantees and sub-recipients to make arrangements to provide their participants, eligible individuals the grantees/sub-recipients are unable to serve, as well as SCSEP ineligible individuals, with access to other services available at the One-Stop Career Center. There is no change to this section other than two proposed clarifications. First, the Department clarifies that core services are those defined in the WIA regulations at § 662.240 of this title. Second, we also clarify that, in addition to providing eligible and ineligible individuals with access to other activities and programs carried out by other One-Stop partners as is provided in the current regulations, SCSEP grantees/sub-recipients must also make arrangements through the One-Stop Delivery System to provide eligible and ineligible individuals with referrals to WIA intensive and training services. As a required One-Stop partner, and in light of the statutory language in both WIA and title V of the 2006 OAA on the cross-use of individual assessments, it is desirable that SCSEP grantees and sub-recipients make appropriate referrals to the One-Stop system for intensive and training services.

Does Title I of WIA Require the SCSEP To Use OAA Funds for Individuals Who Are Not Eligible for SCSEP Services or for Services That Are Not Authorized Under the OAA? (§ 641.220)

This section states that even in the One-Stop Career Center environment, SCSEP projects are limited to serving SCSEP-eligible individuals.

As discussed in the preamble section addressing SCSEP definitions (§ 641.140), the Department is proposing to revise the definition of participant to clarify that an individual must be given a community service employment assignment, though the person need not have begun that assignment, to be considered a SCSEP participant. Because of this proposed modification, we change the language, ''are functioning in a community service assignment,'' which had qualified the word participants, to ''have each received a community service employment assignment.'' We also propose to add language clarifying what an MOU is, and propose to cross-reference the WIA regulatory provisions that relate to the MOU.

Must the Individual Assessment Conducted by the SCSEP Grantee/Sub-Recipient and the Assessment Performed by the One-Stop Delivery System Be Accepted for Use by Either Entity To Determine the Individual's Need for Services in the SCSEP and Adult Programs Under Title I–B of WIA? (§ 641.230)

The only proposed changes the Department makes to this section are technical ones. We add the word ''sub-recipient'' to the heading for clarity. We also change the citation to the OAA to reflect the 2006 Amendments, and move the citation to after the first sentence, as the first sentence contains the provision located in the cited statutory section.

Are SCSEP Participants Eligible for Intensive and Training Services Under Title I of WIA? (§ 641.240)

This section addresses the eligibility of SCSEP participants for intensive and training services under title I of WIA. Under the OAA, SCSEP participants are not automatically eligible to receive intensive and training services under WIA, however Local Boards have the authority to deem SCSEP participants eligible to receive intensive and training services under title I of WIA. We note that WIA eligibility is not based on income except in the adult program when a local area determines that its funds are insufficient and provides priority to low-income individuals. Rather, WIA eligibility is based on the need for and utility of intensive and training services to obtain employment.

The Department proposes to revise paragraph (a) by removing the opening word ''yes'' since it could be read to imply that SCSEP participants are automatically eligible for intensive and training services under title I of WIA, even though the subsequent text states the contrary.

In paragraph (b) the Department proposes to make several changes. First, the current regulations state that, ''SCSEP participants who have been assessed through a SCSEP IEP have received an intensive service.'' An assessment is used in developing an IEP, but assessments are not accomplished through an IEP. Accordingly, to clarify the distinct roles of the assessment and the IEP, the phrase is proposed to read, ''SCSEP participants who have been assessed and for whom an IEP has been developed have received an intensive service.''

Also in paragraph (b), we propose to revise the sentence addressing SCSEP

participants and training. Whereas the current regulations state, ''SCSEP participants who seek unsubsidized employment as part of their SCSEP IEP, may require training to meet their objectives,'' the proposed rule instead says, ''[i]n order to enhance skill development related to the IEP, it may be necessary to provide training beyond the community service employment assignment to enable the participant to meet their unsubsidized employment objectives.'' We propose this change to reinforce the role of the IEP, because unsubsidized employment is a goal for all of the SCSEP, not just certain participants, and to clarify that the training under discussion here is training other than that accomplished via the community service employment assignment. We also propose to add a reference to § 641.540, the section of these regulations that addresses participant training in depth.

The Department proposes to delete what is paragraph (c) in the current regulations; the Department determined this paragraph conflicts with other relevant regulatory provisions. Paragraph (c) states that community service employment assignments are analogous to work experience activities or intensive services under WIA. This paragraph could create confusion with paragraph (a) of this section, which correctly states that SCSEP participants are not automatically eligible for WIA intensive and training services. Whether or not a community service employment assignment is considered to be an intensive service, a SCSEP participant must still meet the other WIA eligibility requirements to be eligible for training services.

The Department also proposes to delete what is paragraph (d) in the current regulations because the subject of that paragraph is thoroughly covered in subpart E. Paragraph (d) indicates that SCSEP participants may be paid while receiving intensive or training services. An explanation of participant wages appears in § 641.565 of these regulations.

Subpart C—The State Plan

The Department proposes to change the title of this subpart to reflect a change in the name of the State Plan in the 2006 OAA from the prior term, the ''State Senior Employment Services Coordination Plan.'' This subpart of the regulations implements the new provisions in section 503 of the 2006 OAA, which direct the Governor, or the highest government official, of each State to submit a State Plan that contains a four-year strategy, and require that the State Plan be updated at least every two years. As reflected in these proposed regulations, the State Plan now has a broader role than merely coordination.

Comments are welcome on requirements for the four-year strategy, as well as other changes affecting the State Plan that are identified in this preamble or other changes to the current regulations which flow from the 2006 Amendments.

What Is the State Plan? (§ 641.300)

This section describes the State Plan and emphasizes that it is intended to foster collaboration among SCSEP stakeholders. As noted above, the Department proposes to change the name of the State Plan to reflect the 2006 OAA. We also propose to add language reflecting the new requirement that the State Plan outline a four-year strategy for the statewide provision of community service and other authorized activities for eligible individuals under the SCSEP. The four-year strategy is one component of the State Plan; § 641.325 of these proposed regulations specifies additional information required in the State Plan.

What Is a Four-Year Strategy? (§ 641.302)

The 2006 OAA requires that States include a four-year strategy in the State Plan; in this proposed section, the Department explains what States must include in their four-year strategy. The four-year strategy is only one component of the State Plan; other elements are discussed in § 641.325 of these regulations. The 2006 OAA does not elaborate on the contents of the four-year strategy, but grants the Secretary authority to determine what provisions should be in the State Plan, consistent with title V. These proposed regulations specify what States must include in the four-year strategy.

The Department views the four-year strategy as an opportunity for the State to take a longer-term view of the SCSEP in the State, including its role in workforce development, given projected changes in the State's demographics (particularly the number of older workers), economy, and labor market. In preparing the four-year strategy, the State should address the role of SCSEP vis-á-vis other workforce programs and initiatives as well as other programs serving older workers, and how the State and SCSEP grantees can utilize these other programs to maximize the services available to the SCSEP-eligible population. The four-year strategy also should be used by the State to examine and, as appropriate, plan longer-term changes to the design of the program within the State, such as changes in the utilization of SCSEP grantees and program operators to better achieve the goals of the program.

To achieve the objectives described above, the Department proposes to require that the four-year strategy include the following specific elements. First, it must explain the State's long-term plan for achieving an equitable distribution of SCSEP positions within the State (the equitable distribution report, discussed in §§ 641.360 and 641.365, addresses this for the short-term). This information is required as part of the State Plan (see § 641.325), but the State should address equitable distribution over a longer period in its four-year strategy. The strategy must specifically address how, over the four-year period, the State intends to: (1) Move positions from over-served to underserved locations within the State, pursuant to § 641.365 of these regulations; (2) equitably serve rural and urban areas; and (3) serve individuals afforded priority for community service employment and other authorized activities, pursuant to § 641.520 of these regulations. Second, a related provision requires that the State explain its long-term strategy for avoiding disruptions to the program when new Census data that affects the distribution of SCSEP positions across the State becomes available, or when there is over-enrollment for any other reason. This information is included in the State Plan for the short-term, but the State should plan over a longer term for avoidance of disruptions when new Census data become available or there is over-enrollment.

Third, the four-year strategy must provide the State's long-term plan for serving minority older individuals under the SCSEP. Section 515 of the 2006 OAA requires a report on services to minority individuals, and this element in the four-year strategy reinforces the law's focus on minority individuals and will provide information that may be used in the report. Fourth, the strategy must provide long-term projections for job growth in industries and occupations in the State that may provide employment opportunities for older workers, and how those relate to the types of unsubsidized jobs for which participants will be trained, and the types of skill training to be provided. The 2006 OAA added to the State Plan provisions the current and projected employment opportunities in the State, and it makes sense to look at this, in relation to the types of skill training provided to participants, not only in the

short-term, but over the longer-term encompassed by the four-year strategy.

Fifth, the four-year strategy must explain how the State plans to work with employers in the State to develop and promote opportunities for placement of SCSEP participants in unsubsidized employment. Working with employers to develop opportunities for placement of SCSEP participants in unsubsidized employment is an essential element of the program and necessary to achieve participation limits, so States should address this in their four-year strategy.

Sixth, the four-year strategy must provide the long-term strategy for increasing the level of performance for entry into unsubsidized employment by SCSEP participants. Specifically, the strategy must demonstrate how the State will achieve the minimum levels of performance required by section 513(a)(2)(E)(ii) of the OAA and § 641.720(a)(6) of the SCSEP regulations (published in the IFR), which set forth the minimum percentage for the expected level of performance for entry into unsubsidized employment for each of fiscal years 2007–2011. The expected level of performance on this core indicator increases over this time period, from 21 percent in fiscal year 2007, to 25 percent in fiscal year 2011. The Department recognizes that these are minimum levels and that some grantees already perform well above these minimum levels. All grantees should strive to continuously improve their performance levels to assist enrollees in becoming self-sufficient, make available opportunities for other individuals to enroll in SCSEP, and better fulfill the objectives of the program.

Seventh, the four-year strategy must indicate how the SCSEP activities of grantees will be coordinated with a number of other programs, initiatives, and entities. The State Plan must address coordination with WIA, but States should plan over a longer term to improve coordination with a variety of other programs, initiatives, and entities. These include: (1) Planned actions to coordinate with activities being carried out in the State under title I of WIA, including plans for utilizing the WIA One-Stop Delivery System and its partners to serve individuals aged 55 and older; (2) planned actions to coordinate with activities being carried out in the State under other titles of the OAA; (3) planned actions to coordinate with other public and private entities and programs that provide services to older Americans in the State (such as community and faith-based organizations, transportation programs, and programs for those with special needs or disabilities); and (4) planned actions to coordinate with other labor market and job training initiatives. These initiatives currently include the President's High Growth Job Training Initiative, Community-Based Job Training Grants, and the Workforce Innovation in Regional Economic Development (WIRED) Initiative.

Eighth, the State should explain its long-term strategy to improve SCSEP services, and may include recommendations to the Department, as appropriate. This is derived from current State Plan Instructions (Older Worker Bulletin 01–04), which specify that the State Plan may include recommendations to the Secretary of Labor on actions to be taken by SCSEP grantees in the State to improve SCSEP services. The recommendations may include such topics as the location of positions, the types of community services, the time required to make changes in the distribution of positions, and the types of participants to be enrolled.

Who Is Responsible for Developing and Submitting the State Plan? (§ 641.305)

The only change we propose to this section is to add the phrase, ''or the highest government official,'' after the word ''Governor'', to be inclusive of all jurisdictions that submit State Plans.

May the Governor, or the Highest Government Official, Delegate Responsibility for Developing and Submitting the State Plan? (§ 641.310)

The only proposed change to this provision is to add in the heading the phrase, ''or the highest government official,'' after the word, ''Governor,'' to be inclusive of jurisdictions where the head of the government is not a Governor.

Who Participates in Developing the State Plan? (§ 641.315)

This provision lists the individuals and organizations from whom the Governor, or the highest government official, is required to seek advice and recommendations related to the State Plan, in accordance with section 503(a)(2) of the OAA. The 2006 OAA changes the task of the Governor (or highest government official) from ''obtaining'' the advice and recommendations of these entities to ''seeking'' advice and recommendations. The Department therefore proposes to revise this section to use the word ''seek.'' We interpret this to mean that the Governor (or highest government official) must make a good faith effort to obtain advice and recommendations from the listed individuals and organizations, whether or not each of these chooses to submit its views. We also propose to replace the phrase ''underserved older individuals'' with ''unemployed older individuals,'' in accordance with the same change in the 2006 OAA.

Must All National Grantees Operating Within a State Participate in the State Planning Process? (§ 641.320)

Section 503(a)(2) of the OAA requires the Governor, or the highest government official, to seek the advice and recommendations of a number of different parties concerning SCSEP services in the State. Although that particular section of the OAA does not require national grantees to participate in the State Plan process, section 514(c)(6) of the OAA establishes that when selecting national grantees, the Department must consider an applicant's ability to coordinate their activities with other organizations at the State and local levels. The State Plan is the process by which SCSEP services are coordinated at the State level; accordingly, section 514(c)(6) effectively requires national grantees to participate in the State planning process. To clarify the source of this requirement, the Department proposes to omit the language referring to OAA section 503(a)(2) from paragraph (a) of this section. We have also updated the remaining citation in paragraph (a) to account for where this provision is located in the 2006 OAA.

Paragraph (b) concerns exemptions from the requirement in paragraph (a); we propose several changes to this paragraph. The 2004 SCSEP final rule exempts national grantees serving older American Indians from the State planning process, based on section 503(a)(8) of the 2000 OAA, although the Department encourages their participation. The proposed regulation adds grantees serving older Pacific Island and Asian Americans to the grantee exemption from the requirement to participate in the State planning process, consistent with section 503(a)(8) of the 2006 OAA. However, the Department continues to encourage exempted grantees to participate in the State planning process in the areas in which they operate. Also in paragraph (b), we propose to change the phrase, ''are exempted from participating in the planning requirements'' to ''are exempted from the requirement to participate in the State planning processes,'' for clarity.

The Department proposes to clarify in paragraph (b) that the exemption from the requirement to participate in the

State planning process applies to grantees using funds specifically reserved for projects serving older American Indians and older Pacific Island and Asian Americans under OAA section 506(a)(3); this clarification is consistent with section 503(a)(8) of the 2006 OAA. We also propose to add new language concerning a grantee using both reserved and non-reserved funds. All grantees of non-reserved SCSEP funds, including grantees that have also received reserved funds, are required to participate in the State planning process per paragraph (a). Having applied for and accepted non-reserved funds, grantees become subject to the same coordination requirements as all other recipients of non-reserved funds. Accordingly, if a grantee that receives reserved funds under one grant is also awarded a non-reserved funds grant, the grantee is required to participate in the State planning process for purposes of the non-reserved funds grant.

Finally, we propose to delete from paragraph (b) the statement that if an exempt grantee chooses not to participate in the State planning process it is required to describe its plan for serving its constituency in its grant application. This is redundant because all grant applications require applicants to describe such plans, regardless of past participation in the State planning process. We also make certain grammatical improvements.

What Information Must Be Provided in the State Plan? (§ 641.325)

This section lists the minimum requirements of the State Plan, consistent with section 503(a)(4) of the OAA. In the opening sentences of the proposed section we add a requirement that the State Plan include the State's four-year strategy, as required by section 503(a)(1) of the 2006 OAA and as described in § 641.302.

Paragraph (a) remains unchanged. In paragraph (b), we propose to add a requirement that the State Plan provide information on the relative distribution of eligible individuals who are limited English proficient as required by 2006 OAA section 503 (a)(4)(C)(iii). In paragraph (c), we propose to replace the requirement to identify and address ''the employment situations and the types of skills possessed by eligible individuals,'' which appears in the current regulations, with a new requirement stemming from a revised section 503(a)(4)(D) of the 2006 OAA, that the plan provide information on the current and projected employment opportunities in the State (such as by providing employment statistics available under section 15 of the Wagner-Peyser Act (29 U.S.C. 491–2) by occupation) and the type of skills possessed by local eligible individuals. State labor market information is available through the following link to America's Career Information Network: *http://www.acinet.org/acinet/crl/library.aspx?PostVal=10&CATID=52*. We propose to make these changes in accordance with the same changes in the 2006 OAA.

Paragraph (d) currently requires a description of the localities and populations for which community service projects in the State are most needed. We propose to change this paragraph by removing the words, ''community service'' before the word ''projects'' to follow the same change in section 503(a)(4)(E) the 2006 OAA.

We propose a slight modification to paragraph (e). Instead of requiring that the State Plan include actions taken ''or'' planned concerning coordination with WIA, we require the Plan to include actions taken ''and/or'' planned to capture actions already taken in addition to those being planned.

What appears as paragraph (f) in the current regulations is moved to paragraph (g), and we propose a new paragraph (f), which would require that the State Plan describe the process used to seek advice and recommendations on the State Plan from representatives of organizations and individuals listed in § 641.315, and the process used to seek advice and recommendations on steps to coordinate SCSEP services with activities funded under title I of WIA from representatives of organizations listed in § 641.335. Since the 2006 OAA requires that advice and recommendations be sought from representatives of these organizations and individuals, the Department believes it is reasonable for the State Plan to describe how this input was obtained.

Proposed paragraph (g) mirrors what is paragraph (f) in the current regulations, and requires the State Plan to describe the planning process, including opportunities for public comment. The only change to this paragraph is that we propose to add a reference to § 641.350, which requires the State to solicit public comments.

There is no change to the text of what appears as paragraph (g) in the current regulations, although it appears as paragraph (h) here. The paragraph that is labeled (h) in the current regulations is labeled paragraph (i) here; the only change is that the reference to § 641.365 has been taken out of parentheses. Finally, the text that appears as paragraph (i) in the current regulations is repeated verbatim here although it is now labeled paragraph (j).

How Should the State Plan Reflect Community Service Needs? (§ 641.330)

There is no change to this provision.

How Should the Governor, or the Highest Government Official, Address the Coordination of SCSEP Services With Activities Funded Under Title I of WIA? (§ 641.335)

The only proposed change to this provision is to add in the heading the phrase, ''or the highest government official,'' after the word, ''Governor,'' to be inclusive of jurisdictions where the head of the government is not a Governor.

How Often Must the Governor, or the Highest Government Official, Update the State Plan? (§ 641.340)

The Department proposes to reword the heading question for this section because the former heading assumed an annual review of the State Plan, which is no longer required under the 2006 OAA, and to include the phrase, ''or the highest government official,'' to be inclusive of jurisdictions for which the head of the government is not a Governor. Instead, the 2006 OAA requires that the State Plan be reviewed, updated, and submitted to the Secretary not less often than every two years. The Department revises the proposed section to reflect the new requirement. We encourage States to review their State Plan more frequently than every two years, and make necessary adjustments and submit modifications as circumstances warrant. The Department intends for the State Plan to be a living document that will guide the strategic and ongoing operations of the SCSEP within the State. Prior to submitting an update of the State Plan to the Department the Governor, or highest government official, must seek the advice and recommendations of the individuals and organizations identified in § 641.315 about what, if any, changes are needed, and publish the State Plan, showing the changes, for public comment.

We also propose to add cites to corresponding statutory provisions.

What Are the Requirements for Modifying the State Plan? (§ 641.345)

The Department proposes a new paragraph (a) to distinguish State Plan updates from State Plan modifications; the remaining paragraphs have been re-designated. Whereas States are required to update their State Plan not less often than every two years, modifications may be submitted anytime circumstances

warrant. Both updates and modifications require an opportunity for the public to comment on the State Plan, but only in the event of a State Plan update (§ 641.340) are States required to seek the advice and comment of the individuals and organizations identified in § 641.315.

Paragraph (b), which is labeled paragraph (a) in the current regulations, addresses what circumstances require a modification to the State Plan. The only changes we propose in paragraph (b) are changing the word ''strategies'' to ''four-year strategy,'' and adding the word ''significant'' before the word ''changes.'' We propose the latter change to clarify that trivial changes do not warrant a modification to the State Plan.

In paragraph (c) we state that modifications to the State Plan must be open for public comment. We propose to delete a reference to § 641.325 from this paragraph because that section merely lists the required contents of the State Plan. We propose to leave intact the reference to § 641.350 which addresses soliciting public comment on the State Plan. In paragraph (d) we clarify that States need not seek the advice and recommendations of the individuals and organizations identified in § 641.315 when modifying the State Plan.

Paragraph (e), which appears as paragraph (c) in the current regulations, remains unchanged.

How Should Public Comments Be Solicited and Collected? (§ 641.350)

There is no change to this provision.

Who May Comment on the State Plan? (§ 641.355)

There is no change to this provision.

How Does the State Plan Relate to the Equitable Distribution Report? (§ 641.360)

The equitable distribution report shows where SCSEP positions are located throughout a State on a grantee-by-grantee basis and is required by section 508 of the OAA. State grantees are responsible for preparing the report at the beginning of each fiscal year. SCSEP grantees use the equitable distribution report to improve on the distribution of SCSEP positions within the State. The information contained in the equitable distribution report is used in preparing the State Plan; however, the State Plan requires additional information. This section is substantively the same as in the current regulations, but the Department proposes to change the reference to the State Plan to reflect the statutory requirement, new to the 2006 OAA, that the Plan be updated and sent to the Secretary not less often than every two years, whereas in the current regulations we reference annual State Plans. The Department also proposes to remove redundant language concerning the role of the equitable distribution report.

How Must the Equitable Distribution Provisions Be Reconciled With the Provision That Disruptions to Current Participants Should Be Avoided? (§ 641.365)

This section is largely the same as in the current regulations, but since the 2006 OAA places time limits on participation in the SCSEP, the Department proposes to revise this section to provide a cross-reference to § 641.570 of these regulations, where the new time limit is addressed. We propose to remove the reference to § 641.575 because limits set on the amount of time a participant spends in a particular community service employment assignment do not affect the distribution of SCSEP positions. We also propose to rephrase the first sentence, concerning avoiding disruptions in services, for greater clarity. Finally, we make several grammatical and technical corrections.

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

This subpart covers the grant application, eligibility, and award requirements for all SCSEP grants under section 506 of the 2006 OAA, which describes distribution of assistance to State and national grantees. The Department proposes to change the title of this subpart to clarify that this subpart applies to National and State grants, but not the pilot, demonstration, and evaluation grants described in subpart F.

The proposed changes in this subpart support an increased emphasis on the grantees' accountability for results in order to achieve enhanced program performance. This subpart describes organizations eligible to apply for SCSEP grants, application requirements, eligibility criteria, responsibility reviews, and how the Department will select grantees. Comments are welcome on the new and revised grant application, eligibility, and award requirements that are discussed in this preamble or other changes to this subpart which flow from the 2006 OAA.

What Entities Are Eligible To Apply to the Department for Funds To Administer SCSEP Projects? (§ 641.400)

The Department proposes to delete ''community service'' from the heading question of this section to be consistent with the rest of these regulations which generally refer simply to ''SCSEP projects.''

Section 502(b)(1) of the 2006 OAA authorizes the Secretary to make grants to public and nonprofit private agencies and organizations, agencies of a State, and tribal organizations, to administer SCSEP projects. This section is the corresponding regulatory provision.

The Department proposes no changes to paragraph (a). In the current regulations, paragraph (b) specifies the eligible entities that can apply for national grant funds in a State if the national grantee consistently fails to meet State performance measures. The Department proposes to delete paragraph (b) because under the 2006 OAA, national grantees are held accountable only for their national goals.

The Department proposes a few changes to former paragraph (c), which is now labeled paragraph (b), concerning State grants. First, we divide the paragraph into two parts. Proposed paragraph (b)(1) addresses the general statutory requirement that the Department award a SCSEP grant to each State. We propose to change the phrase, ''enter into agreements with each State,'' to, ''award each State a grant,'' for clarity. Also, whereas the current regulations provide that States can use individual State agencies, political subdivisions of a State, a combination of political subdivisions, or a national grantee operating in the State to administer SCSEP funds, the proposed paragraph provides that a State may designate only an individual State agency. We propose to delete the options concerning political subdivisions of a State to follow the same change in section 502(b)(1) of the 2006 OAA. We propose to delete the option of a national grantee operating in a State partly because, to date, all State grantees have been State agencies, and partly because in the event of the competition contemplated by paragraph (b)(2), all nonprofit private agencies and organizations are eligible to compete.

Proposed paragraph (b)(2) provides that a State must compete for its SCSEP State grant funds in the event that the designated State grantee fails to meet the expected levels of performance for the core performance measures for three consecutive years. We propose to change what appears as the third sentence of paragraph (b) in the current regulations to the active voice for readability. We also propose to alter the statutory reference so that we now refer to the section of the statute that establishes State grant funding rather

than the statutory section that requires that a State's funds being competed after repeated failure to meet performance measures.

Finally, the Department proposes to add that the designated entity that failed to meet core performance measures for three consecutive years is not eligible to compete for SCSEP funds for the first full Program Year following the determination of the third year of consecutive failure. We add this sentence to ensure that the State competition acts as a consequence for repeated failure to perform. A similar provision governs national grantees; a national grantee that fails to meet the expected levels of performance for four consecutive years is ineligible to compete in the grant competition following the fourth year of consecutive failure (OAA sec. 513(d)(2)(B)(iii)).

How Does an Eligible Entity Apply? (§ 641.410)

This section directs interested applicants, including States, to follow instructions issued by the Department to apply for a SCSEP grant. National grants are competed, and the Department generally publishes application guidelines in Solicitations for Grant Applications (SGA) in the **Federal Register**. The Department usually issues instructions for State grants, which are not competed, in administrative guidance.

In paragraph (a), the Department proposes to add ''evaluation criteria'' to the list of what is included in the application guidelines because these criteria will be set forth in the SGA for national funds and may change over time. We also propose to change the phrase, ''State and national SCSEP funds,'' to ''national funds, and State funds,'' because, under the 2006 OAA, those types of funds are awarded differently (competitively versus noncompetitively) and on a different timetable (annually for State versus multi-year for national). We also propose to delete what is the last sentence of paragraph (a) in the current regulations, because it redundantly provides that applications are to be submitted in accordance with Departmental instructions.

Paragraph (b) implements OAA section 503(a)(5), which requires national grant applicants to provide their applications to the Governor, or the highest government official, of the State in which projects are proposed so that the Governor (or the highest government official) may make recommendations relating to position distribution. Grantees have generally provided Governors (or the highest government official) with executive summaries of their application; the Department will continue to consider such practice as fulfilling this requirement.

The current regulations exempt Indian organizations from this requirement because they are exempt from State planning. The Department proposes to continue this exemption policy, again because it is consistent with the exemption from State planning under OAA section 503(a)(8). We propose to add organizations serving Pacific Island and Asian Americans to the exemption because the 2006 OAA also exempted those organizations from State planning. We propose to clarify that this exemption from submitting national grant applications to the Governor, or the highest government official, applies to Indian and Pacific Island and Asian American organizations seeking funding reserved under OAA section 506(a)(3). While it remains the policy of the Department that these organizations are not required to submit their applications to the Governor (or the highest government official), we nevertheless encourage such entities to submit their applications to the Governor(s) in the State(s) they propose to serve so that the Governor(s) may better plan the activities in their State(s). We also note that if a grantee that is awarded a grant with reserved funds chooses to compete for other, non-reserved SCSEP funds, such a grantee would be required to submit its non-reserved fund grant application to the Governor (or the highest government official).

We also propose to add a phrase connecting the submission required in this paragraph to the Governor's (or the highest government official's) review, which is described in § 641.480 of these regulations.

In paragraph (c), the Department proposes to delete the phrase, ''community service project'' from between the words ''SCSEP'' and ''grant application'' to be consistent with the rest of these regulations which merely refer to ''SCSEP grants'' or ''SCSEP grant applications.'' We also propose to expand the cross-reference to State Plan requirements so that readers are directed to the entirety of subpart C.

What Are the Eligibility Criteria That Each Applicant Must Meet? (§ 641.420)

The Department proposes to move the former § 641.420, which addresses what factors we consider in selecting grantees, to § 641.460, so that it follows all the provisions relating to grant application requirements, and we renumber the remaining sections accordingly.

This renumbered section, which is § 641.430 in the current regulations, describes the eligibility criteria for SCSEP grant applicants. The Department proposes to update language in paragraph (a), specifying that applicants must demonstrate an ability to administer a program that serves the greatest number of eligible participants and most-in-need individuals, to reflect the language of section 514(c)(1) of the 2006 OAA. Paragraphs (b) and (c) remain the same.

The Department proposes to add a new paragraph (d) relating to the applicant's past performance to conform with section 514(c)(4) of the 2006 OAA, and to re-designate the remaining paragraphs accordingly. For applicants that have previously received a SCSEP grant, this criterion addresses the applicant's prior performance in meeting SCSEP core and additional measures of performance. For applicants who have not received a SCSEP grant in the past, this addresses the applicant's prior performance under other Federal or State programs. The Department proposes to add a phrase in paragraph (e) (which is paragraph (d) in the current regulations) specifying that grantees must be able to move most-in-need individuals into unsubsidized employment, to reflect the eligibility criterion specified in section 514(c)(5) of the 2006 OAA.

In paragraph (f), the Department proposes to add the word ''activities'' to clarify the focus of coordination at the State and local levels, in accordance with the same change in section 514(c)(6) of the 2006 OAA. We propose one change in paragraph (g), which is paragraph (f) in the current regulations. We propose to replace the word, ''including'' with the phrase, ''as reflected in,'' for clarity. The Department also proposes to add a new paragraph (h), requiring that grantees be able to administer a project that provides community service to be considered eligible, in order to be consistent with section 514(c)(8) of the 2006 OAA. The Department proposes to add the phrase ''and in community services provided'' in paragraph (i) when describing a grantee's ability to minimize disruption, in accordance with section 514(c)(9) of the 2006 OAA. In paragraph (j) (formerly paragraph (h)), we propose to replace ''Secretary of Labor'' with ''Department'' to be consistent with the rest of these regulations.

What Are the Responsibility Conditions That an Applicant Must Meet? (§ 641.430)

This section contains the responsibility review provisions codified in section 514(d) of the 2006 OAA. The Department proposes to add an opening phrase, ''[s]ubject to § 641.440,'' because that section addresses responsibility conditions that, alone, will disqualify a grant applicant. Also in the opening sentence, we propose to replace the phrase ''any of the acts of misfeasance or malfeasance described in § 641.440(a)–(n) of this section'' with the simpler, ''any of the following acts,'' because paragraphs (a) through (n) comprise the entirety of this section and all are acts of either misfeasance or malfeasance.

In paragraph (a) the Department proposes to replace the word ''sub-grantee'' with ''sub-recipient'' for consistency throughout this proposed rule and with the description of sub-recipients in the Office of Management and Budget (OMB) Circular A–133. Accordingly, we delete the term ''sub-contractors'' from this paragraph because the term sub-recipients includes both sub-grantees and sub-contractors. In paragraph (e), the Department proposes to change the phrase, ''meet applicable performance measures,'' to ''meet applicable core performance measures or address other applicable indicators of performance'' to reflect the same change in section 514(d)(4)(E) of the 2006 OAA. In paragraph (k), we propose to delete the reference to 20 CFR 667.200(b) because SCSEP grantees/sub-recipients are not required to follow the audit requirements in that regulation. The audit requirements for the SCSEP are located in § 641.821, which is properly referenced in paragraph (k).

We also propose several grammatical and clarifying changes.

Are There Responsibility Conditions That Alone Will Disqualify an Applicant? (§ 641.440)

The Department proposes to combine into paragraph (a) what are paragraphs (a) and (b) in the current regulations for increased clarity. In what is now paragraph (b), the Department proposes to clarify that we will determine the existence of significant fraud or criminal activity. We also propose to revise the language concerning handling Federal funds to be grammatically correct. The Department proposes to revise the last sentence on fraud or criminal activity determination for readability and to again clarify that the Department makes that determination.

How Will the Department Examine the Responsibility of Eligible Entities? (§ 641.450)

The Department proposes to remove the words ''conduct a'' and ''of'' from the phrase ''conduct a review of available records,'' for readability.

What Factors Will the Department Consider in Selecting National Grantees? (§ 641.460)

The Department proposes to move the former § 641.420, which addresses what factors we consider in selecting grantees, to § 641.460, so that it follows all the provisions relating to grant application requirements, and we renumber the remaining sections accordingly. Also, we propose to add the word, ''national,'' to the heading of this section because the Department only executes competitions for national grants. Although a State grant must be competed if the designated State agency fails to achieve its core performance levels for three consecutive years, it is the State rather than the Department that carries out such a competition.

This section describes the criteria to be used for the selection of national SCSEP grantees. The Department proposes to drop the conditional language ''if there is a full and open competition'' because the 2006 OAA requires a regular competition for national grants. The Department also proposes to drop the reference to past performance among the rating criteria the Department will consider, and instead adds a new criterion relating to past performance in the section on eligibility criteria (§ 641.420). The Department makes this change in accordance with the 2006 Amendments to section 514(c)(4) of the OAA. We also propose to clarify in the second sentence that the sections to which we refer are sections of these regulations, to avoid any possible confusion with sections of the OAA.

Under What Circumstances May the Department Reject an Application? (§ 641.465)

The only change we propose to make to this section is removing the word ''program'' after ''the SCSEP'' because the ''P'' in the acronym SCSEP stands for program.

What Happens If an Applicant's Application Is Rejected? (§ 641.470)

The Department proposes to revise this section to accurately reflect the process currently used by the Department for applications that are not funded. Under the current process, non-selected entities that request an explanation are provided with feedback on the shortcomings of their proposal. We also propose to include a reference in paragraph (a) to § 641.900, which addresses the appeal process available to a rejected applicant. We propose to reword paragraph (b) to clarify that incumbent grantees are not to receive any technical assistance related to any new application/proposal which they are submitting or planning to submit for a possible new award. Any technical assistance that incumbent grantees receive must relate to activities and/or performance under the existing grant.

The Department proposes to revise what appears as paragraph (c) in the current regulations in several ways. First, we propose to divide it into three paragraphs, now lettered (c), (d), and (f), for clarity. We also revise the text of what is paragraph (c) so that proposed paragraphs (c) and (d) accurately reflect and clarify the possible remedies on appeal. We propose to include another reference to § 641.900 in proposed paragraph (c). In paragraphs (c) and (d) we propose to change the word ''slot'' to ''position'' to be consistent with the use of the term ''position'' in the rest of these regulations.

The Department proposes to add a new paragraph (e) to clarify that if a party is not satisfied with the Grant Officer's decision about whether the organization continues to meet the requirements of this part, whether positions will be awarded to the organization, and the timing of the award, the Grant Officer must return the decision to the Administrative Law Judge for review. We propose to re-designate the remaining paragraph, which appears as paragraph (d) in the current regulations, as paragraph (f).

We also propose grammatical and clarifying changes.

May the Governor, or the Highest Government Official, Make Recommendations to the Department on National Grant Applications? (§ 641.480)

This section explains the Governor's, or the highest government official's, statutory authority under section 503(a)(5) of the OAA to make recommendations to the Department on grant applications before funds are awarded. We propose to add the word ''national'' to the heading because this section is limited in application to national grants. We propose to add to paragraph (a) a reference to § 641.410(b); that is the regulatory provision that requires national grant applicants to submit their application to the Governor, or the highest government official, of each State in which projects are proposed. We also propose to add a

citation to the OAA. In paragraph (b), the Department proposes to drop the reference to the Governor making recommendations under noncompetitive conditions because national grants will now be competed on a regular basis.

When Will the Department Compete SCSEP Grant Awards? (§ 641.490)

This section outlines the circumstances under which there must be a competition for SCSEP funds. The Department proposes to divide paragraph (a) into two subparagraphs. In paragraph (a)(1), we propose to reflect the statutory requirement that the Department will generally hold a competition for national grants every four years. We also propose to state that we will publish a Solicitation for Grant Applications in the **Federal Register**. In paragraph (a)(2) we propose to add a sentence indicating that the statute gives the Department the authority to provide an additional one-year grant to national grantees. The Department makes these changes to paragraph (a) in accordance with section 514(a) of the 2006 OAA; we propose to add specific statutory cites to both subparagraphs of paragraph (a).

The Department proposes to revise paragraph (b) to specify that when a State grantee fails to meet its expected levels of performance for the core indicators for three consecutive Program Years, the State must hold a full and open competition for the SCSEP funds allotted to the State. We propose this change in accordance with section 513(d)(3)(B)(iii) of the 2006 OAA, and propose to add a cite to this paragraph.

When Must a State Compete Its SCSEP Award? (§ 641.495)

The Department proposes a new section to address the competition that is required if a State grantee fails to meet its expected core levels of performance for three consecutive Program Years. Performance measures were discussed in the IFR, 72 FR 35832, June 29, 2007.

Subpart E—Services to Participants

This subpart covers services to SCSEP participants. The Department here proposes to implement new provisions in the 2006 OAA relating to income eligibility, priorities in enrollment of participants, changes in benefit policies, and time limits for program participation. We also address the types of services that participants may receive, procedures concerning termination from the program, and the grantee's responsibilities relating to participants. Comments are welcome on the proposed changes to subpart E described in this preamble or on other changes to subpart E which flow from the 2006 Amendments.

Who Is Eligible To Participate in the SCSEP? (§ 641.500)

This provision establishes the statutorily defined eligibility criteria. The Department proposes to move what was paragraph (b) of this section, concerning cross-border agreements, to § 641.515 of these regulations, which addresses participant recruitment and selection, because cross-border agreements are more relevant to participant recruitment than they are to participant eligibility. We propose to revise the remaining paragraph, which is paragraph (a) in the current regulations, to add the requirement that age- and income-eligible individuals must also be unemployed, as required by section 502(a)(1) of the 2006 OAA. In the current regulations, the requirement that the applicant be unemployed is only referenced in the regulations at § 641.120, relating to program purpose; the Department subsequently issued administrative guidance clarifying that being unemployed was an eligibility criterion (TEGL No. 13–04). We interpret section 502(a)(1) of the 2006 OAA as treating unemployment as a SCSEP eligibility criterion. Such an interpretation is consistent with the training purpose of this program, and is also consistent with the policy expressed in § 641.512 of these regulations that job-ready individuals cannot be enrolled in the SCSEP but should be referred to an employment provider. Moreover, including unemployment as an eligibility criterion is consistent with the role of the SCSEP as serving seniors who are most in need of employment and training services. We also propose to add the word, ''Federal,'' to clarify that the poverty guidelines we refer to are Federal poverty guidelines.

When Is Eligibility Determined? (§ 641.505)

This section states that initial eligibility is determined at the time of an individual's application. After the initial eligibility determination, grantees/sub-recipients are responsible for verifying the eligibility of participants at least once every 12 months, and may do so more frequently as circumstances require.

The Department proposes to add the phrase, ''including instances when enrollment is delayed,'' to the last sentence of this section. Many grantees/sub-recipients maintain waiting lists and considerable time may pass from the time of initial eligibility determination to the time when a SCSEP position becomes available. Accordingly, we indicate through this additional phrase that delayed enrollment is one example of a circumstance when it may be appropriate to verify continued eligibility of an individual.

How Is Applicant Income Computed? (§ 641.507)

This proposed new section discusses computing income eligibility. We propose to move the section that is numbered § 641.507 in the current regulations, which addresses what types of participant income are included and excluded to § 641.510.

Section 518(a)(4) of the 2006 OAA delineates the procedure for calculating participant income. The Department implemented these procedures effective January 1, 2007, when it issued TEGL No. 12–06. We now propose to establish the same procedures in this section. Grantees may calculate income based on the income received during the 12 months prior to application, or may annualize the income received during the 6 months prior to application. (Program guidance prior to TEGL No. 12–06 limited the calculation time period to the 6 months prior to application, annualized.) The Department encourages grantees to choose the computation method that is most favorable to each participant, on a case-by-case basis, for the broadest possible inclusion of eligible applicants.

What Types of Income Are Included and Excluded for Participant Eligibility Determinations? (§ 641.510)

The Department proposes to delete the heading and content of what appears as § 641.510 in the current regulations, which addresses terminating a participant who becomes income ineligible, because terminations are fully addressed in § 641.580. The content of what is § 641.510 in the current regulations is covered in § 641.580(b) of this proposed rule.

The section addressing what types of income are included and excluded is numbered § 641.507 in the current regulations. We propose to move this heading to § 641.510 so that it may follow the section on computing income.

The Department proposes to revise the substance of this section to include the 2006 OAA's requirements relating to income eligibility determinations and to refer to the administrative guidance that provides a complete explanation of SCSEP participant income eligibility determination procedures.

Section 518(a)(3)(A) of the 2006 OAA excludes four sources of income from SCSEP income eligibility determinations. The Department issued administrative guidance in TEGL No. 12–06, which implemented these exclusions effective January 1, 2007. The Department implemented these exclusions prior to the effective date of the 2006 OAA (July 1, 2007) in order to alleviate the difficulties grantees and sub-recipients have encountered in recruiting sufficient numbers of eligible individuals under the prior income eligibility guidelines.

In general, the Department utilizes definitions from the U.S. Census Bureau's Current Population Survey (CPS) to define income for the purposes of SCSEP income eligibility. However, in addition to the statutory exclusions noted above, TEGL No. 12–06 carries forward additional exceptions to the CPS definitions of income for purposes of SCSEP income eligibility determinations from guidance in effect prior to the 2006 OAA. The additional exceptions are based on the recognition that these income sources (e.g., child support, public assistance, income from employment and training programs) rise out of some state of dependency or are intended to encourage individuals drawing benefits to return to work and should not disqualify otherwise needy individuals. TEGL No. 12–06 is available on the SCSEP Web site, *http://www.doleta.gov/seniors*, under the Grantee Information, Technical Assistance link.

May Grantees/Sub-Recipients Enroll Otherwise Eligible Individuals and Place Them Directly Into Unsubsidized Employment? (§ 641.512)

The 2006 OAA and the Department encourage grantees/sub-recipients to work with those participants who are the most difficult to place, rather than those ready for immediate job placement, to provide them with the services necessary to develop the skills needed for job placement. The Department proposes to move and substantially revise what is § 641.560 in the current regulations and replace it with proposed § 641.512. We propose to change the heading from § 641.560 to clarify that the subject of this section is not participants but potential participants. We propose to move this provision to 641.512 so that it appears with more closely-related topics such as eligibility, recruitment, and selection.

In the current regulations, § 641.560 encourages grantees not to enroll individuals who can be placed directly into unsubsidized employment. Proposed § 651.512 forbids grantees to enroll job-ready individuals, instead encouraging grantees to refer them to an employment provider such as the One-Stop Center for job placement assistance under WIA. In this way, the SCSEP can use its limited dollars to serve those who need the training the SCSEP provides, while individuals who do not need training can be served by an entity such as the One-Stop Career Center.

How Must Grantees/Sub-Recipients Recruit and Select Eligible Individuals for Participation in the SCSEP? (§ 641.515)

This section addresses recruitment and selection methods, including use of the One-Stop Delivery System, to ensure that the maximum number of eligible individuals have an opportunity to participate in the SCSEP.

In the current regulations, paragraph (a) includes a list of persons (such as minority individuals and limited English speakers) whom grantees should seek to enroll in the SCSEP. The list derived from OAA section 502(b)(1)(M), which was amended in the 2006 OAA. Accordingly, the Department proposes to revise the list in paragraph (a) to reflect the amended statutory language.

In paragraph (b), we propose to delete the sentence concerning listing community service opportunities with the State Workforce Agency because the corresponding statutory language was omitted from section 502(b)(1)(H) in the 2006 OAA.

Paragraph (c), concerning cross-border agreements, is new to this section. In the current regulations this paragraph appears in § 641.500, which addresses eligibility. The Department proposes to move this paragraph because cross-border agreements are more relevant to participant recruitment than they are to participant eligibility. We propose to specify that grantees entering into cross-border agreements must submit such agreements to the Department ''for approval'' to reflect current practice. Also in paragraph (c), the Department proposes to replace the word ''slot'' with ''position'' to be consistent with the rest of this part. Finally we propose to replace the word, ''between,'' with, ''among,'' to allow for cross-border agreements involving more than two states.

Are There Any Priorities That Grantees/Sub-Recipients Must Use in Selecting Eligible Individuals for Participation in the SCSEP? (§ 641.520)

In paragraph (a) of this section, the Department proposes to list the new statutory selection priorities identified in section 518(b) of the 2006 OAA. In paragraph (b), we interpret the priority for veterans as we did in the current regulations, such that the veterans' priority is afforded to individuals meeting the requirements of section 2(a) of the Jobs for Veterans Act (JVA), Public Law 107–288 (2002), which includes certain spouses of veterans.

In paragraph (c), we propose to specify an order for applying the priorities. The order has changed from what appears in the current regulations because the statutory priorities have changed. The proposed ordering of priorities incorporates the dual statutory priorities contained in the JVA and the OAA and is consistent with Departmental guidance on that topic (TEGL No. 5–03, available on the Department's Web site). Like other programs, veterans who also possess other of the OAA priority characteristics receive the highest preference. Because veteran status is a priority in both the OAA and the JVA, veterans without other of the OAA priority characteristics would be next in order of priority, followed by non-veterans with OAA priority characteristics.

Are There Any Other Groups of Individuals Who Should Be Given Special Consideration When Selecting SCSEP Participants? (§ 641.525 in the Current Regulations)

The Department proposes to delete the section that appears as 641.525 in the current regulations because the statutory provision upon which it is based, OAA section 502(b)(1)(M), is addressed in § 641.515(a).

Must the Grantee/Subgrantee Always Select Priority or Preference Individuals? (§ 641.530 in the Current Regulations)

The Department proposes to delete the section that appears as 641.530 in the current regulations, because according to section 518(b) of the 2006 OAA, a priority individual must always be chosen over a non-priority individual, when a choice must be made. We note that some grantees have ample program openings, so that all eligible individuals may be served. However, if there is only one opening and two eligible individuals apply, one of whom is a priority individual, the 2006 OAA requires that the priority individual be given the program position.

What Services Must Grantees/Sub-Recipients Provide to Participants? (§ 641.535)

This section sets forth those services that grantees/sub-recipients must provide to all SCSEP participants. Grantees are encouraged to utilize the

WIA system to assist in accomplishing the responsibilities outlined in this section.

Paragraph (a)(2) of this section describes the grantees'/sub-recipient's responsibility for assessing participants. The Department proposes to divide this paragraph into two subparts, the first addressing what should be assessed, and the second addressing the frequency of assessments. The sentence that now appears in proposed paragraph (a)(2)(i) is the first portion of paragraph (a)(2) in the current regulations. In proposed paragraph (a)(2)(ii) we revise the language that appears as the remaining portion of paragraph (a)(2) in the current regulations. We propose to state that the various assessment functions described in paragraph (a)(2)(i) of this section must be done initially upon program entry, and then subsequently as necessary, but at least two times a year. The initial assessment may count as one of the two that are required in the first year. This clarification is consistent with the expectation that unsubsidized employment is a goal for SCSEP, and all participants should be periodically assessed to check their progress toward transitioning to unsubsidized employment.

We propose several changes to paragraph (a)(3) of this section, which concerns IEPs. First, we propose to divide this paragraph into two subparagraphs to clearly delineate grantee/sub-recipient responsibilities related to the IEP. We propose to add the phrase, ''that includes an appropriate employment goal,'' after, ''develop an IEP,'' in paragraph (a)(3)(i) because unsubsidized employment is a goal for all of the SCSEP, and every IEP should be oriented toward that eventual goal. We propose to remove the reference to § 641.260 that appears in the current regulations; such a section does not exist in the current regulations nor is it in the proposed regulation. Instead, § 641.230 provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop, and vice-versa, so we add a reference to that section in paragraph (a)(3)(i). We propose to add the word, ''initial,'' before the word, ''assessment'' in paragraph (a)(3)(i) to distinguish this assessment from subsequent assessments. Additionally, the Department proposes to change the wording in both subparagraphs of paragraph (a)(3) to refer to an individual participant and an IEP rather than using the plural ''participants'' and ''IEPs;'' we propose these changes to clarify that an IEP must be developed for each participant individually. We also propose to add the words ''assessment and'' between ''WIA'' and ''IEP'' to clarify that assessments and IEPs are distinct; an assessment is used to develop an IEP. Finally, in proposed paragraph (a)(3)(ii), which addresses updating the IEP, we make one change from the language that appears as the last portion of paragraph (a)(3) in the current regulations. We propose to add the word, ''subsequent'' before ''participant assessments'' to distinguish these assessments from the initial assessment.

With regard to the assessments and IEPs discussed in paragraphs (a)(2) and (a)(3), we note that section 502(b)(1)(N) of the 2006 OAA requires that grantees/sub-recipients prepare an assessment of participants' skills, talents, and needs for services, and a ''related service strategy.'' The Department has determined that preparation of the IEP fulfills the requirement for a related service strategy.

In paragraph (a)(4) of this section we propose to change the word ''activity'' to ''assignment'' to be consistent with the term ''community service employment assignment'' used throughout this proposed rule.

Paragraph (a)(5) broadly addresses the training services that grantees/sub-recipients must provide to participants. (Section 641.540 addresses the specific types of training that may be provided.) In the current regulations there are two paragraphs concerning training: Paragraph (a)(5) addresses training specific to the community service employment assignment and paragraph (a)(6) addresses other training identified in participants' IEP. The Department proposes to merge those two paragraphs into a single paragraph because all training, whether or not initially provided specific to a community service assignment, must be consistent with a participant's IEP and should move the participant toward the goal of unsubsidized employment. Indeed, we consider the IEP to drive all services provided to participants, including training services. The remaining paragraphs have been renumbered accordingly.

We note that it is still permissible to provide training that enables a participant to successfully fulfill the duties of his or her community service employment assignment. However, such training is acceptable only so long as it is consistent with the IEP. Further, all training must contribute to the eventual goal of unsubsidized employment. Clearly, IEPs and training needs will vary greatly among participants. Nevertheless, the course charted in the IEP should be pointed in the direction of unsubsidized employment, and any training provided should advance the participant further along in that same direction.

Paragraph (a)(6), which appears as paragraph (a)(7) in the current regulations, remains unchanged. Proposed paragraphs (a)(7) and (a)(8) of this section appear in the current regulations, but are located at paragraphs (a)(12) and (a)(13). We propose to move them to paragraphs (a)(7) and (a)(8) to give a better sense of time order in the grantee's/sub-recipient's responsibilities. In paragraph (a)(7), the Department proposes to add the phrase ''or referring participants to appropriate services'' to more closely follow the statute and to indicate that, in addition to providing services directly or through WIA partner programs, SCSEP grantees/sub-recipients can use the One-Stop Centers to access the services of other service providers in the community.

In paragraph (a)(9) of this section, the Department proposes to change the term ''fringe benefits'' to ''benefits.'' We propose to delete the word ''fringe'' from the phrase ''fringe benefits'' throughout this proposed rule, to reinforce the notion that the SCSEP is a temporary training program as opposed to a more permanent employment situation, and to correspond to the same change in section 502(c)(6)(A) of the 2006 OAA. The Department also proposes to specify in paragraph (a)(9) that participants must receive a wage while in training, to conform to the 2006 OAA at sections 502(b)(1)(I), 502(b)(1)(J), and 502(c)(6)(A), as well as during orientation. Lastly, we propose to add to this paragraph a reference to the specific regulation sections that address wages and benefits.

The paragraphs that appear as (a)(9) and (a)(11) in the current regulations remain unchanged but appear here as paragraphs (a)(10) and (a)(11). The Department proposes to delete what is paragraph (a)(10) in the current regulations. That paragraph requires grantees to verify participant income at least once every 12 months and is repetitive of § 641.505. We also propose to delete what is paragraph (a)(14) in the current regulations, which discusses following up with participants to determine their need for supportive services after placement into unsubsidized employment, for two reasons. First, § 641.545 already permits grantees to provide or arrange for supportive services after placement into unsubsidized employment. Second, the paragraph's placement in the current

regulations in this section meant that grantees/sub-recipients were required to follow up with participants to determine if they needed supportive services. Although the Department strongly encourages follow-up with participants to support them in their unsubsidized employment, it is not required. (OAA sec. 502(c)(6)(A)(iv)).

We also propose to delete what is paragraph (a)(15) in the current regulations. That paragraph requires grantees/sub-recipients to follow up with former participants to determine whether that person was still employed. Although grantees/sub-recipients are still required to obtain retention data, it is not necessarily done by contacting the participant, nor is that a service provided to the participant, which is the subject of this section.

Paragraph (b) of this section remains unchanged. Paragraph (c) of this section states that grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services. We propose to add to this paragraph a parenthetical reference to § 641.512, which provides that grantees cannot enroll job-ready participants, but must refer them to an employment provider such as the One-Stop Center for job placement assistance.

Finally, we propose several grammatical and technical corrections in this section.

What Types of Training May Grantees/Sub-Recipients Provide to SCSEP Participants in Addition to the Training Received at the Community Service Employment Assignment? (§ 641.540)

This section addresses the many forms that SCSEP training may take. Training received at the community service employment assignment is not within the scope of this section, however. The Department proposes to rephrase the heading accordingly, for clarity. For the same reason, we also propose to delete what appears in the current regulations as the last sentence of paragraph (a) of this section.

Paragraph (a) provides the conceptual framework for training. The Department proposes to add the phrase ''and that prepares them for unsubsidized employment'' to this paragraph because SCSEP training should advance the participant toward the goal of unsubsidized employment.

In paragraph (b), the Department proposes to replace training ''before or after placement in'' with ''prior to beginning or concurrent with'' a community service employment assignment. This change is consistent with statutory language at section 502(c)(6)(A)(ii) of the 2006 OAA, and clarifies that training may take place as soon as a participant has been assigned to a community service employment assignment even if the participant has not yet begun working at that assignment.

Since the current regulations were published, online training has become more common. In many cases quality training can be obtained in an online environment that allows individuals with transportation difficulties access to training. Therefore, the Department proposes to add ''online instruction'' to the list of the types of training allowable in paragraph (c) to clarify that such instruction is an allowable use of training funds.

The Department proposes to remove the following sentence which appears as paragraph (d) of this section in the current regulations: ''Grantees and sub-recipients are encouraged to place a major emphasis on training available through on-the-job experience.'' The Department proposes this change because secs. 502(b)(1)(I) and 502(c)(6)(A)(ii) of the 2006 OAA emphasize the importance of all types of training in the SCSEP, not only on-the-job training. What is paragraph (e) in the current regulations becomes proposed paragraph (d) and is unchanged.

The Department proposes to split what is paragraph (f) in the current regulations into two paragraphs. The first portion, addressing paying for training, becomes paragraph (e). We revise the language in paragraph (e) to mirror the language at section 502(c)(6)(A)(ii) of the 2006 OAA. The second portion, addressing wages during training, stands alone as the new paragraph (f). The Department also proposes to change the new paragraph (f), to state that participants ''must'' be paid wages while in training, to be consistent with the amended statute. (OAA sec. 502(b)(1)(I)). We also propose to add a reference to the paragraph of the proposed rule that describes participants' wages.

The Department proposes to broaden paragraph (g) to address supportive services generally, whereas the subject of this paragraph in the current regulations is, ''travel and room and board.'' We propose this change to conform with section 502(b)(1)(L) of the OAA. The Department encourages grantees and sub-recipients to seek outside sources of assistance to help provide supportive services to participants. We continue to say that a grantee/sub-recipient ''may'' pay for the costs of supportive services for two reasons: first, because we encourage grantees/sub-recipients to obtain supportive services from sources other than the grant whenever possible and second, because a grantee/sub-recipient is not required to provide supportive services when it determines that the supportive services would be too expensive, are not available, or would not be necessary to enable the participant to participate in the program. When a grantee/sub-recipient decides to approve supportive services, however, it must either pay for or obtain the services.

Paragraph (h) explains that in addition to training paid for by the SCSEP, participants may obtain training on their own, if they wish. We propose to clarify that any such training would be at the participant's own expense.

What Supportive Services May Grantees/Sub-Recipients Provide to Participants? (§ 641.545)

This section addresses the supportive services that grantees/sub-recipients may provide to participants. In paragraph (a), the Department proposes to replace ''supportive services to assist participants'' with ''supportive services that are necessary to enable an individual'' to successfully participate in SCSEP projects, to conform to language in secs. 502(c)(6)(A)(iv) and 518(a)(7) of the 2006 OAA. The Department interprets this revision in statutory language concerning the purpose of supportive services to be somewhat more prescriptive. That is, the supportive services that are appropriately provided by the SCSEP are those that are necessary to make it possible for an individual to participate in the SCSEP—not just any supportive service that would assist an individual to participate in the program. Indeed, we view the new language as conveying a tighter requirement that the supportive services be more directly related to the eventual employment goal.

At the same time, we also propose to change ''child and adult care'' to ''dependent care,'' ''temporary shelter'' to ''housing,'' and add needs-related payments, as examples of supportive services. These revisions are consistent with the language in OAA section 518(a)(7), and are chosen to be as inclusive as possible of all allowable supportive services. Therefore, while we interpret the purpose of SCSEP supportive services to be slightly narrower than in the past, the scope of available supportive services is slightly more expansive. We also propose to add to this paragraph a citation to the provision of the 2006 OAA that defines supportive services. Paragraph (b) remains unchanged.

We propose to add a paragraph (c) to this section, and move to it a revised

version of what appears in § 641.555(a) in the current regulations. Section 641.555(a) requires grantees to contact participants during the first six months following placement to determine their need for supportive services. In the proposed paragraph (c), the Department proposes to change ''must'' to ''are encouraged to,'' to clarify that there is no statutory requirement that grantees/sub-recipients follow-up with participants after they have been placed in unsubsidized employment. The statute allows such follow-up, however, and the Department strongly encourages it. Also in paragraph (c), the Department proposes to extend the time period during which grantees/sub-recipients may contact placed participants from 6 months to 12 months. We propose this change because one of the new additional SCSEP indicators of performance is retention in employment at one year; grantees/sub-recipients should be authorized to support placed participants in maintaining their employment throughout this one-year timeframe. The Department also proposes to change the word ''during'' to ''throughout'' in describing the 12 month period, to clarify that the Department prefers that grantees/sub-recipients not wait until 12 months have passed to contact a placed participant. Instead, we encourage grantees/sub-recipients to contact placed participants as often as necessary to ensure that they have the needed supportive services to maintain unsubsidized employment. SCSEP grantees/sub-recipients may utilize other organizations, including One-Stop partners, to contact the placed participants on behalf of the SCSEP, to determine if supportive services are necessary. SCSEP grantees/sub-recipients are authorized to pay for or arrange for necessary supportive services during this twelve month period.

What Responsibility Do Grantees/Sub-Recipients Have To Place Participants in Unsubsidized Employment? (§ 641.550)

This section outlines grantees'/sub-recipients' responsibility to place participants in unsubsidized employment. The Department proposes to change ''should'' to ''must,'' and ''reasonable efforts'' to ''every effort,'' in the proposed clause ''grantees and sub-recipients must make every effort to place participants into unsubsidized employment.'' We propose these changes to strengthen the emphasis on placement in unsubsidized employment, consistent with the 2006 OAA. The Department proposes to remove the phrase ''in accordance with each participant's IEP,'' which appears in the first sentence of this section in the current regulations, and the phrase that appears in the second sentence, ''whose IEPs include an unsubsidized employment placement goal,'' to emphasize that a goal for all of the SCSEP is to move participants into unsubsidized employment. Similarly, the Department proposes to remove the phrase ''as many as possible'' in the first sentence to again emphasize that unsubsidized employment is a goal for the SCSEP. Finally, the Department proposes to add the phrase ''and because the SCSEP limits the amount of time a participant can remain in the program'' to the first sentence because the 2006 OAA establishes a time limit for SCSEP participation that reinforces the responsibility to place participants in unsubsidized employment. (OAA sec. 518(a)(3)(B)).

What Responsibility Do Grantees Have to Participants Who Have Been Placed in Unsubsidized Employment? (§ 641.555 in the Current Regulations)

The Department proposes to remove this section from the regulations.

We propose to move what is paragraph (a) of this section, addressing grantees contacting placed participants to determine their need for supportive services, to § 641.545(c). Paragraph (b) of this section requires grantees to contact participants to obtain retention data. Paragraph (c) of this section states that subparts G and H of this part may include follow-up requirements. We propose to remove paragraphs (b) and (c) because grantees are not required to contact former participants to obtain retention data; retention information is generally obtained through other means.

May Grantees Place Participants Directly Into Unsubsidized Employment? (§ 641.560 in the Current Regulations)

In the current regulations, this section encourages grantees not to enroll individuals who could be placed directly into unsubsidized employment. The Department proposes to remove this section; this topic is now addressed in a new § 641.512 in this part.

What Policies Govern the Provision of Wages and Benefits to Participants? (§ 641.565)

The Department proposes significant substantive changes to this section required by revisions in section 502(c)(6)(A)(i) of the 2006 OAA. The Department also proposes to change the formatting of this section to outline form, rather than paragraphs containing multiple sentences, for clarity.

Paragraph (a) of this section addresses participant wages. In paragraph (a)(1)(i) we propose to delete the phrase ''required by the grantee/subgrantee'' after the word ''training'' because the 2006 OAA requires participants to be paid for all time spent in training. OAA section 502(b)(1)(I). Also, the SCSEP no longer uses the term ''required training.'' Although the program may in the past have considered training called for in the IEP to be ''necessary'' or ''required'' training, those terms are no longer employed. Indeed, under these proposed regulations all training provided by the SCSEP should be identified in the IEP. We also propose to remove the words ''work in'' before ''community service employment assignments'' because they are not needed in the amended language. We also propose to change ''minimum'' to ''required'' in the phrase, ''highest applicable required wage,'' because the prevailing rate of pay is not a minimum wage.

In proposed paragraph (a)(1)(ii) the Department states that grantees may pay participants for time spent on WIA intensive services. This policy is not new; it is stated in § 641.240(d) in the current regulations. However, we propose to move the provision so that it appears here, in the provision relating to wages.

Paragraph (a)(2) addresses the highest applicable required wage, and is essentially unchanged from the current regulations. The only change is to again change the word, ''minimum'' to ''required,'' in the phrase ''highest applicable required wage'' because the prevailing rate of pay is not a minimum wage.

In paragraph (a)(3), the Department proposes to add language to clarify the grantee's/sub-recipient's responsibility to make any necessary adjustments in minimum wage rates during the course of the grant term, should such a change be required by Federal, State, or local statute. Grantees are responsible for managing their funds well and enrolling only as many participants as they have the capacity to serve. In determining how many participants to enroll, grantees should make reasonable efforts to anticipate any likely adjustments in the minimum wage rates that may be required during the grant term.

Paragraph (b) of this section addresses benefits. The Department proposes to change the term ''Fringe Benefits'' to ''Benefits'' in the heading and remove ''fringe'' from the subheadings and in the text of the regulations. As discussed above, we propose this change throughout this part to reinforce the notion that the SCSEP is a temporary

training program as opposed to a more permanent employment situation, and to adhere to the same change in section 502(c)(6)(A) of the 2006 OAA.

The Department proposes to organize paragraph (b) to distinguish two categories of participant benefits: required and prohibited. These categories clearly communicate to grantees and sub-recipients both obligations and proscriptions. This organization is also consistent with language in the 2006 OAA. In the 2000 OAA, section 502(c)(6)(A)(i) merely described ''enrollee wages and fringe benefits (including physical examinations),'' but in the 2006 OAA the same section was expanded to mention various required and prohibited benefits.

Proposed paragraph (b)(1) addresses required benefits. Grantees/sub-recipients must provide such benefits as are required by law. Grantees should determine which benefits are required by law in their area(s) and should submit that information as part of their grant application.

Proposed paragraph (b)(1)(i) remains unchanged; in this paragraph we state that grantees/sub-recipients must provide benefits uniformly to all participants within a project or subproject. Proposed paragraph (b)(1)(ii) also remains unchanged, and provides that participants must be offered the opportunity to receive a physical examination annually. Proposed paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), which further address physical examinations, also remain unchanged. We propose a new paragraph (b)(1)(ii)(C) in which we state that SCSEP funds may be used to pay the costs of the physical examinations. Some grantees and sub-recipients are able to obtain physical examinations at no cost, or locate other sources of assistance to pay for the examinations. The Department encourages this sort of leveraging of community resources. Nevertheless paying for the physical examinations with grant funds is an allowable SCSEP cost.

Proposed paragraph (b)(1)(iii) addresses workers' compensation law; this paragraph is unchanged from the current regulations. Proposed paragraph (b)(1)(iv) concerns unemployment compensation. If State law requires grantees/sub-recipients to provide unemployment compensation coverage, then clearly it would be a required benefit under the SCSEP. For that reason, and to be consistent with the treatment of unemployment compensation coverage by the 2006 OAA as a required benefit, we propose to move and revise the regulatory provision addressing unemployment compensation to this paragraph. In the current regulations this provision is located at paragraph (b)(4) of this section, and is phrased in the negative (''[u]nless required by law, grantees may not * * *''). We propose to place this provision at paragraph (b)(1)(iv) and state that if it is required by State law, then grantees/sub-recipients must provide unemployment compensation coverage. We note that where not required by State law, unemployment compensation coverage is not an allowable benefit.

The Department proposes to add a requirement at paragraph (b)(1)(v), in accordance with section 502(c)(6)(A)(i) of the 2006 OAA, requiring grantees and sub-recipients to provide compensation for scheduled work hours during which an employer's business is closed for a Federal holiday. For the limited purpose of implementing this provision, the Department proposes to interpret the word ''employer'' in section 502(c)(6)(A)(i) of the 2006 OAA to mean host agency. This interpretation will promote uniform treatment of SCSEP participants at the same host agency, regardless of which entity is the program operator.

The Department broadly interprets the word ''compensation'' in this context to allow for a variety of practices. Grantees/sub-recipients may compensate participants for scheduled work hours during which a host agency is closed for a Federal holiday by methods such as paying for the time a participant would have worked had it not been a Federal holiday (essentially a paid day off), or allowing a participant to make up the missed work hours on other days. Other methods of compensation may be allowable, but must be discussed in the grant application. Whatever the method of compensation offered, the compensation must be used within a reasonable period of time, and within the Program Year. Grantees and sub-recipients may develop policies that require the use of offered compensation sooner, for example, within a pay period; such policies must be described in the grant application.

The intent of the Department here is to allow flexibility in administering the SCSEP but prevent any carry-over of benefits from one Program Year to the next. For example, if a host agency is closed for Memorial Day, then a participant assigned to that host agency must be compensated for that Federal holiday. The participant may be paid. Alternatively, the participant may be allowed to work extra hours on other days to make up the missed time, but those extra hours must be worked before the Program Year ends on June 30, if not before. Because no benefits may be carried over to the next Program Year, if a participant is provided an opportunity to make up the time but is unable to do so by June 30, the participant may be paid for the time.

In paragraph (b)(1)(vi) the Department proposes that grantees and sub-recipients are required to provide necessary sick leave that is not part of an accumulated sick leave program, again in accordance with section 502(c)(6)(A)(i) of the 2006 OAA. The statute does not specify whether this sick leave must be paid or unpaid. Accordingly, the Department interprets the statute to allow either option, but requires grantees to explain their sick leave policy in their grant application. Necessary sick leave must be administered uniformly for all participants.

The Department interprets the word ''accumulate'' as meaning any storing of unused sick leave. Thus while it would be permissible for a grantee to have a policy allowing, say, six days of sick leave over the course of a Program Year, it would not be permissible for participants to ''earn'' a day of sick leave every two months and store the unused days. By way of another example, it would be permissible for a grantee to allow each participant one day a month of sick leave, as long as unused sick days did not store, or accumulate. We understand the sick leave contemplated by the statute to be sick leave that is either used or zeroed out at the end of the period provided in the grantee's leave policy but at least at the end of the Program Year (e.g., if the grantee's policy provides for one day of sick leave a month, the sick leave would be zeroed out at the end of the month; if the grantee's policy provides for 12 days of sick leave a year, the unused sick leave would be zeroed out at the end of the year). Again, grantees must explain their method of administering this required benefit in their grant application.

The Department proposes to consolidate the provisions addressing prohibited benefits into a new paragraph (b)(2) (in the current regulations benefit restrictions appear in paragraphs (b)(3) and (b)(4)) and expand the prohibitions in light of the 2006 OAA. Section 502(c)(6)(A)(i) of the 2006 OAA prohibits grantees from using SCSEP funds to pay the cost of pension benefits, annual leave, accumulated sick leave, and bonuses. Again, the Department's intent concerning these restrictions is to make compensation and benefits for SCSEP more consistent

with compensation and benefits received by participants in other time-limited training programs, rather than those in permanent employment situations. This is consistent with an increased emphasis on the goal of placing SCSEP participants in unsubsidized employment.

The Department also proposes to prohibit the carry over of allowable benefits from one Program Year to the next. This policy is not new to the SCSEP. It was promulgated in TEGL No. 29–04, dated April 18, 2005, and is designed to encourage participant self-sufficiency by discouraging participants from staying in the SCSEP indefinitely, thus preventing participation by other SCSEP-eligible individuals. We also propose to prohibit the payout of any unused benefits such as sick leave. This policy is consistent with the 2006 OAA's prohibition on paying the cost of accumulated sick leave, and supports the view of the SCSEP as a training program rather than a long-term employment situation.

The Department interprets section 502(c)(6)(A)(i) of the 2006 OAA as articulating which benefits are required, and which benefits are prohibited; no benefits other than the required benefits are allowable. Grantees/sub-recipients may not offer additional benefits to SCSEP participants. This interpretation of the statute is consistent with the Department's vision of the SCSEP as a temporary training opportunity.

Is There a Time Limit for Participation in the Program? (§ 641.570)

Section 518(a)(3)(B) of the 2006 OAA establishes a new time limit of 48 months for participation in the SCSEP, unless the Department authorizes an increased period of participation for particular participants. The 2006 OAA (sec. 502(b)(1)(c)) also requires SCSEP projects to manage their program such that the average participation period for all a project's participants is not greater than 27 months, unless an extension has been granted. The Department proposes to completely revise § 641.570 to reflect these statutory changes.

In the proposed paragraph (a), the Department describes the 48-month time limit required by section 518(a)(3)(B) of the 2006 OAA, and refers readers to paragraph (b) of this section which addresses increased periods of participation for certain individuals, as well as paragraph (c) of this section, which addresses the average participation cap. In paragraph (a) the Department requires grantees/sub-recipients to inform new participants of the time limit and possible extension at enrollment. However, grantees/sub-recipients should also notify current participants immediately, if they have not already done so, because the time limit began on July 1, 2007 for all participants enrolled as of that date.

The Department proposes a new paragraph (b) to provide the rules for requesting an exception to the 48-month participation limit for certain individuals. Section 518(a)(3)(B)(ii) of the 2006 OAA allows grantees to request to increase the period of participation for individuals who: have a severe disability; are frail or are age 75 or older; meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act; live in an area with persistent unemployment and have severely limited employment prospects; or have limited English proficiency or low literacy skills. The Department will authorize an increased period of participation up to an additional 12 months for any participant who meets one or more of these criteria. Each participant is eligible for one extension. The Department is proposing to implement the statutory extension as a one-per-participant, maximum one-year extension to ensure that participation is not indefinitely extended, thus preventing other eligible individuals from benefiting from the SCSEP. The 2006 OAA allows the average participation cap to be extended for an additional nine months (see § 641.570(c)(2)). The Department reasoned that if the average cap could only be extended by nine months, then the individual period of participation should not be increased beyond a year to limit the risk of exceeding the average participation cap.

The Department proposes a new paragraph (c) to implement the average participation cap set by section 502(b)(1)(C) of the 2006 OAA. Each SCSEP project must manage the participation period for its enrollees such that the average participation cap for all participants in the project does not exceed 27 months, or 36 months under the extension available in § 641.570(c)(2). The Department has determined that for the purposes of this paragraph, each SCSEP grantee (whether State or national) will be considered to have one project. That is, the average participation cap will be applied to the single, over-arching project, not to each local project independently. This is consistent with subpart G of this part, in which grantees are responsible for managing their various projects to achieve the expected levels of performance for the grant as a whole. This approach also affords grantees discretion to manage their sub-recipients and/or individual projects in whatever way best suits their circumstances, to realize the average participation cap.

The average participation cap must be achieved notwithstanding any individual extensions authorized pursuant to paragraph (b) of this section. That is, even if certain participants are allowed to remain in the program more than 48 months, each project must nevertheless satisfy the average participation cap for the project as a whole.

A grantee may request an extended period of average participation, if the grantee demonstrates in a request to the Department the existence of extenuating circumstances relating to the factors enumerated in section 513(a)(2)(D) of the 2006 OAA and listed in paragraph (c)(2) of this section. The Department may authorize an extended average period of not more than 36 months for a specific project area for a particular Program Year. OAA section 502(b)(1)(C)(ii).

Proposed paragraph (d) addresses the circumstance of an authorized break in participation. Some grantees have developed policies for authorized breaks in participation, to address situations such as when a suitable community service employment assignment is not available, or when a participant must take a leave of absence to attend to a loved one or for medical reasons. Such policies must be in writing and must be included in the grant application. The Department does not consider authorized breaks in participation, if taken pursuant to an approved grantee policy and entered into the SCSEP Performance and Results Quarterly Performance Reporting (SPARQ) system, to count against the individual participation limit or the average participation cap.

We propose to add a new paragraph (e), stating that we will issue administrative guidance detailing the processes by which a grantee may request an increased period of participation pursuant to paragraph (b) and by which a grantee may request an extended average participation cap pursuant to paragraph (c)(2).

Finally, in proposed paragraph (f), the Department provides grantees the authority to limit individual participation to a time period less than the 48 months required by statute and described in paragraph (a) of this section. To set a lower individual participation limit, grantees must specify and describe their proposed participation limit in their grant application. In addition, only lower participation limits that are uniformly

applied to all participants are acceptable.

May a Grantee/Sub-Recipient Establish a Limit on the Amount of Time Its Participants May Spend at Each Host Agency? (§ 641.575)

Consistent with the current regulations, the Department allows grantees to establish time limits on host agency assignments. In the proposed rule, however, we add a phrase to the first sentence of this section to encourage rotations among different host agencies, or among different assignments within the same host agency, as such rotations may increase participants' skills development and employment opportunities. The Department also proposes to change the second sentence to clarify that rotations should be consistent with, though not necessarily reflected in (as is the language used in the current regulations), the participants' IEPs. Finally, we note in this proposed section that neither the individual participation limit nor the average participation cap is impacted by host agency rotations. That is, a new host agency assignment does not ''re-start the clock'' for purposes of the individual participation limit or the average participation cap.

The Department encourages grantees that establish time limits to discuss this aspect of the program with participants, at least during orientation and preferably more often than that. Early and ongoing communication concerning host agency rotations is likely to decrease participants' anxieties about changing assignments.

Is There a Limit on Community Service Employment Assignment Hours? (§ 641.577)

This proposed new section limits the number of community service employment assignment hours to 1,300 per Program Year. Though this provision represents a change from the current regulations, a similar provision appeared in the 1995 final rule. In the 1995 rule, all paid time, including time spent on activities such as orientation and training, was limited to 1,300 hours per year. In the proposed rule, only hours spent at the community service employment assignment are subject to the 1,300-hour limit. This difference is meaningful because, consistent with the 2006 OAA and other aspects of this proposed rule, the proposed 1,300-hour limit does not discourage participant training. The Department wants to consistently encourage grantees and participants to utilize available resources to obtain training that will enhance participants' skills and employability. At the same time, the Department wants to make sure that the 1,300-hour limit does not significantly reduce the needed community services that participants provide, or the participants' opportunity to earn needed wages.

Further, a limit of 1,300 hours per year reinforces that SCSEP is meant to provide temporary, part-time community service employment assignments. It is our experience that most SCSEP grantees comply with the purpose of providing temporary, part-time employment assignments. The annual limit of 1,300 hours is well above the average hours worked per year by SCSEP participants, which is 20 hours a week for 52 weeks, or 1,040 hours. The proposed limitation will eliminate full-time and/or long-term assignments that are significantly above the hours worked by the average participant. A limit on the number of hours worked per year also promotes program efficiency by ensuring that grantees and sub-recipients do not spend a disproportionate amount of funds on some individual participants, limiting the participation of other eligible individuals in the program.

Under What Circumstances May a Grantee/Sub-Recipient Terminate a Participant? (§ 641.580)

This section addresses the various reasons for terminating a participant and describes the basic terminations procedures. The Department proposes several minor changes in this section to ensure consistency in termination proceedings, including consistently requiring that a grantee/sub-recipient ''must give the participant written notice explaining the reason(s) for termination.'' The current regulations use various phrasings to describe the written notice and do not require written notice in every case of termination.

Grantees/sub-recipients may serve only those individuals who are eligible for the SCSEP. Paragraphs (a), (b), and (c) of this section address situations in which participants are found not to be eligible for the program. In paragraph (a), describing termination based on false information, the Department proposes to add the word ''knowingly'' to clarify that the situation addressed by this paragraph is one where the participant knowingly furnished false information that leads to an incorrect eligibility determination. In the alternative, if a grantee/sub-recipient learns that a participant mistakenly provided incorrect information that may impact eligibility, the grantee/sub-recipient should verify the individual's eligibility. If the person is actually not eligible for the SCSEP, the grantee/sub-recipient must terminate the individual pursuant to § 641.580(b).

The Department proposes various changes in paragraph (b). This paragraph provides that if, during verification of eligibility, a grantee/sub-recipient determines that a participant is no longer eligible, the participant must be terminated. The ''must terminate'' in this paragraph is a change from the current regulations which allow that grantees ''may terminate'' such a participant. We propose this change because the SCSEP cannot serve ineligible individuals. The Department also proposes to broaden this paragraph to apply to eligibility issues in general, and not merely income eligibility as in the current regulations.

We propose to add the phrase, ''under § 641.505'' after the words ''eligibility verification,'' to refer to the section of this part that addresses when eligibility must be verified. We also propose to delete the word ''annual,'' because verification must be done at least once every twelve months but may also occur as circumstances require (see § 641.505). Finally, we clarify that the written notice of termination must be given to the participant within thirty days of the ineligibility determination. This is consistent with the content of what is § 641.510 in the current regulations; paragraph (b) of this section is silent on the timing of the notice in the current regulations.

The only change we propose to paragraph (c) is to add the words ''for termination'' after the word, ''reason(s),'' for clarity.

In paragraph (d), describing terminations for cause, the Department proposes to replace the phrase ''the proposed reasons for such terminations'' with ''their policies concerning for-cause terminations'' when describing what grantees must include in their grant applications, for clarity. We also propose to replace the word, ''discuss,'' with ''include,'' concerning submitting information on for-cause termination policies in the grant application, for clarity. The Department proposes to remove from paragraph (d) the discussion about communicating termination policies to participants, and proposes to create a new paragraph (g) to address that topic; the remaining paragraphs are re-lettered accordingly.

In paragraph (e), the Department proposes to add the requirement that grantees/sub-recipients must provide participants with written notice when they are terminated for repeated refusals to accept a job offer, so that the

termination is clearly communicated to the participant and in order to be consistent with the requirements for other terminations described in this section. We also propose to add that the termination must occur 30 days after the participant receives the written notice; this is consistent with other termination procedures in this section.

Proposed paragraph (f) provides that when an unfavorable eligibility determination is made pursuant to paragraphs (b) and (c), the grantee/sub-recipient should refer the terminated individual to other possible assistance sources such as the One-Stop Delivery System, and when a grantee/sub-recipient terminates a participant under paragraphs (d) and (e), it may refer the individual to other potential sources of assistance. The Department proposes to remove the redundant phrase ''it must give the individual a reason for termination'' from this paragraph because that requirement is now stated in each paragraph on termination. Also, we propose to delete the phrase, ''when feasible,'' because the Department determined that qualification was not necessary. Finally in paragraph (e), we propose to delete the reference to paragraph (a) because we determined that grantees and sub-recipients have no obligation to offer further assistance to an individual that knowingly provided false eligibility information.

In proposed paragraph (g) we rephrase the material that appears in paragraph (d) of this section in the current regulations, concerning communicating termination policies to participants. We propose to require grantees and sub-recipients to furnish a written copy of their termination policies to participants at enrollment, and to verbally review those policies with participants.

The Department proposes a technical correction to paragraph (h); we replace ''through (f)'' with ''through (e)'' when describing the paragraphs on terminations. Proposed paragraph (i) remains unchanged from what appears as paragraph (h) in the current regulations.

What Is the Employment Status of SCSEP Participants? (§ 641.585)

In the current regulations, §§ 641.585 and 641.590 address different aspects of the employment status of participants. The Department proposes to combine those two sections into a revised § 641.585; we propose to change the heading of the section accordingly.

In proposed paragraph (a), we state that SCSEP participants are not considered Federal employees solely due to their participation in the SCSEP; this statement is derived directly from section 504(a) of the 2006 OAA. The same notion is expressed in paragraph (a) of this section in the current regulations, although in different words (''[n]o, participants are not Federal employees'').

Proposed paragraph (b) contains the substance of what is § 641.590 in the current regulations. In the current regulations, we state that ''[g]rantees must determine if a participant is an employee of the grantee, local project, or host agency as the definition of 'employee' varies depending on the laws defining an employer/employee relationship.'' The first sentence of proposed paragraph (b) is a close parallel: ''[g]rantees must determine whether or not a participant qualifies as an employee of the grantee, sub-recipient, local project, or host agency, under applicable law.'' We propose to add ''sub-recipient'' to include all the possible employer entities. We propose to use the phrase, ''qualifies as,'' rather than the word ''is,'' for clarity. The phrase, ''under applicable law,'' is proposed to clearly give grantees authority to consider whatever law is relevant to their determination. We propose to change ''if'' to ''whether or not'' because a grantee may determine that participants are not employees of any of the listed entities.

In the current regulations, paragraph (b) of § 641.585 states that ''if a Federal agency is a grantee or host agency, § 641.590 applies.'' The Department proposes to keep the substance of that statement but revise the wording. In the second sentence of proposed paragraph (b) we state that the responsibility for making the employment status determination rests with the grantee even if a Federal agency is a grantee or host agency. That is, although SCSEP participants are not considered Federal employees by virtue of their participation in the SCSEP, whether a particular participant is a Federal employee because that participant's grantee or host agency is a Federal agency, is a matter to be determined by the grantee.

Are Participants Employees of the Grantee, the Local Project, and/or the Host Agency? (§ 641.590 in the Current Regulations)

The Department proposes to delete the section that appears as 641.590 in the current regulations, because the subject of that section—the employment status of participants—is now addressed in § 641.585.

Subpart F—Pilot, Demonstration, and Evaluation Projects

This subpart describes the opportunities for pilot, demonstration, and evaluation projects that are authorized under section 502(e) of the 2006 OAA. The former subpart F described ''502(e) projects'' which placed individuals in private sector job opportunities; the OAA now authorizes different types of projects. The proposed regulatory provisions largely reiterate the language in the 2006 OAA; however, proposed § 641.620 provides that additional guidance on implementation of these new projects will be issued administratively.

The Department interprets section 502(e)(2)(C) of the 2006 OAA, reiterated in § 641.630(c) of these proposed regulations, to mean that older individuals who are not SCSEP-eligible may participate in pilot and demonstration projects, but such pilot and demonstration projects must be designed to address the employment and training needs of SCSEP-eligible individuals. For example, older individuals who are not eligible for SCSEP may face challenges common to many older workers—e.g., skills that need to be upgraded (such as technology-related skills), disabilities or other health-related issues, lack of flexible work arrangements, or perceived age discrimination. Projects that propose to serve older individuals who are not eligible for the SCSEP must demonstrate that successful outcomes in their projects can result in strategies, models, or other tools or resources that can be replicated for the benefit of SCSEP-eligible participants. The Department will continue to explore how best to exercise this additional flexibility regarding pilot, demonstration, or evaluation projects.

Subpart G—Performance Accountability

Subpart G was published in an IFR, 72 FR 35832, June 29, 2007.

Subpart H—Administrative Requirements

Subpart H covers the administrative requirements that apply to all SCSEP grants. For the most part, the proposed regulations remain the same as the current regulations. However, the 2006 OAA necessitates several changes to this subpart, and the addition of a new § 641.874 setting forth conditions regarding a grantee's request to use additional funds for training and supportive service costs. We welcome comments on this new section and on other proposed changes to subpart H that are discussed in this preamble or on

other changes to this subpart which flow from the 2006 Amendments.

What Uniform Administrative Requirements Apply to the Use of SCSEP Funds? (§ 641.800)

There is no change to this provision.

What Is Program Income? (§ 641.803)

This section is substantively unchanged. The only change we propose to make to this section is the addition of new parenthetical descriptions of other regulations being referenced, and the revision of the parenthetical descriptions that appear in the current regulations, for clarity.

How Must SCSEP Program Income Be Used? (§ 641.806)

The program income provisions of this section address the application of the Department's uniform administrative requirements to SCSEP activities by indicating what types of income earned or generated by recipients and sub-recipients are considered program income, how the costs of producing program income are to be treated, and by directing recipients to follow the addition method described in 29 CFR 95.24 (non-profit and commercial organizations) and 29 CFR 97.25 (State and local governments) and add program income to Federal and non-Federal resources provided for SCSEP activities. The Department proposes to add a clarifying phrase to paragraph (a) to reflect the fact that program income must be used during the grant period in which it was earned, to be consistent with uniform administrative requirements. We also propose to add to paragraph (a) parenthetical descriptions by the references to other regulations, for clarity. We propose to clarify in paragraph (c) that the recipient has no obligation to the Department for program income earned after the end of the grant period. Finally, we propose certain grammatical corrections to this section.

What Non-Federal Share (Matching) Requirements Apply to the Use of SCSEP Funds? (§ 641.809)

This section sets forth the various matching fund requirements that apply to recipients of SCSEP funds and clarifies previously ambiguous language. We propose to add the phrase, ''allowable costs paid for with'' to paragraph (b) to clarify that, to be counted toward the ten percent non-Federal share, costs must be allowable. The regulatory provisions cited in paragraph (c) provide information concerning allowable costs.

The current regulations indicate that a recipient may not require a sub-recipient or host agency to provide non-Federal resources for the use of the SCSEP project as a condition of entering into a sub-recipient or host relationship. In paragraph (e), we propose to clarify that this does not preclude a sub-recipient or host agency from voluntarily contributing non-Federal resources for the use of the SCSEP project. Paragraph (f) in the current regulations states that the Department may pay all the costs of private sector training projects established in section 502(e); we delete this provision from the proposed rule because section 502(e) now relates to pilot, demonstration, and evaluation projects.

What Is the Period of Availability of SCSEP Funds? (§ 641.812)

This section details the period of availability of SCSEP funds and is substantively unchanged. In the current regulations, paragraph (b) states that SCSEP recipients must ensure that no sub-agreement provides for the expenditure of any SCSEP funds before July 1, or after the end of the grant period, except as provided in § 641.815. We propose to add a phrase to paragraph (b) to clarify that the July 1 at issue here is July 1 of the grant year.

May the Period of Availability Be Extended? (§ 641.815)

There is no change to this provision.

What Happens to Funds That Are Unexpended at the End of the Program Year? (§ 641.818 in the Current Regulations)

The Department proposes to delete the section that appears as 641.818 in the current regulations, because it relates to an internal Department process and is therefore not relevant for the rule.

What Audit Requirements Apply to the Use of SCSEP Funds? (§ 641.821)

There is no change to this provision.

What Lobbying Requirements Apply to the Use of SCSEP Funds? (§ 641.824)

There is no change to this provision.

What General Nondiscrimination Requirements Apply to the Use of SCSEP Funds? (§ 641.827)

In the current regulations, paragraph (b) of this section states that recipients and sub-recipients of SCSEP funds must comply with the Department's nondiscrimination requirements at 29 CFR part 37, for SCSEP activities that are administered in conjunction with the One-Stop Delivery System. We propose to add a phrase to paragraph (a) to clarify that DOL regulations regarding the equal treatment of religious organizations at 29 CFR part 2 subpart D also apply. We also propose, in paragraph (b)(1)(ii), to abbreviate ''the Workforce Investment Act'' to ''WIA.''

What Policies Govern Political Patronage? (§ 641.833)

There is no substantive change to this provision. We propose in paragraph (a) to abbreviate ''the Workforce Investment Act'' to ''WIA.'' We also propose to add the word, ''part'' before ''37'' to accurately reference the regulation.

What Policies Govern Political Activities? (§ 641.836)

The Department proposes to make only a few grammatical changes to this section.

What Policies Govern Union Organizing Activities? (§ 641.839)

There is no change to this provision.

What Policies Govern Nepotism? (§ 641.841)

We make no substantive changes to this section. In paragraph (a), we propose to replace the word ''position,'' with ''assignment,'' so that we use the term ''community service employment assignment,'' to be consistent with the language used in the rest of this part. In the second sentence of paragraph (a), we propose to move the phrase ''this requirement from'' to later in the sentence and change it to, ''from this requirement,'' for clarity.

What Maintenance of Effort Requirements Apply to the Use of SCSEP Funds? (§ 641.844)

This section outlines the maintenance of effort responsibilities of SCSEP recipients. Section 502(b)(1)(G) of the 2006 OAA consolidates and amends the previous statutory sections on which this regulatory section is based. Accordingly, we propose to revise this section to follow the statutory changes.

First, the Department proposes to replace the former paragraph (a) with a statement that a community service employment assignment is permissible only when the maintenance of effort requirements are met. Proposed paragraph (b) contains the specific maintenance of effort requirements. The first requirement is that the community service employment assignment must not reduce the number of job opportunities or vacancies that would otherwise be available to non-SCSEP persons. The 2006 OAA omits the prior statutory requirement, which is reflected in § 641.844(b)(1) of the

current regulations, that SCSEP projects must result in an increase in employment opportunities in addition to those that would otherwise be available. The next requirement is rephrased but is substantively the same as appears in the 2000 OAA and current regulations: a SCSEP project must not displace currently employed workers, including partial displacements. The third listed requirement is that a SCSEP project must not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed. The only proposed change in this requirement is that we drop the phrase, ''for service'' after the word ''contracts'' to be consistent with the language of the statute. The last requirement, concerning a SCSEP participant not performing the same or substantively the same work as a person on layoff, is substantively the same as what appeared in the 2000 OAA and is in the current regulations, but again is proposed to be slightly rephrased. Also, this requirement in the current regulations uses the term, ''participant,'' which we propose to change to the term, ''eligible individual,'' to be consistent with the language of the statute. We also propose to make a few formatting corrections.

What Uniform Allowable Cost Requirements Apply to the Use of SCSEP Funds? (§ 641.847)

This section is substantively unchanged. The only change the Department proposes to make to this section is the addition of parenthetical descriptions for referenced regulatory sections, for clarity.

Are There Other Specific Allowable and Unallowable Cost Requirements for the SCSEP? (§ 641.850)

The only proposed change to this section is found in paragraph (d), which provides that one allowable SCSEP cost is a SCSEP project's proportionate share of the costs of the local One-Stop Delivery System. The Department proposes to add a sentence to this paragraph to clarify that the cost of services provided, including such things as the wages and benefits of a SCSEP participant placed at a One-Stop Career Center, may constitute some or all of a SCSEP project's cost-sharing contribution.

How Are Costs Classified? (§ 641.853)

This section discusses whether costs are classified as administrative costs or programmatic activity costs and is substantively unchanged. The Department proposes two minor changes to this section. First, we propose to replace the term ''program costs,'' with the term ''programmatic activity costs'' to track a corresponding change in section 502(c)(6) of the 2006 OAA. Second, we propose to change the ''shall'' in the second sentence of paragraph (b) to ''must;'' ''must'' is a more appropriate word to use when requiring an action in a regulation.

What Functions and Activities Constitute Administrative Costs? (§ 641.856)

This section discusses the functions and activities that constitute administrative costs. To be consistent with the language of the 2006 OAA and the rest of this regulation, we propose to change the phrase, ''costs of administration,'' to ''administrative costs,'' in the heading and throughout this section. Pursuant to section 502(c)(4) of the 2006 OAA, we propose to add the following additional functions and activities as administrative costs: preparing administrative reports; other activities necessary for general administration of government funds and associated programs; and the costs of technical assistance, professional organization membership dues, and evaluating results obtained by the project involved against stated objectives. We also propose to delete the word, ''overall,'' from the phrase that appears in the current regulations, ''overall general administrative and coordination functions,'' to mirror the same change in section 502(c)(4)(A) of the 2006 OAA. Finally, the Department proposes to remove paragraph (c), the definition of ''first-tier sub-recipient,'' because the term has been replaced with ''program operator'' and that definition can be found in § 641.140. We do not intend for these changes to have a substantive effect on cost allocation.

What Other Special Rules Govern the Classification of Costs as Administrative Costs or Programmatic Activity Costs? (§ 641.859)

To make it easier to operate SCSEP activities within the WIA One-Stop Delivery System, the OAA imports the WIA cost classification system into the SCSEP. Accordingly, the current regulations divide costs into administrative costs and program costs (termed programmatic activity costs in the SCSEP); the same categories are continued in the proposed rule. As in other sections of these regulations, the Department proposes to change the phrase, ''program costs'' to ''programmatic activity costs'' to be consistent with the OAA (see, e.g., OAA sec. 502(c)(6)). We also propose to replace the phrase, ''first-tier sub-recipient,'' with ''program operator,'' as discussed in the definitions section of this preamble (§ 641.140).

We propose a few changes to paragraph (b). First, we propose to revise paragraph (b)(3) to state that the costs of sub-recipients and vendors performing administrative functions on behalf of recipients and program operators are classified as administrative costs. In the current regulations, only vendors are mentioned in paragraph (b)(3). We also propose to delete paragraph (b)(5) and combine its content into a revised paragraph (b)(4) that states that, except pursuant to paragraph (b)(3), costs incurred by all vendors, and only those sub-recipients below program operators, are classified as programmatic activity costs. In the current regulations, both (b)(4) and (b)(5) address activities that are classified as programmatic activity costs. We propose to make these changes to paragraph (b) for clarity, and to help ensure that entities that carry out the program functions of the SCSEP have access to administrative funds.

The only other change we propose to make to this section is in paragraph (d). Paragraph (d) addresses overhead or indirect cost pools. We clarify in the proposed paragraph (d) that that the allocable share of indirect or overhead costs for administrative and programmatic costs are to be in the same proportions as the actual costs for those activities which are included in the overhead or indirect cost pool. Because of reports that the language that appears in paragraph (d) in the current regulations is confusing, we have rewritten the text in an attempt at greater clarity; we do not intend to change the substance of the policy, merely our explication of it.

Must SCSEP Recipients Provide Funding for the Administrative Costs of Sub-Recipients? (§ 641.861)

There is no change to this section.

Section 502(b)(1)(R) of the 2006 OAA requires the Department to consult with grantees concerning what amount of administrative cost allocation is sufficient among recipients and sub-recipients. The Department has determined that it will determine the appropriate allocation on a grantee-by-grantee basis and that the process of grant application, review, and acceptance will be used to carry out the required consultation with each grantee. Grantees must include in their grant application their plans for allocating administrative monies; that is, grantees

must explain how much administrative money they intend to keep and how much they will be delegating. The Department is able to evaluate and respond to that information when it reviews the grant application. If the Department concludes, for example, that a grantee is not allocating sufficient administrative funds for sub-recipients, it could remand the application for further consideration by the applicant. The grantee could then respond with a revised allocation plan. The act of approving the grant application constitutes the conclusion of the consultation process.

What Functions and Activities Constitute Programmatic Activity Costs? (§ 641.864)

The Department defines programmatic activity costs pursuant to the new definition in section 502(c)(6)(A) of the OAA as amended in 2006. Programmatic activity costs now include the costs of (1) wages and benefits; (2) outreach, recruitment and selection, intake, orientation, and assessment functions; (3) participant training; (4) job placement assistance; and (5) participant supportive services.

We propose to revise paragraph (a) to track the wages and benefits costs authorized by statute. These are wages paid to participants, such benefits as are required by law (such as workers' compensation or unemployment compensation), the costs of physical examinations, compensation for scheduled work hours during which an employer's business is closed for a Federal holiday, and necessary sick leave that is not part of an accumulated sick leave program. As described in the preamble discussion of § 641.565(b), we interpret the latter provision to prohibit any storing of sick leave.

No amounts provided under the grant may be used to pay the cost of pension benefits, annual leave, accumulated sick leave, or bonuses, as described in § 641.565. Unlike the current regulations which permit some of these benefits, the Department is bound by the statute to prohibit the use of SCSEP funds for these purposes.

We propose a few changes to paragraph (c). First, we propose to add a reference to § 641.540, which addresses participant training. Also, we propose to specify that participant training may be provided prior to beginning or concurrent with a community service employment assignment. We propose to replace the phrase ''on the job'' with ''at a host agency,'' for increased clarity. The Department interprets the phrase ''participant training'' to mean only those costs that are directly related to participant training, and not activities such as general staff development that relate to participant training only indirectly or tangentially.

Finally, the Department proposes one change to paragraph (e). We propose to insert the phrase, ''to enable an individual to successfully participate in a SCSEP project,'' to mirror the language of section 502(c)(6)(A)(iv) of the 2006 OAA concerning what supportive services are allowable.

What Are the Limitations on the Amount of SCSEP Administrative Costs? (§ 641.867)

There is no change to this provision.

Under What Circumstances May the Administrative Cost Limitation Be Increased? (§ 641.870)

This section continues the Department's previous practice, as is described in the current regulations, of allowing increases in administrative cost limits as permitted under section 502(c)(3) of the OAA, if the recipient demonstrates that such an increase is necessary to carry out the project and that major administrative cost increases are being incurred in necessary program components. We propose to clarify in the proposed rule that payments for workers' compensation refers only to payments for staff; this is because workers' compensation payments made on behalf of participants are classified as programmatic activity costs.

Paragraph (a)(2)(iii) concerns projects that are so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent. We propose to make changes to the wording of this paragraph in accordance with corresponding changes in the language of the statute, but do not consider any of the changes substantive. Whereas the 2000 OAA referred to administrative ''expenses,'' the 2006 OAA now uses the term ''costs.'' Also, the 2000 OAA used the phrase, ''13.5 percent of the amount for such project,'' and the 2006 OAA instead says, ''13.5 percent of the grant amount.''

What Minimum Expenditure Levels Are Required for Participant Wages and Benefits? (§ 641.873)

As amended in 2006, section 502(c)(6)(B) of the OAA provides that grantees generally must use not less than 75 percent of the grant funds to pay participant wages and benefits. In paragraph (a) the Department proposes to add a reference to § 641.864(a), which addresses wage and benefit programmatic activity costs. We propose to specify in paragraph (b) that recipients must spend at least 75 percent of their total award amount on such costs, not 75 percent of their total expenditures, as is stated in the current regulations. In paragraph (c) we note that a SCSEP grantee may request approval to use additional funds for programmatic activity costs, pursuant to a new § 641.874. Finally, we propose to remove an obsolete reference to awards made under the former section 502(e) of the OAA.

What Conditions Apply to a SCSEP Grantee Request To Use Additional Funds for Training and Supportive Service Costs? (§ 641.874)

In this proposed section we implement a new provision at section 502(c)(6)(C) of the 2006 OAA, which allows a SCSEP grantee to submit to the Department a request for approval to use up to 10 percent of grant funds that would otherwise be devoted to wages and benefits under § 641.873 to provide participant training and supportive services. This new percentage (up to ten) is in addition to the 25 percent of funds that are otherwise available for administrative costs to support participant training, job placement assistance, participant supportive services, outreach, recruitment, selection, intake, orientation, and assessments; and thus reduces the minimum level for wages and benefits to 65 percent.

Proposed paragraph (a) tracks section 502(c)(6)(C)(i) of the 2006 OAA. Proposed paragraph (a)(3) addresses acceptable uses of the additional programmatic activity monies. Participant training is one acceptable use of the money; supportive services is the other. The Department interprets the phrase ''participant training'' to mean only those costs that are directly related to participant training, and not activities such as general staff development that relate to participant training only indirectly or tangentially. Also, as we noted in the preamble to § 641.545, the language used in the 2006 OAA to describe appropriate supportive services has changed to, ''supportive services that are necessary to enable an individual'' to successfully participate in a SCSEP project. This language is somewhat more prescriptive than the language in the 2000 OAA, which stated that the SCSEP could provide supportive services ''to assist an enrollee to successfully participate in a [SCSEP] project.''

In proposed paragraph (b) we detail the requirements for submission of a request to use additional funds for training and supportive service costs;

these requirements track those set out in the statute (OAA sec. 502(c)(6)(C)(ii)).

Section 502(c)(6)(C)(iii) of the 2006 OAA requires that grantees submit a request to use additional funds for training and supportive service costs not later than 90 days before the proposed date of implementation, and that the Department must act on the request no later than 30 days before the proposed date of implementation. The Department interprets these requirements as applying to requests to modify an existing grant agreement. We do not consider these timing requirements to apply to requests to use additional funds for training and supportive service costs that are contained in grant applications. Indeed, the practical reality of the SCSEP grant cycle is that grant application instructions are generally not issued early enough for grant applicants to be able to submit their applications 90 days before the beginning of the Program Year (July 1), and may not be acted on 30 days prior to the start of the Program Year. Were the Department to strictly enforce the 90 and 30 day deadlines, it would mean that grantees would be unable to implement the requested use of additional funds for programmatic activity costs until several weeks into the Program Year. Such a delay in implementation would harm participants by complicating the administrative management of the grant, by reducing the amount of funds available for training and supportive service costs, and by reducing the flexibility of grantees to use the funds as Congress intended.

Accordingly, if a grantee wishes to change its grant agreement to be able to use the additional moneys for training and supportive services, it must submit the request not later than 90 days before, and the Department will act on the request not later than 30 days before, the proposed date of implementation. If a request to use additional funds for training and supportive service costs is part of the grant application, the request will be reviewed and approved as a part of the normal grant approval process and will be implemented at the start of the Program Year.

Finally, we propose to state in paragraph (d) that grantees may apply this provision to individual sub-recipients but need not provide this opportunity to all their sub-recipients.

When Will Compliance With Cost Limitations and Minimum Expenditure Levels Be Determined? (§ 641.876)

There is no change to this provision.

What Are the Financial and Performance Reporting Requirements for Recipients? (§ 641.879)

This section covers the reporting requirements that are authorized by the 2006 OAA. We propose to remove a reference to reporting requirements for section 502(e) private sector employment projects, because reporting for all SCSEP recipients is now included in paragraph (a). In addition, proposed paragraph (a) now addresses financial reporting and proposed paragraph (b) addresses performance reporting, which conforms to the ordering in the heading question for this section. In the current regulations, paragraph (a) addresses performance reporting and paragraph (b) addresses financial reporting.

The Department proposes to add to paragraphs (a) and (b) parenthetical descriptions of the referenced regulatory sections. We propose to change the form number referenced in paragraph (a) because SCSEP grantees no longer use reporting form SF 269 for financial reporting; ETA Form 9130 is now the proper financial reporting form. And, whereas the former reporting instructions provided that financial reports were due in 30 days, the reporting instructions for the new ETA Form 9130 provides grantees with 45 days within which to submit each quarterly report, including the report for the last quarter. Under the ETA electronic reporting system, grantees are to mark their financial report for the last quarter of the grant as final which opens the link for a closeout final report which is due 90 days after the end of the grant period of performance; we propose to add the word ''closeout'' in the second sentence of paragraph (a) for clarity.

We propose to revise paragraph (b) to describe the current performance reporting procedure. Although the current regulations indicate that recipients must submit quarterly progress reports, those reports are actually generated by the Department using participant data that recipients submit electronically. Similarly, whereas the current regulations stress timely submission of reports, the proposed language emphasizes the timely submission of electronic participant data. We propose to delete the sentence that indicates that if a grant period ends on a date other than the last day of the Program Year, the final report is due within 90 days after the ending date of the grant. The Department collects data by Program Year, regardless of the grant period. Proposed paragraph (c) remains unchanged.

The Department notes that section 502(c)(6)(D) of the 2006 OAA requires each SCSEP grantee to annually prepare and submit to the Department a report documenting the grantee's use of funds for programmatic activities described in § 641.864. Because the financial and participant data already reported by grantees necessarily includes information on how the grantee uses its funds, including any funds for programmatic activities described in § 641.864, the Department interprets this new requirement as being fulfilled by the reports required in paragraphs (a) and (b) of this section.

Proposed paragraph (d) addresses reporting on the performance measures. We propose to revise the text of this paragraph slightly from what appears as paragraph (e) in the current regulations. Instead of requiring data and reports on, ''the program performance measures and the common performance measures,'' the proposed text requires data and reports on ''the performance measures,'' for simplicity and clarity. We also propose to change the reference to the specific sections of these regulations requiring performance measures, to a reference to subpart F generally, as all of subpart F addresses performance measures.

Proposed paragraph (e) of this section states that grantees may be required to collect and submit data on the demographic characteristics of participants. The only proposed change to this provision, which appears as paragraph (f) in the current regulations, is to change from the singular, ''this report,'' to the plural, ''these reports,'' in the second sentence, to be consistent with the plural ''reports'' in the first sentence. Starting in 2007, in addition to prior uses, the Department will also be using this data to prepare a report for Congress on the levels of participation and performance outcomes of minority individuals served by SCSEP, as required by section 515 of the 2006 OAA. The Department will not be requiring a new report from grantees. However, the Department may request additional information as part of the grant application process in order to complete its report to Congress.

We also propose to make grammatical and technical corrections.

What Are the SCSEP Recipient's Responsibilities Relating to Awards to Sub-Recipients? (§ 641.881)

This section specifies that the recipient is responsible for all SCSEP activities performed with SCSEP funds and for ensuring that sub-recipients comply with SCSEP requirements. We propose to change paragraphs (a) and (b) to (b) and (c). We propose to add a new paragraph (a) to state that recipients are

responsible for ensuring all sub-awards are made on the basis of full and open competition to the maximum extent practicable in accordance with procurement requirements in 29 CFR 95.43 (non-profit and commercial organizations) and 29 CFR 97.36 (State and local governments). These are uniform administrative requirements, applicable to all Department grants.

The parenthetical at the end of paragraph (b) refers to the statutory section on responsibility tests; we propose to add a reference to the section of these regulations addressing the responsibility tests, for clarity. Proposed paragraph (c), which appears as paragraph (b) in the current regulations, remains unchanged. We propose to add a new paragraph (d) to conform to the requirements of section 514(e) of the 2006 OAA relating to the special consideration that national grantees serving a service area where a substantial population of individuals with barriers to employment exists must afford in selecting sub-recipients. Section 514(e)(1) of the 2006 OAA provides that for purposes of this section ''individuals with barriers to employment'' means minority individuals, Indian individuals, individuals with greatest economic need, and individuals who are most-in-need. The term most-in-need is defined in the portion of § 641.140 that was included in the IFR published at 72 FR 35832, Jun. 29, 2007.

What Are the Grant Closeout Procedures? (§ 641.884)

The Department proposes to add parenthetical descriptions for the regulatory references provided. Otherwise there is no change to this section.

Subpart I—Grievance Procedures and Appeals Process

Subpart I describes the grievance procedures required of grantees, and the Department's appeal process for grant applicants and grantees. With two exceptions these provisions are substantively identical to the provisions in the current regulations.

What Appeal Process Is Available to an Applicant That Does Not Receive a Grant? (§ 641.900)

This section describes the appeal process that is available to an applicant that does not receive a grant. We propose to revise the text of this section to more accurately reflect the current process actually used by the Department for applications that are not funded. An applicant may request feedback from the Department concerning a decision not to award a grant to the applicant, but debriefings are no longer provided. Under the current process, non-selected entities that request an explanation are provided with feedback on the shortcomings of their proposal. An applicant that wishes to appeal must file their appeal within 21 days of either the notification that financial assistance would not be awarded or the Grant Officer's feedback on the proposal. Under the current regulations, an applicant is required to request that the Grant Officer provide the reasons for not awarding financial assistance in order to preserve the right to appeal. Under this proposed section, an applicant may file an appeal within 21 days of the notification that an award was not given; requesting an explanation from the Grant Officer is not a necessary step to preserving the right to appeal.

The Department also proposed to modify two timeframes. Under the current regulations, the Grant Officer has 20 days within which to provide a debriefing and a written decision explaining the reasons for the decision. In the proposed section, the Grant Officer has 21 days to provide feedback concerning the proposal. Under the current regulations, a party dissatisfied with the decision of the Administrative Law Judge has 20 days within which to file a petition for review. We propose to change that timeframe to 21 days. We propose these timeframe changes to be consistent with the 21-day timeframe used in other circumstances in this section. We also propose to make technical corrections.

What Grievance Procedures Must Grantees Make Available to Applicants, Employees, and Participants? (§ 641.910)

Paragraph (c) of this section formerly required that any allegation of a Federal law violation be filed with the Chief of the Division of Older Worker Programs. Due to a reorganization within ETA, such an allegation will now be filed with the Chief of the Division of Adult Services. We also propose to make technical corrections to this section.

What Actions of the Department May a Grantee Appeal and What Procedures Apply to Those Appeals? (§ 941.920)

We propose to delete the sentence, ''[t]he Chief Administrative Law Judge will designate an Administrative Law Judge to hear the appeal,'' from paragraph (d)(1) as it is unessential to these regulations. The only other changes we propose in this section are technical corrections.

Is There an Alternative Dispute Resolution Process That May Be Used in Place of an OALJ Hearing? (§ 641.930)

The only changes we propose in this section are technical ones.

III. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the Department to evaluate the economic impact of this proposed rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

First, the Department has determined that this NPRM does not affect a substantial number of small entities. There are about 900 SCSEP grantees, sub-recipients, and sub-sub-recipients. Of these, 50 are States and are not small entities as defined by the RFA. The vast majority of the rest are non-profit organizations that would be categorized as small entities for RFA purposes. However, even if all of the rest (850) are small non-profit organizations, that is simply not a substantial number. Eight hundred and fifty is less than one percent of the total number of non-profits in the country, which has been estimated to be over 1 million. Accordingly, we conclude that this proposes rule does not affect a substantial number of small entities.

The Department has also determined that the economic impact of this proposed rule is not significant because these regulations will not result in any additional costs to grantees. The SCSEP is designed such that SCSEP funds cover the vast majority of the costs of implementing this program. Subpart H of this proposed rule provides detailed information to grantees on what costs are proper program expenditures, how to properly categorize those costs, etc. The SCSEP statute does require a ten percent non-Federal match (*see* § 641.809); however, the ten percent match requirement has been in effect in previous SCSEP regulations and therefore does not constitute a new economic burden on grantees. (We note that the Department allows in-kind contributions in lieu of monetary payments, which significantly moderates the economic impact of the match requirement.) Accordingly, the Department certifies that this proposed

rule will not have a significant economic impact on a substantial number of small entities. The Department welcomes comments on this RFA certification.

We note that this analysis is also applicable under Executive Order 13272; for those purposes as well we certify that this proposed rule does not impose a significant economic impact on a substantial number of small entities.

The Department has also determined that this rule is not a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. chapter 8. SBREFA requires agencies to take certain actions when a ''major rule'' is promulgated. SBREFA defines a ''major rule'' as one that will have an annual effect on the economy of $100,000,000 or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely effect the business climate.

This proposed rule will not significantly or adversely effect the business climate. First, the proposed rule will not create a significant impact on the business climate at all because, as discussed above, SCSEP grantees are governmental jurisdictions and not-for-profit enterprises. Moreover, any secondary impact of the program on the business community would not be adverse. To the contrary, the SCSEP functions to assist the business community by training older Americans to participate in the workforce.

The proposed rule will also not result in a major increase in costs or prices for States or local government agencies. The SCSEP has no impact on prices, and, as discussed above, the only costs that could potentially be borne by governmental jurisdictions are limited to the ten percent matching share. Finally, this proposed rule will not have an annual effect on the economy of $100,000,000 or more.

Therefore, because none of the definitions of ''major rule'' apply in this instance, we determine that this proposed rule is not a ''major rule'' for SBREFA purposes.

Executive Order 12866

Executive Order 12866 requires that for each ''significant regulatory action'' proposed by the Department, the Department conduct an assessment of the proposed regulatory action and provide OMB with the proposed regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of $100 million or more, as well as an action that raises a novel legal or policy issue.

As discussed with regard to the SBREFA analysis, this proposed rule will not have an annual effect on the economy of $100 million or more. However, the rule does raise novel policy issues concerning implementing the 2006 OAA in the SCSEP. The key policy changes that are being implemented include the introduction of a 48-month limit on participation, institution of a regular competition for national grants, and an increase in the proportion of grant funds that can be used for participant training and supportive services. Therefore, the Department has submitted this proposed rule to the OMB.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

Because the 2006 OAA necessitated changes in many of the SCSEP forms used by grantees until now, in July 2007 the Department submitted to OMB for review and approval in accordance with section 3507(d) of the PRA a modification to the SCSEP information collection requirements. The four-year strategy newly required by the 2006 OAA (see § 641.302) was accounted for in that PRA submission. The SCSEP PRA submission was assigned OMB control number 1205–0040 and was approved by OMB in October 2007. The approval expires October 31, 2010. The following proposed rule neither introduces new nor revises any existing information collection requirements.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this NPRM does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Executive Order 13132

The Department has reviewed this NPRM in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' While States are SCSEP grantees, the requirements in this NPRM flow directly from the 2006 OAA and thus do not constitute a ''substantial direct effect'' on the States, nor will it alter the relationship, power, or responsibilities between the Federal and State governments.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This NPRM addresses the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have ''tribal implications.'' Required actions include consulting with tribal governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having ''tribal implications'' when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this NPRM and concludes that it does not have tribal implications. While tribes are sub-recipients of national SCSEP grantees, this proposed rule will not have a substantial direct effect on those tribes, because, as outlined in the Regulatory Flexibility section of the preamble, there are no new costs associated with implementing this proposed rule. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and tribal governments.

Accordingly, we conclude that this rule does not have tribal implications for the purposes of Executive Order 13175.

Environmental Impact Assessment

The Department has reviewed this NPRM in accordance with the requirements of the National

Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The NPRM will not have a significant impact on the quality of the human environment, and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative affect on families must be supported with an adequate rationale.

The Department has assessed this NPRM and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by providing job training and support services to low-income older Americans.

Executive Order 12630

This NPRM is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This NPRM is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs—Labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR part 641 to read as follows:

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 *et seq.*

Subpart A—[Amended]

2. Revise § 641.100 to read as follows:

§ 641.100 What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under the title V of the Older Americans Act (OAA), 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Amendments of 2006, Public Law 109–365. This part, and other pertinent regulations expressly incorporated by reference, set forth the regulations applicable to the SCSEP.

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

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.* These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop Delivery System.

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

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

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

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

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

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

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

3. Revise § 641.110 to read as follows:

§ 641.110 What is the SCSEP?

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

4. Revise § 641.120 to read as follows:

§ 641.120 What are the purposes of the SCSEP?

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

5. Revise § 641.130 to read as follows:

§ 641.130 What is the scope of this part?

The regulations in this part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this part, phrases such as, ''according to instructions (procedures) issued by the Department'' or ''additional guidance will be provided through administrative issuance'' refer to the documents issued under the Secretary's authority to administer the SCSEP, such as Training and Employment Guidance Letters (TEGLs), Training and Employment Notices (TENs), previously issued SCSEP Older Worker Bulletins that are still in effect, technical assistance guides, and other SCSEP guidance.

6. Amend § 641.140 by:

a. Removing the definitions ''Co-enrollment,'' ''Placement into public or private unsubsidized employment,'' ''Retention in public or private unsubsidized employment,'' ''State Workforce Agency,'' and ''Subgrantee.''

b. Revising the definitions ''Authorized position level,'' ''Community service,'' ''Equitable distribution report,'' ''Grantee,'' ''Greatest economic need,'' ''Greatest

social need,'' ''Host agency,'' ''Indian,'' ''Indian tribe,'' ''Individual employment plan or IEP,'' ''Jobs for Veterans Act,'' ''OAA,'' ''Other participant (enrollee) costs,'' ''Participant,'' ''Poor employment prospects,'' ''Program year,'' ''Project,'' ''Recipient,'' ''Service area,'' ''State grantee,'' ''State Plan,'' ''Sub-recipient,'' ''Title V of the OAA,'' ''Tribal organization,'' and ''Workforce Investment Act or WIA,'' to read as set forth below.

c. Adding in alphabetical order the definitions ''Pacific Island and Asian Americans,'' ''Program operator,'' ''Secretary,'' ''Supportive services,'' and ''Unemployed,'' as set forth below.

§ 641.140 What definitions apply to this part?

* * * * *

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

Community service means:

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

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

(c) Community betterment or beautification;

(d) Antipollution and environmental quality efforts;

(e) Weatherization activities;

(f) Economic development; and

(g) Other such services essential and necessary to the community as the Secretary determines by rule to be appropriate. (OAA sec. 518(a)(1)).

* * * * *

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

* * * * *

Grantee means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include public and nonprofit private agencies and organizations, agencies of a State, tribal organizations, and Territories, that receive SCSEP grants from the Department. (OAA secs. 502(b)(1), 506(a)(2)). As used here, ''grantee'' includes ''grantee'' as defined in 29 CFR 97.3 and ''recipient'' as defined in 29 CFR 95.2(gg).

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

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

* * * * *

Host agency means a public agency or a private nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 which provides a training work site and supervision for one or more participants. Political parties cannot be host agencies. A host agency may be a religious organization as long as the projects in which participants are being trained do not involve the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship. (OAA sec. 502(b)(1)(D)).

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

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

Individual employment plan or IEP means a plan for a participant that is based on an assessment of that participant conducted by the grantee or sub-recipient, or a recent assessment or plan developed by another employment and training program, and a related service strategy. The IEP must include an appropriate employment goal, objectives that lead to the goal, a timeline for the achievement of the objectives; and be jointly agreed upon with the participant. (OAA sec. 502(b)(1)(N)).

* * * * *

Jobs for Veterans Act means Public Law 107–288 (2002). Section 2(a) of the Jobs for Veterans Act, codified at 38 U.S.C. 4215(a), provides a priority of service for Department of Labor employment and training programs for veterans, and certain spouses of veterans, who otherwise meet the eligibility requirements for participation. Priority is extended to veterans. Priority is also extended to the spouse of a veteran who died of a service-connected disability; the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power; the spouse of any veteran who has a total disability resulting from a service-connected disability; and the spouse of any veteran who died while a disability so evaluated was in existence. (See § 641.520(b)).

* * * * *

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

* * * * *

Other participant (enrollee) costs means the costs of participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job, prior to or concurrent with a community service employment assignment, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to enable a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection,

intake orientation, and assessments. (OAA sec. 502(c)(6)(A)).

Pacific Island and Asian Americans means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA sec. 518(a)(5)).

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

* * * * *

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

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

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

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

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

* * * * *

Secretary means the Secretary of the Department of Labor.

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

* * * * *

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

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

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

Supportive services mean services, such as transportation, child care, dependent care, housing, and needs-related payments that are necessary to enable an individual to participate in activities authorized under the SCSEP. (OAA sec. 518(a)(7)).

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

* * * * *

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

Unemployed means an individual who is without a job and who wants and is available for work, including an individual who may have occasional employment that does not result in a constant source of income. (OAA sec. 518(a)(8)).

* * * * *

Workforce Investment Act or WIA means the Workforce Investment Act of 1998 (Pub. L. 105–220 [Aug. 7, 1998]), 29 U.S.C. 2801 *et seq.*, as amended.

* * * * *

7. Revise subparts B through F of part 641 to read as follows:

Subpart B—Coordination With the Workforce Investment Act

Sec.

641.200 What is the relationship between the SCSEP and the Workforce Investment Act?

641.210 What services, in addition to the applicable core services, must SCSEP grantees/sub-recipients provide through the One-Stop Delivery System?

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

641.230 Must the individual assessment conducted by the SCSEP grantee/sub-recipient and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I–B of WIA?

641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

Subpart C—The State Plan

641.300 What is the State Plan?

641.302 What is a four-year strategy?

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

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

641.315 Who participates in developing the State Plan?

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

641.325 What information must be provided in the State Plan?

641.330 How should the State Plan reflect community service needs?

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

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

641.345 What are the requirements for modifying the State Plan?

641.350 How should public comments be solicited and collected?

641.355 Who may comment on the State Plan?

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

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

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

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

641.410 How does an eligible entity apply?

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

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

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

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

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

641.465 Under what circumstances may the Department reject an application?

641.470 What happens if an applicant's application is rejected?
641.480 May the Governor, or the highest government official, make recommendations to the Department on national grant applications?
641.490 When will the Department compete SCSEP grant awards?
641.495 When must a State compete its SCSEP award?

Subpart E—Services to Participants

641.500 Who is eligible to participate in the SCSEP?
641.505 When is eligibility determined?
641.507 How is applicant income computed?
641.510 What types of income are included and excluded for participant eligibility determinations?
641.512 May grantees/sub-recipients enroll otherwise eligible individuals and place them directly into unsubsidized employment?
641.515 How must grantees/sub-recipients recruit and select eligible individuals for participation in the SCSEP?
641.520 Are there any priorities that grantees/sub-recipients must use in selecting eligible individuals for participation in the SCSEP?
641.535 What services must grantees/sub-recipients provide to participants?
641.540 What types of training may grantees/sub-recipients provide to SCSEP participants in addition to the training received at the community service employment assignment?
641.545 What supportive services may grantees/sub-recipients provide to participants?
641.550 What responsibility do grantees/sub-recipients have to place participants in unsubsidized employment?
641.565 What policies govern the provision of wages and benefits to participants?
641.570 Is there a time limit for participation in the program?
641.575 May a grantee/sub-recipient establish a limit on the amount of time its participants may spend at each host agency?
641.577 Is there a limit on community service employment assignment hours?
641.580 Under what circumstances may a grantee/sub-recipient terminate a participant?
641.585 What is the employment status of SCSEP participants?

Subpart F—Pilot, Demonstration, and Evaluation Projects

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

Subpart B—Coordination With the Workforce Investment Act

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

The SCSEP is a required partner under the Workforce Investment Act. As such, it is a part of the One-Stop Delivery System. SCSEP grantees/sub-recipients are required to follow all applicable rules under WIA and its regulations. (29 U.S.C. 2841(b)(1)(B)(vi) and 29 CFR 662.200 through 662.280).

§ 641.210 What services, in addition to the applicable core services, must SCSEP grantees/sub-recipients provide through the One-Stop Delivery System?

In addition to providing core services, as defined at 20 CFR 662.240 of the WIA regulations, SCSEP grantees/sub-recipients must make arrangements through the One-Stop Delivery System to provide eligible and ineligible individuals with referrals to WIA intensive and training services and access to other activities and programs carried out by other One-Stop partners.

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

No, SCSEP requirements continue to apply. Title V resources may not be used to serve individuals who are not SCSEP-eligible. The Workforce Investment Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop Delivery System. Although the overall effect is to provide universal access to core services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. (Note, however, that one allowable SCSEP cost is a SCSEP project's proportionate share of One-Stop costs; see § 641.850(d).) Title V funds can be used to pay wages to SCSEP participants receiving intensive and training services under title I of WIA provided that the SCSEP participants have each received a community service employment assignment. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIA or other appropriate partner programs. (29 U.S.C. 2841(b)(1)). These arrangements should be negotiated in the Memorandum of Understanding (MOU), which is an agreement developed and executed between the Local Workforce Investment Board, with the agreement of the chief local elected official, and the One-Stop partners relating to the operation of the One-Stop Delivery System in the local area. The MOU is further described in the WIA regulations at §§ 662.300 and 662.310 of this title.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee/sub-recipient and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title I–B of WIA?

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

§ 641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

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

(b) SCSEP participants who have been assessed and for whom an IEP has been developed have received an intensive service according to 20 CFR 663.240(a) of the WIA regulations. In order to enhance skill development related to the IEP, it may be necessary to provide training beyond the community service employment assignment to enable participants to meet their unsubsidized employment objectives. The SCSEP grantee/sub-recipient, the host agency, the WIA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU. (See § 641.540 for a further discussion of training for SCSEP participants.)

Subpart C—The State Plan

§ 641.300 What is the State Plan?

The State Plan is a plan, submitted by the Governor, or the highest government official, in each State, as an independent document or as part of the WIA Unified Plan, that outlines a four-year strategy for the statewide provision of community service employment and other authorized activities for eligible individuals under the SCSEP as

described in § 641.302. The State Plan also describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees/sub-recipients operating within the State and to facilitate the efforts of stakeholders, including State and Local Boards under WIA, to work collaboratively through a participatory process to accomplish the SCSEP's goals. (OAA sec. 503(a)(1)). The State Plan provisions are listed in § 641.325.

§ 641.302 What is a four-year strategy?

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

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

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

(2) Equitably serves rural and urban areas; and

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

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

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

(d) Long-term projections for job growth in industries and occupations in the State that may provide employment opportunities for older workers, and how those relate to the types of unsubsidized jobs for which SCSEP participants will be trained, and the types of skill training to be provided;

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

(f) The State strategy for continuous increase in the level of performance for entry into unsubsidized employment, and to achieve, at a minimum, the levels specified in section 513(a)(2)(E)(ii) of the OAA;

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

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

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

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

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

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

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

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

Yes, the Governor, or the highest governmental official of each State, may delegate responsibility for developing and submitting the State Plan, provided that any such delegation is consistent with State law and regulations. To delegate responsibility, the Governor, or the highest government official, must submit to the Department a signed statement indicating the individual and/or organization that will be submitting the State Plan on his or her behalf.

§ 641.315 Who participates in developing the State Plan?

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

(1) The State and Area Agencies on Aging;

(2) State and Local Boards under the Workforce Investment Act (WIA);

(3) Public and private nonprofit agencies and organizations providing employment services, including each grantee operating a SCSEP project within the State, except as provided for in § 641.320(b);

(4) Social service organizations providing services to older individuals;

(5) Grantees under title III of the OAA;

(6) Affected communities;

(7) Unemployed older individuals;

(8) Community-based organizations serving older individuals;

(9) Business organizations; and

(10) Labor organizations.

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

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

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

(b) National grantees serving older American Indians, or Pacific Island and Asian Americans, with funds reserved under OAA section 506(a)(3), are exempted from the requirement to participate in the State planning processes under section 503(a)(8) of the OAA. Although these national grantees may choose not to participate in the State planning process, the Department encourages their participation. Only those grantees using reserved funds are exempt; if a grantee is awarded one grant with reserved funds and another grant with non-reserved funds, the grantee is required under paragraph (a) of this section to participate in the State planning process for purposes of the non-reserved funds grant.

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

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

(a) The ratio of eligible individuals in each service area to the total eligible population in the State;

(b) The relative distribution of:

(1) Eligible individuals residing in urban and rural areas within the State;

(2) Eligible individuals who have the greatest economic need;

(3) Eligible individuals who are minorities;

(4) Eligible individuals who are limited English proficient; and

(5) Eligible individuals who have the greatest social need;

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

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

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

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

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

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

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

(j) Such other information as the Department may require in the State Plan instructions. (OAA sec. 503(a)(3)–(4), (6)).

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

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

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

The Governor, or the highest government official, must seek the advice and recommendations from representatives of the State and Area Agencies on Aging in the State and the State and Local Boards established under title I of WIA. (OAA sec. 503(a)(2)). The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIA. (OAA sec. 503(a)(4)(F)). The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop Delivery System and the steps that will be taken to encourage and improve coordination with the One-Stop Delivery System.

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

Pursuant to instructions issued by the Department, the Governor, or the highest government official, must review the State Plan and submit an update to the State Plan to the Secretary for consideration and approval not less often than every two years. OAA section 503(a)(1). States are encouraged to review their State Plan more frequently than every two years, however, and make modifications as circumstances warrant, pursuant to § 641.345. Prior to development of the update to the State Plan, the Governor, or the highest government official, must seek the advice and recommendations of the individuals and organizations identified in § 641.315 about what, if any, changes are needed, and must publish the State Plan, showing the changes, for public comment. OAA sections 503(a)(2), 503(a)(3).

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

(a) Modifications may be submitted anytime circumstances warrant.

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

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

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

(3) The State has failed to meet performance goals and must submit a corrective action plan; or

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

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

(d) States are not required to seek the advice and recommendations of the individuals and organizations identified in § 641.315 when modifying the State Plan.

(e) The Department will issue additional instructions for the procedures that must be followed when requesting modifications to the State Plan. (OAA sec. 503(a)(1)).

§ 641.350 How should public comments be solicited and collected?

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

§ 641.355 Who may comment on the State Plan?

Any individual or organization may comment on the Plan.

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

The two documents address some of the same areas, but are prepared at different points in time. The equitable distribution report is prepared by State grantees at the beginning of each fiscal year and provides a ''snapshot'' of the actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census data. The State Plan is prepared by the Governor, or the highest government official, and covers many areas in addition to equitable distribution, as discussed in § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the next equitable distribution report, which then forms the basis for the proposed distribution in the next State Plan update. This process is iterative in that it moves the authorized positions from over-served areas to underserved areas over a period of time.

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

Governors, or highest government officials, must describe in the State Plan the steps that are being taken to comply with the statutory requirement to avoid disruptions in the provision of services for participants. (OAA sec. 503(a)(6)). When there are new Census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any

other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service employment assignments to move into unsubsidized employment to make positions available for eligible individuals in the areas where there has been an increase in the eligible population. The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service employment assignment indefinitely. As discussed in § 641.570, there is a time limit on SCSEP participation, thus permitting positions to be transferred over time. Grantees and sub-recipients must not transfer positions from one geographic area to another without first notifying the State agency responsible for preparing the State Plan and equitable distribution report. Grantees must submit, in writing, any proposed changes in distribution that occur after submission of the equitable distribution report to the Federal Project Officer for approval. All grantees are strongly encouraged to coordinate any proposed changes in position distribution with the other grantees in the State, including the State project director, prior to submitting the proposed changes to their Federal Project Officer for approval.

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

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

(a) *National Grants.* Entities eligible to apply for national grants include nonprofit organizations, Federal public agencies, and tribal organizations. These entities must be capable of administering a multi-State program. State and local agencies may not apply for these funds.

(b) *State Grants.* (1) Section 506(e) of the OAA requires the Department to award each State a grant to provide SCSEP services. Governors, or highest government officials, designate an individual State agency as the organization to administer SCSEP funds.

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

§ 641.410 How does an eligible entity apply?

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

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

(c) *State Applicants.* A State that submits a Unified Plan under WIA section 501 may include the State's SCSEP grant application in its Unified Plan. Any State that submits a SCSEP grant application as part of its WIA Unified Plan must address all of the application requirements as published in the Department's instructions. Sections 641.300 through 641.365 address State Plan applications and modifications.

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

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

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

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

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

(d) Where the applicant has previously received a SCSEP grant, the applicant's prior performance in meeting SCSEP core measures of performance and addressing SCSEP additional measures of performance; and where the applicant has not received a SCSEP grant, the applicant's prior performance under other Federal or State programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Failure to submit required reports.

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

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

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

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

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

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

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

(a) Yes, an applicant may be disqualified if

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

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

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

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

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

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

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

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

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

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

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

(a) Any entity whose application is rejected in whole or in part will be informed that they have not been selected. The non-selected entity may request an explanation of the Department's basis for its rejection. If requested, the Department will provide the entity with feedback on its proposal. See § 641.900.

(b) Incumbent grantees will not have an opportunity to obtain technical assistance provided by the Department under OAA section 513(d)(2)(B)(i) to cure in an open competition any deficiency in a proposal because that will create inequity in favor of incumbents.

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

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

(e) In the event that any party notifies the Grant Officer that it is not satisfied with the Grant Officer's decision, the Grant Officer must return the decision to the ALJ for review.

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

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

(a) Yes, in accordance with § 641.410(b), each Governor, or highest government official, will have a reasonable opportunity to make comments on any application to operate

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

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

§ 641.490 When will the Department compete SCSEP grant awards?

(a)(1) As provided in a Solicitation for Grant Applications published in the **Federal Register**, the Department will hold a full and open competition for national grants every four years. (OAA sec. 514(a)(1)).

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

§ 641.495 When must a State compete its SCSEP award?

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

Subpart E—Services to Participants

§ 641.500 Who is eligible to participate in the SCSEP?

Anyone who is at least 55 years old, unemployed (as defined in § 641.140), and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by OMB (Federal poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 518(a)(3), (8)). A person with a disability may be treated as a ''family of one'' for income eligibility determination purposes.

§ 641.505 When is eligibility determined?

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee/sub-recipient is responsible for verifying their continued eligibility at least once every 12 months. Grantees/sub-recipients may also verify an individual's eligibility as circumstances require, including instances when enrollment is delayed.

§ 641.507 How is applicant income computed?

An applicant's income is computed by calculating the includable income received by the applicant during the 12-month period ending on the date an individual submits an application to participate in the SCSEP, or the annualized income for the 6-month period ending on the application date, whichever the grantee involved selects. (OAA sec. 518(a)(4)).

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

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

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

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

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

No, grantees/sub-recipients may not enroll as SCSEP participants individuals who can be directly placed into unsubsidized employment. Such individuals should be referred to an employment provider, such as the One-Stop Center for job placement assistance under WIA.

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

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

(b) Grantees and sub-recipients must use the One-Stop Delivery System in the recruitment and selection of eligible individuals to ensure that the maximum number of eligible individuals have an opportunity to participate in the project. (OAA sec. 502(b)(1)(H)).

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

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

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

(1) Are 65 years of age or older;

(2) Have a disability;

(3) Have limited English proficiency or low literacy skills;

(4) Reside in a rural area;

(5) Are veterans (or, in some cases, spouses of veterans) for purposes of section 2(a) of the Jobs for Veterans Act, 38 U.S.C. 4215(a) as set forth in paragraph (b) of this section;

(6) Have low employment prospects;

(7) Have failed to find employment after utilizing services provided through the One-Stop Delivery System; or

(8) Are homeless or are at risk for homelessness.(OAA sec. 518(b)).

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

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

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

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

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

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

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

(1) Providing orientation to the SCSEP, including information on project goals and objectives, community service employment assignments, training opportunities, available supportive services, the availability of a free physical examination, participant rights and responsibilities, and permitted and prohibited political activities (OAA sec. 502);

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

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

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

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

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

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

(6) Assisting participants in arranging for needed supportive services identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

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

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

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

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

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

(b) In addition to the services listed in paragraph (a) of this section, grantees/sub-recipients must provide services to participants according to administrative guidelines that may be issued by the Department.

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

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

(a) In addition to the training provided in a community service employment assignment, grantees and sub-recipients must arrange skill training that is realistic and consistent with the participants' IEP, that makes the most effective use of their skills and talents, and that prepares them for unsubsidized employment.

(b) Training may be provided prior to beginning or concurrent with a community service employment assignment.

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

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

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

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

(g) Grantees/sub-recipients may pay for costs associated with supportive services, such as transportation, necessary to participate in training. (OAA sec. 502(b)(1)(L)).

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

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

(a) Grantees/sub-recipients may provide or arrange for supportive services that are necessary to enable an individual to successfully participate in a SCSEP project, including but not limited to payment of reasonable costs of transportation; health and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; dependent care; housing; needs-related payments; and follow-up services. (OAA secs. 502(c)(6)(A)(iv), 518(a)(7)).

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

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

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

Because one goal of the program is to foster economic self-sufficiency, and because the SCSEP limits the amount of time a participant can remain in the program, grantees and sub-recipients must make every effort to place participants in unsubsidized employment. Grantees/sub-recipients are responsible for working with participants to ensure that the participants are receiving services and taking actions designed to help them achieve this goal. Grantees/sub-recipients must contact private and public employers directly or through the One-Stop Delivery System to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

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

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

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

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

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

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

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

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

(A) Physical examinations are a benefit, and not an eligibility criterion. The examining physician must provide, to participants only, a written report of the results of the examination. Participants may, at their option, provide the grantee or sub-recipient with a copy of the report.

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

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

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

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

(v) Grantees/sub-recipients must provide compensation for scheduled work hours during which a host agency's business is closed for a Federal holiday.

(vi) Grantees/sub-recipients must provide necessary sick leave, whether paid or unpaid, that is not part of an accumulated sick leave program.

(2) *Prohibited wage and benefits costs.*

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

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

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

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

(B) Annual leave.

(C) Accumulated sick leave.

(D) Bonuses.

(OAA sec. 502(c)(6)(A)(i)).

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

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

(2) At the time of enrollment, the grantee/sub-recipient must inform the participant of the time limit and the possible extension, and the grantee/sub-recipient must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions for transition must be reflected in the participant's IEP.

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

(b) *Increased periods of individual participation.* Pursuant to a request by a grantee, the Department will authorize a one-time increased period of participation up to an additional 12 months for individuals who:

(1) Have a severe disability;

(2) Are frail or are age 75 or older;

(3) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);

(4) Live in an area with persistent unemployment and are individuals with severely limited employment prospects; or

(5) Have limited English proficiency or low literacy skills.

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

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

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

(ii) Significant downturns in the areas served by the grantee or in the national economy;

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

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

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

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

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

(e) *Administrative guidance.* The Department will issue administrative guidance detailing the process by which a grantee may request an increased period of participation for a participant(s), and the process by which a grantee may request an extension of the average participation cap.

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

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

Yes, grantees/sub-recipients may establish limits on the amount of time that participants spend at a particular host agency, and are encouraged to rotate participants among different host agencies, or to different assignments within the same host agency, as such rotations may increase participants' skills development and employment opportunities. Such limits are established in the grant agreement, as approved by the Department, and must be consistent with the participants' IEPs. Host agency rotations have no effect on either the individual participation limit or the average participation cap (see § 641.570).

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

Yes. Each participant's community service employment assignment must not exceed 1,300 hours during a Program Year. The 1,300 hours includes all paid hours directly related to the community service employment assignment, including any hours of scheduled work during a Federal holiday and any hours of compensated or uncompensated leave. Hours spent by a participant in SCSEP orientation and training do not count toward the 1,300 hour limit.

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

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

(b) If, during eligibility verification under § 641.505, a grantee/sub-recipient finds a participant to be no longer eligible for enrollment, the grantee/sub-recipient must give the participant written notice explaining the reason(s) for termination within 30 days, and must terminate the participant 30 days after the participant receives the notice.

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

(d) A grantee/sub-recipient may terminate a participant for cause. In doing so, the grantee/sub-recipient must give the participant written notice explaining the reason(s) for termination. Grantees must include their policies concerning for-cause terminations in the grant application.

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

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

(g) Grantees and sub-recipients must provide each participant at the time of enrollment with a written copy of its policies for terminating a participant for cause or otherwise, and must verbally review those policies with each participant.

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

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

§ 641.585 What is the employment status of SCSEP participants?

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

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

Subpart F—Pilot, Demonstration, and Evaluation Projects

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

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

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

The Department may enter into agreements with States, public agencies, nonprofit private organizations, or private business concerns, as may be necessary, to conduct pilot, demonstration, and evaluation projects.

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

Organizations applying for pilot, demonstration, and evaluation project funding must follow the instructions issued by the Department.

§ 641.630 What pilot, demonstration, and evaluation project activities are allowable under section 502(e)?

Allowable pilot, demonstration and evaluation projects include:

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

(b) Demonstration projects and pilot projects designed to:

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

(2) Improve the provision of services to eligible individuals under One-Stop Delivery Systems established under title I of WIA;

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

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

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

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

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

(f) Evaluation of SCSEP activities.

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

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

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

8. Revise subparts H and I of part 641 to read as follows:

Subpart H—Administrative Requirements

Sec.

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

Subpart I—Grievance Procedures and Appeals Process

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

Subpart H—Administrative Requirements

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

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

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

common rule implementing OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments'' (10/07/1994) (further amended 08/29/1977), codified at 29 CFR part 97.

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

§ 641.803 What is program income?

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

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP and must use it for the program, during the grant period in which it was earned, as provided in 29 CFR 95.24(a) (non-profit and commercial organizations) or 29 CFR 97.25(g) (2) (State and local governments), as applicable.

(b) Recipients that continue to receive a SCSEP grant from the Department must spend program income earned or generated from SCSEP-funded activities after the end of the grant period for SCSEP purposes in the Program Year it was received.

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

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

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

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

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

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

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

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

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

(a) Except as provided in § 641.815, recipients must expend SCSEP funds during the Program Year for which they are awarded (July 1–June 30). (OAA sec. 515(b)).

(b) SCSEP recipients must ensure that no sub-agreement provides for the expenditure of any SCSEP funds before July 1 of the grant year, or after the end of the grant period, except as provided in § 641.815.

§ 641.815 May the period of availability be extended?

SCSEP recipients may request in writing, and the Department may grant, an extension of the period during which SCSEP funds may be obligated or expended. SCSEP recipients requesting an extension must justify that an extension is necessary. (OAA sec. 515(b)). The Department will notify recipients in writing of the approval or disapproval of any such requests.

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

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

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

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

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

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

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

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

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

(b) Recipients and sub-recipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 37 if:

(1) The recipient:

(i) Is a One-Stop partner listed in section 121(b) of WIA, and

(ii) Operates programs and activities that are part of the One-Stop Delivery System established under WIA; or

(2) The recipient otherwise satisfies the definition of ''recipient'' in 29 CFR 37.4.

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

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements cited in this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210, for processing. (See § 641.910(d)).

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

§ 641.833 What policies govern political patronage?

(a) A recipient or sub-recipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as indicated in § 641.827(b), certain recipients and sub-recipients of SCSEP funds are required to comply with WIA nondiscrimination regulations in 29 CFR part 37. These regulations prohibit discrimination on the basis of political affiliation or belief.

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

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

§ 641.836 What policies govern political activities?

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

(b) State and local employees involved in the administration of SCSEP activities may not engage in political activities prohibited under the Hatch Act (5 U.S.C. chapter 15), including:

(1) Seeking partisan elective office;

(2) Using official authority or influence for the purpose of affecting elections, nominations for office, or fund-raising for political purposes. (5 U.S.C. 1502).

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

(d) SCSEP recipients must ensure that:

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

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

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

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

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

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

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in non-political assignments is permissible, however, provided that:

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

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

§ 641.839 What policies govern union organizing activities?

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

§ 641.841 What policies govern nepotism?

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

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

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

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

(a) A community service employment assignment for a participant under title V of the OAA is permissible only when specific maintenance of effort requirements are met.

(b) Each project funded under title V:

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

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

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

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

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

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

(b) Allowable costs/cost principles.

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''

(2) Allowable costs for nonprofit organizations must be determined under OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(4) Allowable costs for hospitals must be determined in accordance with appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(5) Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

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

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

(b) *Claims against the Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

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

(d) *One-Stop Costs.* Costs of participating as a required partner in the One-Stop Delivery System established in accordance with section 134(c) of the Workforce Investment Act of 1998 are allowable, provided that SCSEP services and funding are provided in accordance with the MOU required by the Workforce Investment Act and section 502(b)(1)(O) of OAA, and costs are determined in accordance with the applicable cost principles. The costs of services provided by the SCSEP, including those provided by participants/enrollees, may comprise a portion or the total of a SCSEP project's proportionate share of One-Stop costs.

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

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

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

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

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

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

§ 641.853 How are costs classified?

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

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

§ 641.856 What functions and activities constitute administrative costs?

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

(b) Administrative costs are the costs associated with:

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

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

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

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

(vii) Audit functions;

(viii) General legal services functions;

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

(x) Preparing administrative reports; and

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

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

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

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

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development, and operating costs of such systems; and

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

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

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

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

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

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

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

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

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

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

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

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

(3) Local area performance information.

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

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

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

§ 641.864 What functions and activities constitute programmatic activity costs?

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

(a) Participant wages, such benefits as are required by law (such as workers' compensation or unemployment compensation), the costs of physical examinations, compensation for scheduled work hours during which a host agency is closed for a Federal holiday, and necessary sick leave that is not part of an accumulated sick leave program, except that no amounts provided under the grant may be used to pay the cost of pension benefits, annual leave, accumulated sick leave, or bonuses, as described in § 641.565;

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

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

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

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

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

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

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

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

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

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

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation for staff, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Department;

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

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

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

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

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

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

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

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

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

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

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

(3) To use the 10 percent of grant funds that would otherwise be devoted to wages and benefits under § 641.873 to provide participant training (as described in § 641.540(e)) and participant supportive services to enable a participant to successfully participate in a SCSEP project (as described in § 641.545), in which case the grantee must provide (from the funds described in this paragraph) the subsistence allowance described in § 641.565(a) for those individual participants who are receiving training from the funds described in this paragraph, but may not use the funds described in this paragraph to pay for any administrative costs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In accordance with 29 CFR 97.40 (State and local governments) or 29 CFR 95.51 (non-profit and commercial organizations), each SCSEP recipient must submit updated data on participants, host agencies, and employers in electronic format via the Internet within 30 days after the end of each of the first three quarters of the Program Year, on the last day of the fourth quarter of the Program Year, and within 90 days after the last day of the Program Year. Recipients wishing to correct data errors or omissions for their final Program Year report must do so within 90 days after the end of the Program Year. The Department will generate SCSEP Quarterly Progress Reports (QPRs), as well as the final QPR, as soon as possible after receipt of the data. (OAA sec. 503(f)(3)).

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

(d) Each SCSEP recipient must collect data and submit reports regarding the performance measures. See Subpart F. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(e) Each SCSEP recipient may be required to collect data and submit reports about the demographic characteristics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare these reports.

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

(g) Recipients may be required to maintain records that contain any other information that the Department determines to be appropriate in support of any other reports that the Department may require. (OAA sec. 503(f)(3)).

(h) Grantees submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as

failing to submit reports, which may result in failing one of the responsibility tests outlined in § 641.430 and section 514(d) of the OAA.

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

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

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

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

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

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

§ 641.884 What are the grant closeout procedures?

SCSEP recipients must follow the grant closeout procedures at 29 CFR 97.50 (State and local governments) or 29 CFR 95.71 (non-profit and government organizations), as appropriate. The Department will issue supplementary closeout instructions to title V recipients as necessary.XXX

Subpart I—Grievance Procedures and Appeals Process

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

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

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

(c) A request for a hearing under this section must state specifically those issues in the Grant Officer's notification upon which review is requested. Those provisions of the Grant Officer's notification not specified for review, or the entire notification when no hearing has been requested within 21 days, are considered resolved and not subject to further review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400 North, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, published at 61 FR 19978, May 3, 1996), specifically identifying the procedure, fact, law, or policy to which exception is taken. The Department will deem any exception not specifically urged 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 constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

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

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

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

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

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

(i) This section only applies to multi-year grant awards.

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

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

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

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the grantee's procedures, may be filed with the Chief, Division of Adult Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, section 188 of the Workforce Investment Act of 1998 (WIA), or their implementing regulations, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIA section 188 may be filed initially at the grantee level. See 29 CFR 37.71, 37.76. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 37.70 through 37.80 to resolve the complaint.

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

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

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR 31 or 29 CFR 37, as appropriate.

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

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

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 400 North, 800 K Street, NW., Washington, DC 20001 with a copy to the Department official who signed the final determination.

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

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

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

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

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

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 2–96), specifically identifying the procedure, fact, law, or policy to which exception is taken. The Department will deem any exception not specifically urged 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 constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

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

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 (a), (c), and (d) may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) Unless the parties agree in writing to extend the period, the waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as the final agency decision.

Signed at Washington, DC, this 30th day of July 2008.

Brent R. Orrell,

Deputy Assistant Secretary, Employment and Training Administration.

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