

By direction of the Commission.

Donald S. Clark,
Secretary

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 672

RIN 1205-AB49

YouthBuild Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) is issuing this Notice of Proposed Rulemaking (NPRM) to implement the YouthBuild Transfer Act of 2006 (Transfer Act), which establishes the YouthBuild program in the Department under subtitle D of Title I of the Workforce Investment Act of 1998 (WIA) as amended. The proposed rule clarifies the requirements of the Transfer Act for YouthBuild program providers and participants. The proposed rule would set standards under which YouthBuild program providers would carry out the goals of the program, which are to assist at-risk youth in obtaining a High School diploma or GED and acquiring occupational skills training that leads to employment through the construction/rehabilitation of housing for low-income or homeless individuals and families in the community.

DATES: Interested persons are invited to submit comments on this proposed rule. To ensure consideration, comments must be received on or before October 26, 2010.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB49, by any one of the following methods:

Federal e-Rulemaking Portal: <http://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.

The Department will not accept e-mailed or faxed comments.

Instructions: Label all submissions with RIN 1205-AB49.

Please submit your comment by only one method. Please be advised that the Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, or redacting any information. The *http://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 information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard any such personal 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 on <http://www.regulations.gov>.

Docket: All comments on this proposed rule will be available on the <http://www.regulations.gov> Web site and can be found using RIN 1205-AB49. The Department also will make all the comments it receives available for public inspection by appointment 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, Braille 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 (this is not a toll-free number). You may also contact this office at the address listed.

FOR FURTHER INFORMATION CONTACT: 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; 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 (800) 877-8339.

SUPPLEMENTARY INFORMATION:

The Preamble of 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 the structure and requirements of the YouthBuild Program
- III. Administrative Section—sets forth the applicable regulatory requirements

I. Background

On September 22, 2006, the YouthBuild Transfer Act, Public Law 109-281 (Transfer Act) was signed into law. The Transfer Act authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades.

The White House Task Force for Disadvantaged Youth recommended transferring the administration of the YouthBuild program, also known as “Hope for Youth”, from the U.S. Department of Housing and Urban Development (HUD) to the Department. *The White House Task Force for Disadvantaged Youth Final Report*. Pg. 4, October 2003.

The transfer allows for greater coordination of the YouthBuild program with Job Corps, WIA Youth Programs, the workforce investment system, including local workforce investment boards (WIBs), One-Stop Career Centers, and their partner programs (for example, Federal, State, and local education agencies), while at the same time retaining many of the same affordable housing goals as under the HUD program. The Transfer Act transfers the authority for the YouthBuild program from the Cranston-Gonzalez National Affordable Housing Act (49 U.S.C. 12899 *et seq.*) (Cranston-Gonzales Act) to subtitle D of Title I of WIA and it makes modifications and changes to the programs that focus on increasing the skilled workforce available for the construction trades.

In addition to transferring the administration of the program from HUD to the Department, the Transfer Act expands the activities authorized under the YouthBuild program to include many activities authorized under the WIA Title I youth formula program. The transfer maintains all the goals of the YouthBuild program as

originally developed under HUD, but shifts the emphasis to education and skills training for at-risk youth participants. The Department will continue to support the development of affordable housing which was a goal of the HUD program. The Transfer Act incorporates technical modifications to the YouthBuild program to make it consistent with WIA's job training, education, and employment goals. Moreover, the Transfer Act authorizes education and workforce investment activities such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. In addition, the Transfer Act authorizes the Department to use performance indicators developed for Federal youth employment and training programs to enhance the accountability of YouthBuild programs.

Although the construction and rehabilitation of affordable housing continues to be a major component of the YouthBuild training program, the Department's main focus is to prepare at-risk youth for employment. Therefore, the Department has increased the emphasis on the education and occupational skill training provided by YouthBuild programs. Specifically, the occupational skill training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry recognized credential; i.e., what someone receives after successful completion of the National Center for Construction Education and Research' program, the Home Builder's Institute's (HBI) HPACT curriculum, or the Building Trades Multi-Craft Core curriculum.

The Transfer Act also places emphasis on coordinating training with registered apprenticeship programs, which will allow participants to enter such programs upon exiting YouthBuild. Additionally, the Transfer Act permits the use of some YouthBuild funds to pay for supervision and training costs to allow participants to develop skills and obtain work experience in the rehabilitation or construction of community buildings and other public facilities. The Transfer Act authorizes these and other new activities to better assist at-risk youth in preparing for employment.

The Department has administered the YouthBuild program, including making grants, for more than three years since the passage of the Transfer Act. In drafting these regulations, the Department relies on the knowledge gained from administering these grants, along with its experience gained in developing the WIA Youth Program.

The Transfer Act retains the out-of-school and age requirements that were in the Cranston-Gonzalez Act for YouthBuild, targeting eligible youth who are school dropouts and are between the ages of 16 and 24 years old. The Transfer Act further provides that at least 75 percent of participants must be school drop-outs who are members of low-income families, youth in foster care, youth offenders, youths with a disability, children of an incarcerated parent, or migrant youths. In addition, to ensure that other at-risk youths have access to the program, the Transfer Act includes a 25 percent eligibility exception. This exception permits secondary schools to refer students to a YouthBuild program that offers a secondary school diploma if the program is determined to be a better fit for the youth. The exception also allows youth who have a diploma or General Education Development (GED) degree but test as basic skills deficient to participate in a YouthBuild program.

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

Subpart A—Purpose and Definitions

What is YouthBuild? (§ 672.100)

This section describes the YouthBuild program. YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged youth. The program also benefits the larger community because it provides new and rehabilitated affordable housing.

The program recruits youth between the ages of 16 and 24. The youth are school dropouts and are either: A member of a low-income family, a youth in foster care, a youth offender, a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth. In addition, to ensure that other at-risk youths have access to the program, the Transfer Act includes a 25 percent eligibility exception. Program participants are given the chance to earn their high school diploma or pass their GED tests, to participate in the occupational skills training, and are provided with the opportunity to pursue post-secondary education and training, including registered apprenticeship programs.

The program creates a sense of self-worth for its participants by providing skills training in the construction industry and highlighting the important role that each individual can have on community development and engagement. In addition, youth can witness their success and contributions through the rehabilitation and

construction of affordable housing for homeless individuals and families and low-income families.

What are the purposes of the YouthBuild program? (§ 672.105)

This section describes the purposes of the YouthBuild program. The overarching goal of the YouthBuild program is to offer disadvantaged youth the opportunity to obtain education and useful employment skills to enter the labor market. Construction encompasses this goal, and serves as a platform to provide skills training and education to YouthBuild participants.

In addition to the goal listed above, another essential element of the YouthBuild program is the provision of counseling and assistance in obtaining post-secondary education and/or employment and training placements that allow youth to further their education and training. Further, youth also have the ability to participate in leadership development and community service activities. The program seeks to increase the number of affordable housing units available to alleviate the rate of homelessness in communities with YouthBuild programs. Another goal of YouthBuild is to foster the development of leadership skills and a commitment to community improvement among youth in low-income communities. Through these opportunities, youth can contribute to their communities both through workforce participation and housing development.

What definitions apply to this part? (§ 672.110)

The definitions that are listed in this section are specific to the YouthBuild program. As an amendment to the Workforce Investment Act, other definitions that apply to the YouthBuild Program are defined under sec. 101 of WIA, 29 U.S.C. 2801 and at 20 CFR part 660.

Alternative School: To determine the educational status and therefore eligibility of a youth to participate in YouthBuild, the term "alternative school" means a school or program that is set up by a State, school district, or other community-based entity to serve young people who are not succeeding in a traditional public school environment. An "alternative school" must be recognized by the authorizing entity designated by the State. The school must award a high school diploma. "Alternative schools" must be affiliated with YouthBuild programs in order to qualify as part of a "sequential service strategy."

Community or Other Public Facility: The term “community or other public facility” means those facilities which are publicly owned and publicly used for the benefit of the community. Examples include public use buildings such as recreation centers, libraries, public park shelters, or public schools. This term may also encompass facilities used by the program but only if the facility is available for public entry and use.

Core Construction: The term “core construction” means activities that are directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, Construction and Extraction Occupations, in codes 47–1011 through 47–4099. These activities may also include, but are not limited to construction skills that may be required by green building and weatherization industries but are not yet standardized. A full list of the SOC’s can be found at the Department Bureau of Labor Statistics (BLS) Web site, <http://www.bls.gov/soc>.

Eligible Entity: The term “eligible entity” describes the types of organizations that are permitted to apply for a YouthBuild grant. The definition of “eligible entity” was provided in the YouthBuild Transfer Act.

Homeless Individual: The definition of “homeless individual” comes from the McKinney-Vento Homeless Assistance Act. 42 U.S.C. 11302. This term is defined in the YouthBuild Transfer Act.

Housing Development Agency: The term “housing development agency” is defined in the YouthBuild Transfer Act.

Income: The definition of “income” comes from the United States Housing Act of 1937. 42 U.S.C. 1437a(b). Under § 3(b) of the YouthBuild Transfer Act (29 U.S.C. 2918(a)), the determination of income is made in accordance with guidance provided by the Secretary of Labor (Secretary), in consultation with the Secretary of Agriculture.

Indian; Indian Tribe: The definitions of “Indian” and “Indian tribe” are taken from the Indian Self-Determination and Education Assistance Act. 25 U.S.C. 450b. These terms are defined in the YouthBuild Transfer Act.

Individual of Limited English Proficiency: The definition of an “individual of limited English proficiency” means an eligible participant who meets the criteria derived from the Adult Education and Family Literacy Act. 20 U.S.C. 9202(10).

This term is defined in the YouthBuild Transfer Act.

Low-Income Family: The definition of the term “low-income family” is taken from the United States Housing Act of 1937. 42 U.S.C. 1437a(b)(2). As defined, a “low-income family” is: A family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. This term is defined in the YouthBuild Transfer Act. Under HUD’s YouthBuild program, one of the eligibility criteria for participants was that the individual must be a very low-income individual or a member of a “very low-income family.” However, the YouthBuild Transfer Act requires only that an individual be a member of a “low-income family” or fall into one of the new categories prescribed by the Transfer Act. The definition of “low-income family” in the proposed rule subsumes the definition of “very low-income family” in HUD’s YouthBuild regulations and broadens the pool of eligible participants. This definition applies not only to the eligibility of participants but also to the requirement that any residential units constructed or rehabilitated using YouthBuild funds must be used to house homeless individuals and families or low-income families. Further, as defined by 42 U.S.C. 1437a(b)(2)(3), the term families includes families consisting of one person.

Migrant Youth: The term “migrant youth” means a youth who, or a youth who is the dependent of someone who, during the previous 12 months has:

(a) Worked at least 25 days in agricultural labor that is characterized by chronic unemployment or underemployment;

(b) Made at least \$800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(c) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(d) Was employed in agricultural labor that requires travel to a jobsite such that the worker is unable to return to a permanent place of residence within the same day.

This definition is adapted from guidance for determining eligibility of migrant and seasonal farmworkers for the National Farmworker Jobs Program in Department of Labor, Farmworker Bulletin 00–02, NFJP Eligibility Policy Guidance (2000).

Needs-Based Stipend: “needs-based stipends” are additional payments (beyond regular stipends for program participation) that are based on defined needs that enable a youth to participate in the program. To provide “needs-based stipends”, the grantee must have a written policy in place, which defines: (a) Eligibility; (b) the amounts; and (c) the required documentation and criteria for payments. This policy must be applied consistently to all program participants.

Occupational Skills Training: “Occupational skills training” means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. The occupational skills training offered in YouthBuild programs must begin upon program enrollment and tied to the award of an industry-recognized credential.

Partnership: The term “partnership” means an agreement that involves a Memorandum of Understanding (MOU) or letter of commitment submitted by each organization and applicant, as defined in the YouthBuild Transfer Act, that plan on working together as partners in a YouthBuild program. Each partner must have a clearly defined role. These roles must be verified through a letter of commitment, not just a letter of support, or MOU submitted by each partner. The letter of commitment or MOU must detail the role the partner will play in the YouthBuild Program, including specific responsibilities and resources committed, if appropriate. These letters or MOU’s must clearly indicate the partnering organization’s unique contribution and commitment to the YouthBuild Program. This term is not in the YouthBuild Transfer Act but was added to the regulations. An applicant’s ability to enter into partnerships with education and training providers, employers, the workforce investment system, the juvenile justice system and faith-based and community organizations will be a criteria in selecting grantees.

Registered Apprenticeship Program: The term “registered apprenticeship program” is defined in the YouthBuild Transfer Act and means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement. To the extent that 29 CFR part 30 is amended, such amendments shall apply to the

determination of what is a “registered apprenticeship program”.

Sequential Service Strategy: The term “sequential service strategy” defines the educational and occupational skills training plan developed for individuals who have dropped out of high school and want to enroll in a YouthBuild program. The plan is designed so that the individual first enrolls in an alternative school, and, after receiving a year or more of educational services, enrolls in a YouthBuild program. A youth will only be eligible for the YouthBuild program under the sequential service strategy if the alternative school is affiliated with a YouthBuild program.

The Office of Inspector General suggested that a definition be provided for “sequential service strategy” either through guidance or in the regulations after its Audit of the YouthBuild Recovery grants. The reason for their suggestion was that grantees should be provided guidance on the meaning of provisions in both the American Recovery and Reinvestment Act, Public Law 111–5 (2009) and the 2009 Omnibus Appropriations Act, Public Law 111–8 (2009) that broaden the WIA YouthBuild school dropout provision for Program Years 2008 and 2009. We agree and, therefore, have added definitions to clarify the terms “alternative school” and “sequential service strategy” as used in those statutory provisions.

Transitional Housing: The term “transitional housing” is defined in the YouthBuild Transfer Act.

Youth in Foster Care: The term “youth in foster care” means youth currently in foster care or youth who have ever been in foster care. The YouthBuild Transfer Act uses the term “youth in foster care (including youth aging out of foster care).” The U.S. Department of Health and Human Services (HHS) has recommended that the term be changed to youth who have ever been in foster care. We accept this new definition as we believe it is consistent with the statutory definition and is clearer and explains how the program uses the term.

Youth Who is an Individual with a Disability: The term Youth who is an Individual with a Disability means an individual between the ages 16–24 who is an individual with a disability as defined by Section 101 of the Workforce Investment Act or a student receiving special education and related services under the Individuals with Disabilities Education Act (IDEA).

Subpart B—Funding and Grant Applications

How are YouthBuild grants funded and administered? (§ 672.200)

This section describes how YouthBuild grants are funded and administered. The YouthBuild program is funded through appropriations authorized under 29 U.S.C. 2918a(h). YouthBuild will be administered as a national program with grants awarded through a competitive selection process, similar to the YouthBuild “implementation grants” formerly administered by HUD. It is noteworthy that the authority to issue “planning grants,” which was formerly authorized under the Cranston-Gonzalez Act, was not retained in the Transfer Act as Congress considered planning grants no longer necessary to administer the current program.

How does an eligible entity apply for grant funds to operate a YouthBuild program? (§ 672.205)

This section describes in general terms the process the Department will use to select grantees. We propose to select grantees through a competitive process. The directions for applying for grants will be issued in a Solicitation for Grant Applications (SGA) which will describe the eligibility requirements and rating criteria for the competition.

Essentially, all of the grant application requirements to operate a YouthBuild program have been retained, but several new requirements are now added by the Transfer Act and these regulations. Among the new requirements, an applicant is required to provide labor market information for the local market area where the grant will be used and to provide projections on career opportunities in local industries, such as the construction industry. In addition, an applicant’s statement of qualifications must describe its relationships with the workforce investment system and with employers. HUD required a description of the manner in which eligible youth will be recruited and selected as YouthBuild participants, including arrangements with required partners. Newly added to the list as a requirement, is a description of the arrangements that will be made with the local workforce board, One-Stop operators, and faith-based organizations to recruit YouthBuild participants. HUD only required such a description for community-based organizations. Other new requirements are that applicants describe how they will meet common performance measures for youth programs, identify the role of employers

in the program, and describe their ability to grant industry-recognized skills-based certifications. All of these requirements will be described in the SGA through which grantees are selected.

How are eligible entities selected to receive grant funds? (§ 672.210)

This section describes the selection criteria for selecting grantees. The selection criteria that the Secretary may use to make grant determinations have been expanded from HUD’s selection criteria. The new factors, which are specified in the Transfer Act and are in addition to existing criteria, include the applicant’s focus on preparing youth for postsecondary education or careers in demand occupations; the extent to which the applicant will coordinate with the workforce investment system, employers, and educational institutions in conducting their YouthBuild activities; the applicant’s ability to serve different regions, including rural areas and States without prior YouthBuild programs. The weights given to these criteria will be specified in the SGA. Additionally, in the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to a SGA.

The Department has added to the selection criteria one factor not listed in the Transfer Act. Applicants will be evaluated on their ability to attract partners. Examples of partners are educational and training providers, employers, the workforce investment system, the juvenile justice system, disability service providers, and faith-based organizations as partners. While the selection criteria already emphasize the applicants’ ability to coordinate with these groups, a partnership is a more formal commitment in which the applicant and its partner agree to work together, signified by a memorandum of understanding or letter of commitment indicating the partnering organization’s unique contribution and commitment to the YouthBuild Program. The complexity of the YouthBuild program requires that entities engage in meaningful partnerships throughout their community to ensure the success of the participants as they transition from the program into post-secondary employment or education as well as ensure the successful construction or rehabilitation of affordable housing.

How are eligible entities notified of approval for grant funds? (§ 672.215)

The Secretary, to the extent practicable, must notify each applicant of the approval or disapproval of its

grant application not later than 5 months after the date of the receipt of the application. This is a change from the 4-month notification timeframe under the HUD program and reflects differences in the grant award process at the Department.

Grants will be awarded for a 3-year period of performance. This includes 2 years of core program operations (education, workforce investment skills training, and other activities such as youth leadership development) plus at least 9 months of follow-up support services and tracking of participant outcomes. In the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to the SGA.

Subpart C—Program Requirements

Who is an eligible participant? (§ 672.300)

This section sets out the participant eligibility requirements. The requirements that at least 75 percent of participants must be between the ages of 16 and 24 years on the date of enrollment and must be school dropouts are continued under the YouthBuild Transfer Act. Later statutes provided that a YouthBuild program may serve an individual who has dropped out of school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy.

Previously, under the HUD regulations, an eligible participant was also required to be a very low-income individual or a member of a very low-income family using the definition of income, adjusted for certain exclusions as determined by the United States Housing Act of 1937. The Department proposes to revise the previous requirement by now requiring that a participant be a member of a low-income family using the definition of income, adjusted for certain exclusions as determined by the United States Housing Act of 1937. As specified in the Transfer Act, an eligible participant may also be a youth in foster care, a youth offender (including any youth between the ages of 16 and 24 who has been convicted through either a juvenile or adult criminal justice system), a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth.

Also continuing under the YouthBuild Transfer Act is the exception provision that no more than 25 percent of the participants may be individuals who do not meet the general income or educational needs requirement, providing that they are

academically deficient in one of two areas. The first area is that high school graduates or those who already have a GED but who are “basic skills deficient” may participate in the program under this exception. The term basic skills deficient has the same definition as it does in section 101 of WIA. It is “an individual that has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.” The second area of the exception refers to youth who are still enrolled in a secondary school and are referred by that school to participate in a YouthBuild program that leads to the attainment of a secondary school diploma.

Are there special rules that apply to veterans? (§ 672.305)

The priority of service provisions for qualified persons under Department of Labor regulations at 20 CFR part 1010 apply to the YouthBuild program as a Department of Labor job training program. Accordingly, youth who are eligible participants for the YouthBuild programs, and are also covered persons under 20 CFR part 1010, must receive priority of service. The special rule for determining low-income status for veterans which is found at 20 CFR 667.225 also applies.

What eligible activities may be funded under the YouthBuild program? (§ 672.310)

The HUD regulations included provisions for education and job training activities, including work experience and skills training, as eligible activities under YouthBuild grants. The Transfer Act outlines new education and workforce investment activities permitted under the YouthBuild program such as postsecondary education services and activities, including tutoring, study skills training and dropout prevention activities; other paid and unpaid work experiences, including internships and job shadowing; and alternative secondary school services, occupational skills training, and counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral. Grantees have discretion on which of these activities to offer and may also offer additional activities. However, as explained in § 672.320, the Department requires that every grantee offer as part of its program the activities listed in § 672.310(b)(1): Work experience and skills training in housing rehabilitation and construction.

With the transfer of the YouthBuild program to the Department, there is wider access to workforce-related programs administered by the Department. Therefore, the Department proposes to place an emphasis on coordinating training with registered apprenticeship programs, which will allow participants to enter such programs after exiting YouthBuild. YouthBuild programs are permitted to use some funds to pay for supervision and training costs to allow participants to develop skills and obtain work experience through the rehabilitation or construction of community or other public facilities. As a result, by expanding the use of funds for participant services related to the rehabilitation or construction of community or public facilities, job training and career opportunities for YouthBuild participants will be enhanced.

What timeframes apply to participation? (§ 672.315)

The participation parameters for individuals participating in a YouthBuild program are unchanged under the Transfer Act. Participants must be offered full-time participation for a period of at least 6 months and not more than 24 months.

What timeframes must be devoted to education and workforce investment or other activities? (§ 672.320)

The Department proposes to require YouthBuild grantees to structure programs so that participants in the program are offered specific educational and related services and activities during at least 50 percent of their participation time and workforce investment activities during at least 40 percent of the remaining time. The latter is a new requirement under the Transfer Act. Only the requirement that 50 percent of participant time be for educational activities had existed under the HUD program.

The remaining 10 percent can be used for educational, construction-related occupational skills training, and/or leadership development as well as community service activities. Grantees should establish a program structure that is used consistently throughout the program cycle.

Within these timeframes, YouthBuild grantees can generally determine which educational, workforce or other activities to offer participants. However, the Department has determined that the work experience and skills training in rehabilitation and construction set out in § 672.310(b)(1) are an essential part of the YouthBuild program and that every

YouthBuild grantee must include such activities as part of its workforce activities. YouthBuild was designed as a program that provides disadvantaged youth with both education and skills in occupations in demand while fostering a commitment to community development and expanding the supply of affordable housing to homeless individuals or families or low-income families. The White House Task Force for Disadvantaged Youth Final Report emphasized that, at its core, YouthBuild is an employment and training program and, as the Report recommended, the Transfer Act transferred authority for YouthBuild to the Department of Labor to provide greater coordination with existing workforce programs.

To fully achieve the intent of the Transfer Act, the Department has interpreted the Act to require that work experience and skills training in housing construction and rehabilitation be part of every YouthBuild program. However, this may present a challenge for YouthBuild programs in placing participants in the construction industry when demand for construction workers in a local area is low, as it is in the current economic landscape. In addition, many youth can benefit from the YouthBuild program, but are not interested ultimately in entering construction careers. Many current grantees have expressed an interest in expanding their program training beyond construction for these reasons. Therefore, we are seeking comments on whether YouthBuild should continue to focus on construction skills training or if the skills training should be expanded to other industry areas.

What timeframes apply for follow-up services? (§ 672.325)

The Department proposes to require YouthBuild grantees to provide follow-up services for a period of not less than 3 quarters after exit (nine months) and not to exceed 12 months after exit. Follow-up services are services that help YouthBuild participants transition successfully from the program into education and/or employment. This specificity is added to the regulations because of the recognition that youth exiting the program may require additional services in order to maintain the positive gains they achieved while enrolled. Follow-up services include supportive services and may also include, but are not limited to, activities such as counseling services, job search assistance, and checking-in on participants after they have left the program. Additionally, programs are required to report on participants who have exited the program for 3 quarters

after exit to ensure their successful transition into employment or education and to collect data on the performance indicators required by the Department. In accordance with the Department's instructions, individual YouthBuild programs determine participant exit dates based on participant completion of the program requirements for educational and workforce investment activities or other activities.

Subpart D—Performance Indicators

What are the performance indicators for YouthBuild grants? (§ 672.400)

All YouthBuild grantees must report on the three youth common performance indicators currently used to assess performance in the WIA Formula Youth Program. These indicators as described in Departmental guidance (TEGL No. 17-05) are placement in employment or education, attainment of a degree or certificate, and literacy and numeracy gains. These performance indicators will help the Department to identify early potential for successful outcomes from grantees and sets forth one set of indicators to be used for both reporting purposes and WIA section 136 performance accountability purposes. They will also allow grantees to better serve the eligible populations under this program.

The Secretary may require grantees to track other performance indicators, including short-term performance indicators such as enrollment rate, number of initial job placements, number obtained High-School Diploma or GED, and provide this data to the Department in quarterly performance reports required under § 672.410. The Department will provide the details of the performance indicators in administrative guidance.

What are the required levels of performance for the performance indicators? (§ 672.405)

Each YouthBuild grantee must meet certain levels of performance established by the Department for each of the common performance measures described in § 672.400. In determining annual performance levels for the YouthBuild program, the Department reviews previous year's performance and also compares performance levels with similar WIA youth workforce development programs.

The levels of performance established must, at a minimum:

- (a) Be expressed in an objective, quantifiable, and measurable form; and
- (b) Lead to continuous improvement in performance.

Expected national levels of performance for each of the common

performance indicators, and any other performance indicators, will be established at a later date and provided in separately issued guidance. Generally, these other performance indicators are established, short-term indicators specified in the SGA or individual grant agreement and comprised of individual YouthBuild program data used by the Department to gauge individual program progress toward performance outcomes. Performance level expectations are based on available YouthBuild data and data from similar WIA Youth programs. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

What are the reporting requirements for YouthBuild grantees? (§ 672.410)

The Department proposes to require that each grantee receiving funds under this program must provide three quarterly reports to the Department:

(a) The Quarterly Performance Report (QPR);

(b) The quarterly narrative progress report; and

(c) The financial report.

Also, the Department may require a grantee to provide additional reports, as part of a grant agreement. These additional reports will assist the Department in the effective administration of YouthBuild.

The QPR will be generated by a Web-based system programmed exclusively for YouthBuild grantees to use. This Web-based system is a tool used to capture agency-specific processes and data that occur throughout the grant's lifecycle and helps the Department and the grantee with the various reporting requirements specified in § 672.410. This system will be the main system of data entry for all grantees, including all case management information, which the grantee will use to produce the QPR for submission to the Department. The QPR and narrative reports must be submitted electronically each quarter via this Web-based system. The financial report also will be submitted electronically via the Web-based system in accordance with reporting instructions issued by ETA. Grantees will be trained in all necessary reporting systems during the initial award phase.

What are the due dates for quarterly reporting? (§ 672.415)

The QPR and narrative reports are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. A final financial report is required 90 days after

the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs and Limitations

What administrative regulations apply to the YouthBuild program? (§ 672.500)

This proposed section incorporates the administrative requirements of WIA that are applicable to YouthBuild grants, which include requirements relating to fiscal and administrative rules, audit, allowable costs/cost principles, debarment and suspension, a drug-free workplace, restrictions on lobbying, treatment of individuals with disabilities, and nondiscrimination.

The nondiscrimination regulations incorporated by this section, 29 CFR part 37, broadly prohibit all forms of discrimination for WIA Title I programs, which include YouthBuild. 29 CFR 37.5 states that “[n]o individual in the United States may, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I-funded program or activity.” The regulations also require that grantees provide reasonable accommodations to youth who are individuals with disabilities. 29 CFR 37.8. For grantees unsure of how to best accommodate youth who are individuals with disabilities in their program, the Department recommends that the grantees consult with the Job Accommodation Network, a free service of the Department’s Office of Disability Employment Policy that provides employers with technical assistance on accommodating different disabilities.

In addition to prohibiting discrimination, YouthBuild grantees have positive requirements to ensure equal opportunity and prevent discrimination in their programs. YouthBuild grantees are required by 29 CFR 37.29 through 37.32 to disseminate an equal opportunity policy. YouthBuild grantees must also ensure that they provide universal access to their programs, including advertising the program in a manner that targets various populations, sending notices about openings in programs to community service groups that serve various populations, and consulting with community service groups on ways to improve outreach and service to various populations. 29 CFR 39.42.

YouthBuild grantees are also required to comply with all generally applicable laws and implementing regulations that apply to the grantees or their participants, including, for example, for participants who are Youth Who are Individuals with Disabilities and participate in secondary education programs, the administrative provisions of the Individuals with Disabilities Improvement Act, 34 CFR 300.320 through 34 CFR 300.324, which require that grantees provide Youth Who are Individuals with Disabilities who enter the program with an appropriate transition plan corresponding to their individual needs.

How may grantees provide services under the YouthBuild program? (§ 672.505)

This proposed section restates the provisions of the Transfer Act which authorize grantees to provide services directly or to enter into sub-grants, contracts, or other arrangements with various public and private entities to provide services under the YouthBuild program.

What cost limits apply to the use of YouthBuild program funds? (§ 672.510)

This proposed section restates the provisions of the YouthBuild Transfer Act which set the administrative cost limit at 15 percent of the grant award and the cost of supervision and training for participants in the rehabilitation or construction of community and other public facilities to no more than 10 percent of the grant award. 29 U.S.C. 2918a(c)(2)(C) and (D).

What are the cost-sharing or matching requirements of the YouthBuild program? (§ 672.515)

The YouthBuild Transfer Act authorizes the Department to require the grantee to make available to the program additional resources from its own resources or from other sources such as businesses, non-profit organizations, or non-Federal public entities that can provide funds or in-kind services. Cost-sharing or match requirements will be addressed in the grant agreement, and described in the SGA. However, a few match requirements are addressed in particular in this section.

Construction materials may be counted toward meeting the required non-Federal match share under the YouthBuild program. The value of buildings acquired for the YouthBuild is an allowable cost-share or match cost to the extent that the building is used for training. The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match cost.

This proposed section also incorporates the cost-sharing and matching provisions set forth in the Uniform Administrative Requirements, which define composition, use, and valuation of required match contributions. Although it is addressed in the Uniform Administrative requirements, because it is such a common question, the regulations restate the prohibition at 29 CFR 95.23(a)(5) and 97.24(b), against Federal funds being used as part of the cost-sharing or match amount proposed by a prospective applicant.

What are considered to be leveraged funds? (§ 672.520)

This proposed section addresses the use of additional monies, known as leveraged funds, to support grant activities. Leveraged funds include costs that could be an allowable match but are in excess of the match requirement or costs that do not meet the cost-sharing and match requirements set forth in the Uniform Administrative Requirements. To be considered leveraged funds, they must be otherwise allowable costs under the cost principles which have been used by the grantee to support grant activity. For example, another Federal grant used by the grantee or sub-grantee to support otherwise allowable activities under the YouthBuild program could not be counted toward the match requirement but would be considered a leveraged fund.

The amount, commitment, nature and quality of the leveraged funds described in the grant application will be a factor in evaluating grants in the SGA. Grantees will also be required to report the use of such funds through their financial report and quarterly narrative report.

How are the costs associated with real property treated in the YouthBuild program? (§ 672.525)

This proposed section specifies which costs associated with real property are allowable and unallowable under the YouthBuild program. The costs associated with the acquisition of buildings to be rehabilitated for training purposes are allowable under the same proportionate share conditions that apply under the match provision at § 672.515, but only with prior grant officer approval. The costs related to construction and/or rehabilitation associated with the training of participants are allowable. The costs associated with the acquisition of land are not allowable.

What participant costs are allowable under the YouthBuild program? (§ 672.530)

Payments to participants for work-related and non-work-related YouthBuild Activities, supportive services, needs-based stipends, and additional benefits are allowable participant costs. A needs-based stipend is not a regular stipend, which is paid to participants in lieu of wages while they are in training. Needs-based stipends are additional payments (beyond regular stipends for program participation) that are based on defined needs to enable youth to participate in the YouthBuild program. To provide "needs-based stipends", the grantee must have a written policy in place, which defines: (a) Eligibility; (b) the amounts; and (c) the required documentation and criteria for payments. This policy must be applied consistently to all program participants.

What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits? (§ 672.535)

Under WIA regulations at 20 CFR 667.272(c), allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301). The Department wants to assure grantees and participants that their participation in the YouthBuild program should not disqualify them from participating in other Federally-sponsored needs-based programs that are available to them.

What program income requirements apply to the YouthBuild program? (§ 672.540)

This proposed section provides that the program income provisions of the Uniform Administrative Requirements apply to the YouthBuild program. In addition, this proposed section specifies that the revenue from the sale or rental of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families or low-income families, as specified in section 672.615, is not considered program income. Grantees are encouraged to use such revenue for the long-term sustainability of the YouthBuild effort.

Are YouthBuild programs subject to the Davis-Bacon Act labor standards? (§ 672.545)

Davis-Bacon labor standards apply to Federal construction contracts and many Federally-assisted construction projects under the provisions of the Davis-Bacon Act and numerous related Acts that authorize Federal assistance for construction. YouthBuild programs and grantees are subject to Davis-Bacon labor standards in certain circumstances. The Department has determined that YouthBuild participants are subject to Davis-Bacon labor standards when they perform Davis-Bacon-covered laborer or mechanic work on Federal or Federally-assisted projects that are subject to Davis-Bacon labor standards. When a YouthBuild participant works on a project subject to Davis-Bacon labor standards, the Davis-Bacon labor standards, including prevailing wage requirements, apply to the hours worked on the site of the work.

This may present a challenge to YouthBuild programs that view these types of construction projects as valuable training sites for their youth since many contractors may be reluctant to pay prevailing wage rates for youth trainees who are in the process of learning and developing their skill set. The regulations implementing the Davis-Bacon Act contain a provision that allows for Department-certified training programs to pay less than the applicable prevailing wage rate to trainees. As stipulated by 29 CFR 5.5(a)(4)(ii), "trainees" are not permitted to be paid less than the predetermined rate for the work performed unless they are employed under and individually registered in a program which has received prior approval, evidenced by a formal certification by the U.S. Department of Labor, Employment and Training Administration.

What are the recordkeeping requirements for YouthBuild programs? (§ 672.550)

This proposed section sets forth the requirements for maintaining records under the YouthBuild program, including requirements for records related to the use of buildings constructed or rehabilitated with YouthBuild funds which will be specified in the grant agreement. Grantees must follow the recordkeeping requirements in the Uniform Administrative Regulations, codified at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

Grantees must maintain such additional records as specified in the

grant agreement related to the use of buildings constructed or rehabilitated with YouthBuild funds. Recordkeeping requirements vary for different classes of records.

Subpart F—Additional Agency Requirements

What are the safety requirements for the YouthBuild program? (§ 672.600)

On November 14, 2006, the Department published, at 71 FR 66349, a **Federal Register** notice requesting public comments and announcing public meetings on the design of YouthBuild grants. The notice sought public input and observations on the optimum number of years and amount of grant awards, ways to ensure grantees meet educational and employment outcomes, how capacity building grants can be strengthened, and ways to improve any other aspect of the program. The Department received four comments relating to safety issues in response to the **Federal Register** notice, including comments from the National Institute for Occupational Safety and Health (NIOSH), the Department's Occupational Safety and Health Administration (OSHA), the University of California at Berkeley Labor Occupational Health Program, and the University of North Carolina Injury Prevention Research Center. The NIOSH comments emphasized the dangers of youth working in construction and noted that youth fatalities in construction are related to noncompliance with child labor laws and occupational safety and health regulations. The NIOSH comments referenced a review of OSHA investigations of fatally injured teenage construction workers between 1984 and 1998 which found that approximately half of the 76 investigations of deaths to youth under 18 involved apparent violations of child labor laws.¹ The NIOSH comments also referenced a survey in North Carolina of youth ages 16 and 17 working in construction that found that 84 percent of the youth had performed at least one task clearly prohibited by child labor laws, while 47 percent had performed three or more tasks prohibited by child labor laws.²

NIOSH recommended that the Department comprehensively integrate worker safety and associated training into the YouthBuild program by

¹ Sarua A, Philips P, Lillquist D, Seseck R, "Fatal Injuries to Construction Workers in the U.S.," *American Journal of Industrial Medicine*, 2003.

² Runyon CW, Dal Santo J, Schulman M, Lipscomb HJ, Harris TA, "Work Hazards and Workplace Safety Violations Experienced by Adolescent Construction Workers," *Archives of Pediatric and Adolescent Medicine*, 2006.

incorporating the following requirements in the program:

(a) Comprehensive, documented training on construction safety for youth working on YouthBuild projects, including requirements for youth to demonstrate knowledge and proficiency in hazard identification, abatement, and safe work practices;

(b) Compliance with Federal and State child labor laws and occupational safety and health regulations;

(c) Written, jobsite specific, safety plans overseen by an on-site supervisor with the knowledge, skills, and authority to correct safety and health hazards and enforce the site-specific safety plan;

(d) Provision of necessary personal protective equipment to youth working on YouthBuild projects; and

(e) Reporting of all injuries and illnesses to youth working on YouthBuild projects, along with documentation on remedial measures to prevent future similar injuries and help ensure that YouthBuild is a model program that takes active steps for participant safety and health.

The comments from OSHA similarly stressed the importance of safety training and identification of worksite hazards. OSHA's comments recommended that YouthBuild grantees should demonstrate an effective, comprehensive occupational safety and health management system that includes four basic elements:

(a) Management leads the way in emphasizing safety;

(b) The worksite is continuously analyzed to identify existing and potential hazards;

(c) Methods to prevent or control existing hazards are put in place; and

(d) Managers, supervisors, and participants are trained in safety practices, including new-hire training and ongoing weekly or daily safety training.

The comments from the University of California and the University of North Carolina both strongly recommended that YouthBuild grantees be subject to the hazardous orders in the child labor regulations.

Based upon the concerns raised by these commenters, the Department is proposing to require that YouthBuild grantees not only comply with Federal and State health and safety standards, including the hazardous orders in the child labor regulations, but also provide: comprehensive safety training for youth working on YouthBuild construction projects; have written, jobsite specific, safety plans overseen by an on-site supervisor with authority to enforce safety procedure; provide necessary

personal protective equipment to youth working on YouthBuild projects; and submit injury incident reports to the Department. The intent of these proposed regulations is to protect the health and safety of YouthBuild participants on YouthBuild work sites, and to ensure that YouthBuild grantees comply with child labor laws.

YouthBuild grantees must adhere to all safety guidelines, laws and regulations required by all Federal, State and local laws which include the Department's OSHA regulations, as well as the Department's Wage and Hour Division's (WHD) child labor regulations. Among other things, these provisions prohibit youth ages 16 and 17 from working in identified hazardous occupations. Occupations prohibited for 16 and 17 year-olds under these "hazardous orders" relating to construction include, but are not limited to, operating circular saws, working on or about roofs, performing demolition work, excavating and trenching, operating a fork lift or a hoist, and driving a motor vehicle on the job.

What are the reporting requirements for youth safety? (§ 672.605)

The Department places high priority on the safety of YouthBuild participants. The comments by NIOSH about the design of the YouthBuild program specifically recommend that the Department require the "reporting of all injuries and illnesses to youth working on YouthBuild projects, along with documentation on remedial measures to prevent future similar injuries and help ensure that YouthBuild is a model program that takes active steps for participant safety and health."

By requiring grantees to complete and file injury incident reports for accidents incurred by youth while working on YouthBuild projects, the Department will be able to determine whether youth are being properly trained under safe conditions while participating in the YouthBuild program.

The working conditions of YouthBuild participants are subject to Federal and State health and safety standards under 20 CFR 667.274. Such standards include requirements under 29 CFR part 1904 that employers in the construction industry and other non-exempt industries record occupational injuries and illnesses and keep these reports on file for 5 years. These reports include individual incident reports, a log of injuries, and an annual summary of incidents. In addition, YouthBuild grantees must send a copy of the incident reports to the Department within 7 days of the incident. Requiring

YouthBuild grantees to submit incident reports of occupational injuries and illnesses to the Department will serve to emphasize to grantees and their staff the importance of safety. The Department will be able to use the incident reports to respond in a timely manner to require corrective actions at particular sites. Corrective actions may include any of the following: requiring grantees to modify or improve safety training; alert all YouthBuild sites of hazards identified in incident reports; and, in some cases, to sanction or close sites in which a flagrant safety violation or pattern of violations has resulted in a serious accident.

What environmental protection laws apply to the YouthBuild program? (§ 672.610)

All YouthBuild worksites are expected to be in compliance with all applicable Federal, State, and local environmental protection laws, as YouthBuild participants spend a large portion of their training time on YouthBuild worksites.

It should be noted that the regulations implementing HUD's YouthBuild program contained environmental procedures which governed HUD's determination of whether any environmental thresholds in the agency's National Environmental Policy Act (NEPA) regulations would be exceeded as a result of funding the "lease, acquisition, rehabilitation, or new construction of real property that is proposed for housing project development." 24 CFR 585.307(a). However, HUD's environmental procedures expressly did not apply to "HUD's approval of grants where the applicant proposes to use YouthBuild funds solely to cover any costs for classroom and/or on-the-job construction training and supportive services." *Id.*

The Department considers the construction and rehabilitation-related activities authorized under the Transfer Act to be on-the-job training, rather than construction or rehabilitation, which is consistent with HUD's previous administration of the program. As a result, the Department has chosen not to include specific environmental procedures for the YouthBuild program in this proposed regulation. However, the absence of environmental procedures does not affect the Department's on-going obligation to comply with NEPA and the Department's NEPA regulations at 29 CFR part 11. Therefore, grantees are expected to be familiar and comply with NEPA, State, and local environmental regulations.

What requirements apply to YouthBuild housing? (§ 672.615)

One of the priorities of the YouthBuild program is to provide transitional and affordable housing to homeless individuals and families. The Transfer Act made the changes to the housing requirements that would allow the Department to focus on the workforce aspect of the YouthBuild program and at the same time maintain the integrity of the housing initiative. The Transfer Act maintains some basic rental and homeownership restrictions, which are similar to the major restrictions specified in the Cranston-Gonzalez Act (42 U.S.C. 12899d); however, many of the more extensive restrictions were eliminated. The Transfer Act does stipulate that YouthBuild residential properties must be available solely for rental by, or sale to, homeless individuals and families or low-income families, and/or for use as transitional or permanent housing for homeless individuals and families transitioning to independent living. The Department has interpreted this stipulation to require that YouthBuild residential properties be inhabited by homeless individuals and families or low-income families. Therefore, in addition to constructing or rehabilitating housing to sell or rent to new low-income family tenants, YouthBuild grantees may rehabilitate residences already occupied by low-income families.

As administrator of the YouthBuild program, it is the Department's responsibility to ensure that YouthBuild funds are only used for the housing purposes stipulated in the Transfer Act. Additionally, we are concerned with minimizing the enforcement burden on grantees in order to emphasize the training and employment purposes of the programs. In order to accomplish these goals, a new requirement is being proposed in order to create a self-enforcing mechanism to ensure compliance with the YouthBuild housing limitations. The HUD regulations required the restrictions be in place for 10 years and that if the property was sold before the termination of the time period, any conveyance document require that the new owner abide by the restrictions. The Department's new requirement is that grantees ensure that a restrictive covenant be recorded with the appropriate local office or agency against the property limiting the use of residential units constructed or rehabilitated using YouthBuild funds to housing for homeless individuals and families and low-income families.

The restrictive covenant must also include the additional conditions that apply to housing in § 672.615(b)–(c). It should be noted that a grantee and/or property owner may choose to include additional stipulations to the restrictive covenant, depending on their standard business practices.

This restrictive covenant must be recorded at the time of the issuance of the occupancy permit. The duration of the covenant is a minimum of 10 years from the issuance of the occupancy permit, unless a longer time period has been established by the grantee. In the event that the covenant has not expired before any later sale of the property, any conveyance document must contain the covenant for the time remaining. Grantees will be required to provide verification to the Department that a restrictive covenant has been recorded, through the submission of a copy of the deed with the restrictive covenant before the end of the grant period.

The covenant requirement applies to all newly constructed or rehabilitated residential units funded with YouthBuild funds when they are for sale or rent. When a grantee rehabilitates the home of a low-income homeowner, there is no sale or rental and therefore the homeowner is not required to record a restrictive covenant.

All grantees or property owner must make a good faith effort to rent the property to homeless individuals and families or low-income families. Grantees or property owners must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Except for dangerous or egregious situations involving the tenant, any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action.

Grantees and/or property owners who are rehabilitating or constructing houses for the purposes of transitional or permanent housing for homeless individuals and families and low-income families under the YouthBuild program will be required to ensure that the housing is safe and sanitary. The housing must also meet any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located. Transitional housing is a necessary factor in community improvement and development. The

Department believes that this provision of transitional housing will not only help individuals establish ties to the community but also encourage their participation in the local labor market.

The YouthBuild program is designed to provide workforce training and education through the rehabilitation and construction of low-income housing for the community. This section balances the Department's duty to focus on training and education in order to prepare a skilled workforce with its duty to ensure that the housing provided by each grantee will remain available for the purposes of low-income occupancy for a specified length of time.

III. Administrative Information

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

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. The proposed rule directly affects all YouthBuild grantees, of which there are currently 226. About half of these are small entities (generally non-profit, community-based organizations). The Department does not believe that the proposed rule will have a significant economic impact on a substantial number of these small entities. The Department has certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act. Primary issues affected by the proposed rule are discussed below.

The YouthBuild program has existed since 1978. YouthBuild began as a Federal grant program in 1994 and was administered by HUD until 2006 when it was transferred to the Department. YouthBuild operates as a voluntary grant program. While there are matching and leverage requirements,

organizations apply for Federal grant funds. The costs that might be thought to be increased by the proposed rule are participant safety, worksite environmental standards, and a required follow-up time period for YouthBuild enrollees, all of which may be paid for with grant funds.

The proposed rule would require that all applicable National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA) regulations be followed for youth who are on YouthBuild participant construction sites. The NIOSH safety measures are standard requirements for all Federally-funded construction worksites across the United States. The requirements should not add demonstrably to the cost of any YouthBuild program because safety equipment required by NIOSH standards can be purchased using YouthBuild grant funds provided by the Department. Further, the cost of the other requirements—supervisor training, development of safety plans, safety reporting, etc.—can be paid for with grant funds as well.

In addition, the Department is requiring that all Federal environmental standards, including National Environmental Policy Act of 1969 (NEPA), be followed. This is a standard for all Federally-funded construction worksites across the United States and is already established procedure at many YouthBuild work sites. YouthBuild grant funds may be used to ensure compliance with the required environmental standards.

The proposed rule also requires a minimum 9-month follow-up period for enrollees who exit the YouthBuild program. While this is a new requirement in the proposed rule, one of the mandatory program reporting requirements already in place for YouthBuild requires a minimum 9-month follow-up period for participants. As a result, the 9-month follow-up period requirement should already be followed by all YouthBuild programs and will not add to the existing program costs.

Finally, the YouthBuild program will have a beneficial economic impact on small entity program participants. While there are match and leverage requirements under YouthBuild, the grantees are applying to receive additional resources to carry out their purposes for the benefit of participants.

Accordingly, the Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Department explicitly invites

comments from members of the public who believe there will be a significant economic impact on small entities.

Paperwork Reduction Act

One of the purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, is to minimize 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.

The collection of data described in this proposed rule contains requirements to implement reporting and recordkeeping requirements for the YouthBuild program. This reporting structure features standardized data collection for program participants, and quarterly narrative and Management Information System (MIS) performance report formats. All data collection and reporting will be done by YouthBuild grantees.

These requirements were previously reviewed and approved for use by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and 5 CFR part 1320, and assigned OMB control number 1205-0464 under the provisions of the PRA. YouthBuild grantees will collect and report selected standardized information on customers in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. ETA will provide all grantees with a YouthBuild management information system (MIS) to use for collecting participant data and for preparing and submitting the required quarterly reports. The Department has determined that this proposed rule contains no new information collection requirements.

The Department estimates that the public reporting burden for this collection of information will amount to 16,280 hours. This total includes all paperwork in regard to this proposed rule over the course of one program year for all grantees nationwide.

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.

The regulatory requirements defined and implemented by this proposed rule for this grant program will not have an annual effect on the economy of \$100 million or more but do raise novel policy issues. With the transfer of the program from HUD to the Department, there have been changes from what was required under the “Hope for Youth”, the original YouthBuild program located in the Cranston-Gonzalez National Affordable Housing Act of 1992. Primarily, the transfer allowed for a change of focus from a purely housing initiative to one more focused on job and skills training and low-income housing creation. Therefore this proposed rule has been submitted to OMB for review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. This NPRM has no “Federal mandate,” which is defined in 2 U.S.C. 658(6) to include either a “Federal intergovernmental mandate” or a “Federal private sector mandate.” A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. The YouthBuild program is a grant program. Grantee participation in YouthBuild is voluntary. Furthermore, this proposed rule 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—12630 Government Actions and Interference with Constitutionally Protected Property Rights

The YouthBuild Transfer Act requires that housing rehabilitated or constructed with YouthBuild grant funds be for the purposes of housing homeless individuals and families or low-income families. In order for the Department to ensure that the YouthBuild program is administered in compliance with the legislation, each grantee must ensure that the owner of the property where YouthBuild funds are spent to construct or rehabilitate residential units records a restrictive covenant on the property, limiting the use of the units to housing for homeless individuals and families and low-

income families. Such a restrictive covenant will not result in a taking without just compensation. This is a contractually-based restriction and therefore property owners are compensated for any limitations on the use of their land. Property owners enter into these contracts creating the restriction voluntarily and they receive consideration in the form of services from the YouthBuild program to build or rehabilitate their housing for the burden on their property. Subsequent purchasers will have notice of the covenant and will be able to determine purchase price with knowledge of the limitations on the use of the property. Furthermore, the restrictive covenant will expire 10 years from the date of issuance of occupancy permit, giving flexibility to the grantee and/or property owner within a reasonable time period. The Department is committed to upholding the integrity of the YouthBuild program in all its aspects and believes that a restrictive covenant is the best way to meet the purpose of the legislation with regard to housing for homeless individuals and families and low-income families.

Executive Order 12988—Civil Justice

This proposed 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 proposed 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 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This proposed rule has no impact on the environmental health or safety of 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.

This proposed rule addresses a voluntary grant program, YouthBuild, which is administered by the Department. We conclude that this proposed rule does not directly affect one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Environmental Impact Assessment

The Department has reviewed this proposed rule 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 proposed rule 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 proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this proposed rule and determines that it will not have a negative effect on families. Indeed, we maintain that this proposed rule will strengthen families by providing low-income housing and occupational training for low-income families and others.

Executive Order 13211

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

Privacy Act of 1974

The Privacy Act of 1974 is implicated when a regulation: (1) Requires either collection of information that the agency will retrieve by an individual's name or other personal identifier or would create a program where the agency's program

records will be retrieved by an individual's name or personal identifier; and (2) involves computerized matching of records from a Privacy Act System of Records with any other records.

This regulation is not affected by the Privacy Act of 1974 as it does not require the collection of information by the Department of an individual's name or other personal identifier or involves computerized matching of records from a Privacy Act System of Records with any other records.

Plain Language

The Department drafted this proposed rule in plain language.

List of Subjects in 20 CFR Part 672

Apprenticeship, Construction, Education, High growth, Homeless, Housing, Labor, Low-income, Safety, Training, Transitional housing, and Youth.

For the reasons discussed in the preamble, the Department proposes to add 20 CFR part 672 to read as follows:

PART 672—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

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Sec.

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Authority: 29 U.S.C. 2918a.

Subpart A—Purpose and Definitions**§ 672.100 What is YouthBuild?**

YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, who are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth. Program participants receive education services that may lead to either a high school diploma or General Education Development (GED). Further, they receive occupational skills training and are encouraged to pursue a post-secondary education or additional training, including registered apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless individuals and families and low-income families, as well as public facilities, or in other high wage, high-demand jobs. The program also benefits

the larger community because it provides more new and rehabilitated affordable housing.

§ 672.105 What are the purposes of the YouthBuild program?

(a) The overarching goal of the YouthBuild program is to enable disadvantaged and low-income youth the opportunity to obtain education and employment skills necessary to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals:

(1) Promote leadership skills development and community service activities. YouthBuild programs will foster the development of leadership skills and a commitment to community improvement among youth in low-income communities.

(2) Enable youth to further their education and training. YouthBuild programs will provide counseling and assistance in obtaining post-secondary education and/or employment and training placements that allow youth to further their education and training.

(3) Reduce the rate of homelessness in communities with YouthBuild programs. The program seeks to increase the number of affordable housing units available to decrease the number of homeless individuals and families in their communities.

(b) Through these newfound educational and occupational opportunities, youth participants will provide a valuable contribution to their communities. The YouthBuild program will add skilled workers to the workforce by educating and training youth who might have otherwise succumbed to the negative influences within their environments.

§ 672.110 What definitions apply to this part?

Alternative school: The term “*alternative school*” means a school or program that is set up by a State, school district, or other community-based entity to serve young people who are not succeeding in a traditional public school environment. An “*alternative school*” must be recognized by the authorizing entity designated by the State, must award a high school diploma and, must be affiliated with YouthBuild programs in order to qualify as part of a “*sequential service strategy*.”

Community or other public facility: The term “*community or other public facility*” means those facilities which are publicly owned and publicly used for the benefit of the community. This term may also encompass facilities used by the program but only if the facility is available for public entry and use.

Core construction: The term “*core construction*” means activities that are

directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, Construction and Extraction Occupations, in codes 47–1011 through 47–4099. These activities may also include, but are not limited to construction skills that may be required by green building and weatherization industries but are not yet standardized. A full list of the SOC’s can be found at the Bureau of Labor Statistics (BLS) Web site, <http://www.bls.gov/soc>.

Eligible entity: The term “*eligible entity*” means a public or private nonprofit agency or organization (including a consortium of such agencies or organizations), including—

- (1) A community-based organization;
- (2) A faith-based organization;
- (3) An entity carrying out activities under this Title, such as a local school board;

- (4) A community action agency;
- (5) A State or local housing development agency;
- (6) An Indian tribe or other agency primarily serving Indians;
- (7) A community development corporation;
- (8) A State or local youth service or conservation corps; and
- (9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this part).

Homeless individual: As defined in 42 U.S.C. 11302 of the McKinney-Vento Homeless Assistance Act, a “*homeless individual*” is:

- (1) An individual who lacks a fixed, regular, and adequate night time residence; and
- (2) An individual who has a primary night time residence that is—
 - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Housing development agency: The term “*housing development agency*” means any agency of a Federal, State or local government, or any private nonprofit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income: As defined in 42 U.S.C. 1437a(b), “*income*” is: Income from all sources of each member of the household, as determined in accordance with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this paragraph.

Indian; Indian tribe: As defined in 25 U.S.C. 450b of sec. 4 of the Indian Self-Determination and Education Assistance Act, the term “*Indian*” is a person who is a member of an Indian tribe; and the term “*Indian tribe*” is any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individual of limited english proficiency: As defined in 20 U.S.C. 9202(10), an “*individual of limited English proficiency*” is: An adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language, and:

- (1) Whose native language is a language other than English; or
- (2) Who lives in a family or community environment where a language other than English is the dominant language.

Low-Income Family: As defined in 42 U.S.C. 1437a(b)(2), a “*low-income family*” is: A family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary of Labor with adjustments for smaller and larger families, except that the Secretary of Labor may establish income ceilings higher or lower than 80 per centum of the median for the area if the Secretary of Labor finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. Further, as defined by 42 U.S.C. 1437a(b)(2)(3), the term families includes families consisting of one person.

Migrant youth: The term “*migrant youth*” means a youth, or a youth who is the dependent of someone who, during the previous 12 months has:

- (1) Worked at least 25 days in agricultural labor that is characterized

by chronic unemployment or underemployment;

(2) Made at least \$800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(3) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(4) Was employed in agricultural labor that requires travel to a jobsite such that the farmworker is unable to return to a permanent place of residence within the same day.

Needs-based stipend: The term “*Needs-based stipends*” means additional payments (beyond regular stipends for program participation) that are based on defined needs that enable youth to participate in the program. To provide need-based stipends the grantee must have a written policy in place, which defines: Eligibility; the amounts; and the required documentation and criteria for payments. This policy must be applied consistently to all program participants.

Occupational skills training: The term “*Occupational skills training*” means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. The occupational skills training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry recognized credential.

Partnership: The term “*partnership*” means an agreement that involves a Memorandum of Understanding (MOU) or letter of commitment submitted by each organization and applicant, as defined in the YouthBuild Transfer Act, that plan on working together as partners in a YouthBuild program. Each partner must have a clearly defined role. These roles must be verified through a letter of commitment, not just a letter of support, or MOU submitted by each partner. The letter of commitment or MOU must detail the role the partner will play in the YouthBuild Program, including specific responsibilities and resources committed, if appropriate. These letters or MOU’s must clearly indicate the partnering organization’s unique contribution and commitment to the YouthBuild Program.

Public housing agency: As defined in 42 U.S.C. 1437a(b), a “*public housing agency*” is: Any State, county, municipality or other government entity

or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing.

Registered apprenticeship program: The term “*registered apprenticeship program*” means:

(1) Registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 20 U.S.C. 50 *et seq.*); and

(2) A program with a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

(3) To the extent that 29 CFR part 30 is amended, such amendments apply to the “registered apprenticeship program” for Youthbuild.

Sequential service strategy: The term “*sequential service strategy*” means the educational and occupational skills training plan developed for individuals who have dropped out of high school and want to enroll in a YouthBuild program. The plan is designed so that the individual sequentially enrolls in an alternative school, and after receiving a year or more of educational services, enrolls in the YouthBuild program.

Transitional housing: The term “*transitional housing*” means housing provided for the purpose of facilitating the movement of homeless individuals to independent living within a reasonable amount of time. The term includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals who are individuals with disabilities or are members of families with children.

Youth in foster care: The term “*youth in foster care*” means youth currently in foster care or youth who have ever been in foster care.

Youth who is an individual with a disability: The term youth who is an individual with a disability means a youth with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) or a student receiving special education and related services under the Individuals with Disabilities Education Act (IDEA).

Subpart B—Funding and Grant Applications

§ 672.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under sec. 173A of the

Workforce Investment Act (WIA) to administer YouthBuild as a national program under Title I, Subtitle D of the Act. YouthBuild grants are awarded to eligible entities, as defined in § 672.110, through a competitive selection process described in § 672.205.

§ 672.205 How does an eligible entity apply for grant funds to operate a YouthBuild program?

The Secretary announces the availability of grant funds through a Solicitation for Grant Applications (SGA). The SGA contains instructions for what is required in the grant application, describes eligibility requirements, the rating criteria that will be used in reviewing grant applications, and special reporting requirements to operate a YouthBuild project.

§ 672.210 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity applying for funds (applicant) must meet selection criteria established by the Secretary which include:

- (a) The qualifications or potential capabilities of an applicant;
- (b) An applicant's potential to develop a successful YouthBuild program;
- (c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);
- (d) The commitment of an applicant to provide skills training, leadership development, and education to participants;
- (e) The focus of a proposed program on preparing youth for postsecondary education and training opportunities or in-demand occupations in the construction industry;
- (f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:
 - (1) Local boards, One-Stop Career Center operators, and One-Stop partners participating in the operation of the One-Stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

- (2) Public education, criminal justice, housing and community development, national service, or postsecondary education or other systems that relate to the goals of the proposed program; and
- (3) Employers in the local area.

- (g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;
- (h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

- (1) An applicant;
- (2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and maintenance, or other housing and community development activities undertaken as part of the proposed program; or
- (3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIA,

- (i) An applicant's ability to enter partnerships with:

- (1) Education and training providers including:
 - (i) The kindergarten through twelfth grade educational system;
 - (ii) Adult education programs;
 - (iii) Community and technical colleges;
 - (iv) Four-year colleges and universities;
 - (v) Registered apprenticeship programs; and
 - (vi) Other training entities.
- (2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

- (i) Defining the program strategy and goals;
- (ii) Identifying needed skills and competencies;
- (iii) Designing training approaches and curricula;
- (iv) Contributing financial support; and
- (v) Hiring qualified YouthBuild graduates.

- (3) The workforce investment system which may include:

- (i) State and local workforce investment boards;
- (ii) State workforce agencies; and
- (iii) One-Stop Career Centers and their cooperating partners.
- (4) The juvenile justice system, and the extent to which it provides:

- (i) Support and guidance for YouthBuild participants with court involvement; and

- (ii) Assists in the reporting of recidivism rates among YouthBuild participants.

- (5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

- (i) Case management;
- (ii) Mentoring;
- (iii) English as a Second Language courses; and
- (iv) Other comprehensive supportive services, when appropriate.

- (j) The applicant's potential to serve different regions, including rural areas and States that may not have previously received grants for YouthBuild programs; and

- (k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

- (l) The weight to be given to these factors will be described in the SGA issued under § 672.205.

§ 672.215 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, ETA reserves the right to use such funds to select additional grantees from applications submitted in response to an SGA.

Subpart C—Program Requirements

§ 672.300 Who is an eligible participant?

(a) Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if such individual is:

- (1) Not less than age 16 and not more than age 24 on the date of enrollment; and

- (2) A school dropout or an individual who has dropped out of school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy; and

- (3) Is one or more of the following:

- (i) A member of a low-income family as defined in § 672.110;
- (ii) A youth in foster care;
- (iii) A youth offender;
- (iv) A youth who is an individual with a disability;
- (v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth as defined in § 672.110.

(b) *Exceptions.* Not more than 25 percent of the participants in a program, under this section, may be individuals who do not meet the requirements of paragraph (a)(2) or (a)(3) of this section, if such individuals:

(1) Are basic skills deficient as defined in section 101(4) of WIA, even if they have their high school diploma, GED credential, or other State recognized equivalent; or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma. Referrals from secondary schools to YouthBuild programs that provide only a GED degree are not allowed.

§ 672.305 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in 20 CFR 667.255 and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

§ 672.310 What eligible activities may be funded under the YouthBuild program?

Grantees may provide one or more of the following education and workforce investment and other activities to YouthBuild participants—

(a) Eligible education activities include:

(1) Services and activities designed to meet the educational needs of participants, including:

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for individuals with limited English proficiency;

(iii) Secondary education services and activities, including tutoring, study skills training, and dropout prevention activities, designed to lead to the attainment of a secondary school diploma, GED credential, or other State-recognized equivalent (including recognized alternative standards for individuals with disabilities);

(iv) Counseling and assistance in obtaining post-secondary education and required financial aid; and

(v) Alternative secondary school services.

(2) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral to appropriate treatment;

(3) Activities designed to develop employment and leadership skills,

which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors, and activities related to youth policy committees that participate in decision-making related to the program; and

(4) Supportive services, as defined under Title I of WIA Section 101(46), and provision of need-based stipends, as defined in § 672.110.

(b) Eligible workforce investment activities include:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs) in housing rehabilitation and construction activities described in paragraphs (c)(1) and (c)(2) of this section;

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing; and

(4) Job search assistance.

(c) Other eligible activities include:

(1) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals and families or low-income families, or transitional housing for homeless individuals and families.

(2) Supervision and training for participants in the rehabilitation or construction of community or other public facilities, except that, as provided in § 672.505(b), not more than 10 percent of the funds awarded for each grant may be used for such supervision and training;

(3) Ongoing training and technical assistance for staff of grant recipients that is related to developing and carrying out the YouthBuild program;

(4) Payment of a portion of the administrative costs of the program as provided in § 672.505(a);

(5) Adult mentoring;

(6) Provision of wages, stipends, or additional benefits to participants in the program as provided in § 672.530; and

(7) Follow-up services as provided in § 672.325.

§ 672.315 What timeframes apply to participation?

An eligible individual selected for participation in the program must be offered full-time participation in the program for not less than 6 months and not more than 24 months.

§ 672.320 What timeframes must be devoted to education and workforce investment or other activities?

YouthBuild grantees must structure programs so that participants in the program are offered:

(a) Eligible education activities, as specified in § 672.310(a), during at least 50 percent of the time during which they participate in the program; and

(b) Eligible workforce investment activities such as those specified in § 672.310(b) during at least 40 percent of the time during which they participate in the program. Grantees must provide the eligible workforce investment activities described in § 672.310(b)(1) as part of their program of eligible workforce investment activities.

(c) The remaining 10 percent of the time of participation can be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

§ 672.325 What timeframes apply for follow-up services?

Follow-up services must be provided to YouthBuild participants for a period of not less than 9 months but no more than 12 months after participants exit a YouthBuild program. These are services that assist participants in obtaining or retaining employment, or applying for and transitioning to post-secondary education or training.

Subpart D—Performance Indicators

§ 672.400 What are the performance indicators for YouthBuild grants?

(a) The performance indicators for YouthBuild grants are:

(1) Placement in employment or education;

(2) Attainment of a degree or certificate;

(3) Literacy and numeracy gains; and

(4) Such other indicators of performance as may be required by the Secretary.

(b) The Department will provide the details of the performance indicators in administrative guidance.

§ 672.405 What are the required levels of performance for the performance indicators?

(a) Expected levels of performance for each of the common performance indicators are national standards that will be established at a later date and will be provided in separately issued guidance. Short-term or other performance indicators will be established at a later date and will be provided in separately issued guidance or as part of the SGA or grant agreement. Performance level expectations are based on available YouthBuild data and data from similar WIA Youth programs and may change between grant competitions. The expected national levels of performance will take into account the extent to which the levels

promote continuous improvement in performance.

(b) The levels of performance established must, at a minimum:

- (1) Be expressed in an objective, quantifiable, and measurable form; and
- (2) Indicate continuous improvement in performance.

§ 672.410 What are the reporting requirements for YouthBuild grantees?

Each grantee must provide such reports as are required by the Secretary in separately issued guidance, including:

- (a) The Quarterly Performance Report;
- (b) The quarterly narrative progress report;
- (c) The financial report; and
- (d) Such other reports as may be required by the grant agreement.

§ 672.415 What are the due dates for quarterly reporting?

Each grantee must provide quarterly reports such that:

- (a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 672.410; and
- (b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs and Limitations

§ 672.500 What administrative regulations apply to the YouthBuild program?

- (a) The regulations found in this part.
- (b) The general administrative requirements found in 20 CFR part 667, except those which apply only to the WIA Title I–B program and those which have been modified by this section.
- (c) The Department's regulations on government-wide requirements, which include:
 - (1) The regulations codifying the Office of Management and Budget's Government wide grants requirements: Circular A–110 (relocated to 2 CFR part 215) and Circular A–102 at 29 CFR parts 95 and 97, as applicable;
 - (2) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188;
 - (3) The Department's regulations at 29 CFR parts 93, 94 and 98 relating to, and restrictions on lobbying, drug free workplace, and debarment and suspension;
 - (4) The audit requirements of the OMB Circular A–133 stated at 29 CFR part 99, as required by 29 CFR 96.11, 95.26 and 97.26, as applicable.

§ 672.505 How may grantees provide services under the YouthBuild program?

Each recipient of a grant under the YouthBuild program may provide the services and activities described in these regulations either directly or through subgrants, contracts, or other arrangements with local educational agencies, postsecondary educational institutions, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

§ 672.510 What cost limits apply to the use of YouthBuild program funds?

(a) Administrative costs for programs operated under YouthBuild are limited to no more than 15 percent of the grant award. The definition of administrative costs can be found in 20 CFR 667.220.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 10 percent of the grant award.

§ 672.515 What are the cost-sharing or matching requirements of the YouthBuild program?

(a) The cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

(b) The value of construction materials used in the YouthBuild program is an allowable cost for the purposes of the required non-Federal share or match.

(c) The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match.

(d) Federal funds may not be used as cost-sharing or match resources except as provided by Federal law.

(e) The value of buildings acquired for the YouthBuild program is an allowable match, provided that the following conditions apply:

- (1) The purchase cost of buildings used solely for training purposes is allowable; and
- (2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase price related to direct training activities.

(f) Grantees must follow the requirements of 29 CFR 95.23 or 29 CFR 97.24 in the accounting, valuation, and reporting of the required non-Federal share.

§ 672.520 What are considered to be leveraged funds?

(a) Leveraged funds used to support allowable YouthBuild program activities consist of payments made for allowable costs funded by both non-YouthBuild

Federal, and non-Federal, resources which include:

- (1) Costs which meet the criteria for cost-sharing or match in § 672.515 and are in excess of the amount of cost-sharing or match resources required;
 - (2) Costs which would meet the criteria in § 672.515 except that they are paid for with other Federal resources; and
 - (3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.
- (b) The use of leveraged funds must be reported in accordance with Departmental instructions.

§ 672.525 How are the costs associated with real property treated in the YouthBuild program?

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

- (1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing.
- (2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing.
- (3) Construction or rehabilitation of community or other public facilities, except, as provided in § 672.510(b), only 10% of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following conditions:

- (1) Purchase cost of buildings used solely for training purposes is allowable; and
- (2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

- (1) Trainees' tools and clothing;
- (2) On-site trainee supervisors;
- (3) Construction management;
- (4) Relocation of buildings; and
- (5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

- (1) The costs of acquisition for land.
- (2) Brokerage fees.

§ 672.530 What participant costs are allowable under the YouthBuild program?

Allowable participant costs include:

(a) The costs of payments to participants engaged in eligible work-related YouthBuild activities.

(b) The costs of payments provided to participants engaged in non-work-related YouthBuild activities.

(c) The costs of Needs-based stipends

(d) The costs of supportive services.

(e) The costs of providing additional benefits to participants, which may include:

- (1) Tuition assistance for obtaining college education credits
- (2) Scholarships to an Apprenticeship, Technical, or Secondary Education program; and
- (3) Sponsored health programs.

§ 672.535 What effect do payments to YouthBuild participants have on eligibility for other Federal need-based benefits?

Under 20 CFR 667.272(c), allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

§ 672.540 What program income requirements apply under the YouthBuild program?

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 29 CFR 95.24 and 97.25, apply to YouthBuild grants.

(b) Revenue from the sale or rental of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered program income. Grantees are encouraged to use such revenue for the long-term sustainability of the YouthBuild effort.

§ 672.545 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor

standards requirements in certain circumstances. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(1) YouthBuild participants may be classified as "trainees" on Davis-Bacon contracts only when they are employed in and are individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The Davis-Bacon contract clauses set forth in 29 CFR 5.5(a)(4)(ii) provide further rules and requirements regarding the use of trainees on Davis-Bacon covered contracts.

(2) YouthBuild participants who are not registered and participating in a training program approved by the Employment and Training Administration must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

§ 672.550 What are the recordkeeping requirements for YouthBuild programs?

(a) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative Regulations, at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

Subpart F—Additional Requirements

§ 672.600 What are the safety requirements for the YouthBuild program?

(a) The working conditions of YouthBuild participants are subject to health and safety standards under 20 CFR 667.274. Such health and safety standards include "hazardous orders" governing child labor under 29 CFR part 570 prohibiting youth ages 16 and 17

from working in identified hazardous occupations.

(b) YouthBuild grantees are required to:

(1) Provide comprehensive safety training for youth working on YouthBuild construction projects;

(2) Have written, jobsite specific, safety plans overseen by an on-site supervisor with authority to enforce safety procedures;

(3) Provide necessary personal protective equipment to youth working on YouthBuild projects; and

(4) Submit required injury incident reports.

§ 672.605 What are the reporting requirements for youth safety?

YouthBuild grantees must ensure that YouthBuild program sites comply with the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. The YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at <http://www.osha.gov/recordkeeping/RKforms.html>. Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

§ 672.610 What environmental protection laws apply to the YouthBuild program?

YouthBuild Program grantees are required, where applicable, to comply with all environmental protection statutes and regulations.

§ 672.615 What requirements apply to YouthBuild housing?

(a) YouthBuild grantees must ensure that all residential housing units located on the property which are constructed or rehabilitated using YouthBuild funds must be available solely for:

(1) Sale to homeless individuals and families or low-income families;

(2) Rental by homeless individuals and families or low-income families;

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living; or

(4) Rehabilitation of homes for low-income homeowners.

(b) For rentals of residential units located on the property which are constructed or rehabilitated using YouthBuild funds:

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to one or two years. The leases provided to tenants with higher incomes will not be subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b) and (c) of this section and incorporates the following definitions at § 672.110: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 10 years from the time of the issuance of the occupancy permit, unless a time period of more than 10 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 10-year period of the restrictive covenant must inform the

buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a), (b), (c), and (d) of this section.

Signed at Washington, DC, this 19th day of August 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 401

[Docket No. FR-5304-P-01]

RIN 2502-AI75

Multifamily Housing Reform and Affordability Act: Projects Eligible for a Restructuring Plan; When Eligibility Is Determined

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD seeks public comment on HUD's determination of the point in time at which an assisted project covered by the Multifamily and Assisted Housing Reform and Affordability Act is eligible for restructuring. Additionally, HUD proposes to amend its regulation, which provides a cross-reference to the statutory list of the types of projects that are eligible for mortgage restructuring, to incorporate that list into the regulation. HUD is initiating this rulemaking in accordance with a court decision.

DATES: *Comments Due Date:* October 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Theodore Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation (OAHP), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6230, Washington, DC 20024, telephone number 202-708-0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note) (MAHRA) introduced a Mark-to-Market program designed to preserve housing affordability, while