

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 641**

RIN 1205-AB28

**Senior Community Service Employment Program**

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing a Notice of Proposed Rulemaking with request for comments to implement reforms to the Senior Community Service Employment Program (SCSEP) due to the enactment of the 2000 amendments to title V of the Older Americans Act of 1965 (OAA), Pub. L. 106-501 (2000). This proposed rule provides administrative and programmatic guidance, as well as requirements for the implementation of the SCSEP. Key components of this reform include coordination between SCSEP and the One-Stop Delivery System, increased responsibility of State grantees to collaborate with other SCSEP stakeholders, and increased accountability for performance.

**DATES:** All comments must be received by June 12, 2003.

**ADDRESSES:** All comments received during the comment period following the publication of this Notice of Proposed Rulemaking should be submitted in writing to Mr. Gale Gibson, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5306, Washington, DC 20210.

All comments will be available for public inspection and copying during normal business hours at the Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5306, Washington, DC 20210. Copies of the proposed rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is also available on the Division of Older Worker Programs' Web site at <http://wdsc.doleta.gov/seniors>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gale Gibson, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone:

(202) 693-3758 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The preamble is divided into four sections. Section I provides general background information. Section II discusses the implementing changes to the Older Americans Act. Section III discusses the proposed rule. Section IV discusses miscellaneous administrative requirements, such as Paperwork Reduction Act requirements. In drafting these regulations, the Department consulted with interested parties through a series of Town Hall Meetings and work groups, and received written suggestions in response to the **Federal Register** notices published at 66 FR 6678 (Jan. 22, 2001), 66 FR 10919 (Feb. 20, 2001), 66 FR 15596 (Mar. 19, 2001), 66 FR 16068 (Mar. 22, 2001), and 66 FR 20334 (Apr. 20, 2001).

**I. Background**

Since its inception in 1965, the purpose of the Senior Community Service Employment Program (SCSEP) has been to foster and promote useful part-time employment opportunities in community service activities for persons with low incomes who are 55 years old or older. The 2000 amendments to this legislation expand the program's purpose to include increasing participants' economic self-sufficiency and increasing the number of persons who may benefit from unsubsidized employment. The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) administers the program by means of grant agreements with eligible organizations, such as governmental entities and public and private nonprofit agencies and organizations. The SCSEP regulations were last revised in 1995, at 20 CFR part 641; 60 FR 26574 (May 17, 1995).

The 2000 amendments are the first major legislative changes to the SCSEP in many years. This document issues a proposed rule to conform to the new changes in the Older Americans Act due to the enactment of the 2000 amendments. The Department developed these regulations in consultation with program stakeholders, including State agencies, national organizations, interested individuals, and public and private nonprofit organizations.

**II. Implementing Changes**

Congress amended SCSEP to combine requirements that were formerly in the SCSEP legislation as last amended in 1992 by Pub. L. 102-375, the accompanying regulations at 60 FR

26574 (May 17, 1995) (formerly codified at 20 CFR part 641), and SCSEP program administration materials provided to the grantee community as bulletins, or training and employment information notices. New provisions of the OAA include requirements for: greater coordination with the Workforce Investment Act (WIA); a greater proportion of funds for States for appropriations above current funding levels; the submission of State plans; grants for a period up to 3 years; new performance measures; and corrective action and sanctions for poor performance.

With the enactment of the Workforce Investment Act of 1998, title V became a required partner in the workforce investment system. As a result, Congress amended SCSEP to include greater coordination with the One-Stop Delivery System, including reciprocal use of Individual Employment Plans and other assessment mechanisms.

Under both WIA and the OAA, any grantee operating an SCSEP project in a local area must now negotiate a Memorandum of Understanding with the Local Workforce Investment Board, which details SCSEP's involvement in the One-Stop Delivery System. Further, because of SCSEP's closer coordination with the One-Stop Delivery System, the "joint program" language contained in section 510 of the 1992 amendments to the OAA, Pub. L. 102-375 (1992), and section 203 of the Job Training Partnership Act, Pub. L. 97-300 (1982) (29 U.S.C. 1603 *et seq.*) for "automatically" qualifying participants for training or intensive services has been replaced with language that permits Local Boards to deem SCSEP participants eligible for those services.

The 2000 Amendments to the OAA require a different distribution of funding between State and national SCSEP grantees if the SCSEP appropriation increases. The legislation requires the Department to reserve amounts for section 502(e) (authorizing second career training projects), the territories, and the Native American and Asian Pacific aging organizations before funds are distributed between the States and national SCSEP grantees. From the amounts remaining after the reservation, the legislation holds grantees harmless at the 2000 level of activity, which requires the Department to allocate 22 percent of funding to State grantees and 78 percent of funding to national grantees. Funding remaining after 2000 level of activity distribution must be divided as follows: up to \$35 million will be divided to provide 75 percent to the States and 25 percent to the national grantees. Excess amounts over \$35

million will be divided 50 percent to States and 50 percent to the national grantees.

The 2000 Amendments require Governors to submit an annual plan that discusses the number and distribution of eligible individuals in the State, the employment opportunities, the skills of the local eligible population, the locations and populations for which community service projects are most needed and plans for coordinating with WIA. As part of the planning process, the legislation requires the Governor to obtain the advice of title V stakeholders in developing a plan that addresses the equitable distribution of positions in each State. The legislation also allows the Governor to make recommendations on grant proposals to the Department related to the proposed distribution of positions within the State.

Another new provision of the legislation is the establishment of performance measures. The performance measures are designed to monitor the performance of each grantee and provide a mechanism to assist those grantees that need technical assistance to perform better. The performance measures are based on the required indicators listed in section 513(b) of the OAA. For grantees that do not meet the established performance measures, section 514 of the OAA provides for corrective action and sanctions. Section 514 of the OAA also codifies prior regulatory eligibility and responsibility criteria that grantees must meet before receiving SCSEP funds. Finally, section 514 authorizes the Department to fund grants for up to 3 years after the establishment of the regulations and performance measures.

### III. Summary and Explanation of the Proposed Rule

This section discusses and explains the specific provisions of the proposed rule. As this legislation has many new provisions, the Department has drafted regulations that respond both to the SCSEP community's concerns and to the Department's interpretation of the statute. The Department obtained viewpoints of the public, including individuals and members of the grantee community, on the new provisions and any other SCSEP provision (regulatory or statutory) or policy. Five work groups were established that included representatives from the national grantee organizations and several States. The work groups addressed the following areas: Performance accountability; operational and policy issues; grant and administrative issues; the State Senior Employment Services Coordination Plan; and technical

assistance and consultation. These work groups provided the Department with issue papers and recommendations. Further, the Department held a series of Town Hall Meetings and requested comments through **Federal Register** notices to ensure that the regulations reflect the ideas of interested individuals. The Department has received a number of suggestions through this process. Every effort has been made to incorporate these suggestions to the extent practicable and consistent with applicable statutory requirements.

#### *Subpart A—Purpose and Definitions*

This subpart provides a section-by-section overview of the regulations. This subpart also includes a number of definitions that are intended to familiarize the reader with basic elements of the One-Stop Delivery System established under WIA, such as "core services," "individual employment plan," "local workforce investment area." Other definitions such as "recipient," "subrecipient," and "vendor" are provided to clarify the use of terminology in Subpart H of these regulations, which is based on uniform administrative requirements, audit requirements, and allowable cost requirements generally applicable to Federal financial assistance programs, including SCSEP. A number of definitions that are well known to those familiar with SCSEP are provided for the benefit of readers who may be less familiar with the program. These include such terms as "authorized position level" and "host agency."

The Department added a definition of "national grantee" for the first time by regulation, although it is supported by a long-standing Department practice. This definition clarifies the list of those entities eligible to receive SCSEP national grant funds. For this purpose, the regulation defines "public agencies" as meaning Federal agencies in order to maintain the statutory distinction between national grants and grants to States. Thus, under this definition, State and local public agencies are not permitted to serve as national grantees.

The definition of national grantee in § 641.140, also contains a requirement that the organization must be capable of administering multi-State programs. An organization does not have to operate in more than one State, but must be structured to have the capacity to administer multi-State programs. This requirement provides the Department with the flexibility to negotiate with grantees to ensure that all SCSEP participant slots are covered with no disruptions to the participants. It is the

Department's experience that such organizations will be able to run a successful SCSEP program and also meet the statutory administrative cost limitations. Further, it aligns with the current practice of awarding SCSEP funds to organizations that are "national" in scope and further distinguishes these grants from grants to States.

Finally, the term "State grantee" has been defined for purposes of this regulation to include not only the 50 States, Puerto Rico, and the District of Columbia, but also to include the following territories: Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. "State" is defined in section 506(g)(6) of the OAA to specifically exclude the territories. The Department interprets this definition as applying only to section 506 of the OAA, which governs the distribution of funds. In section 506, where the OAA discusses "State," it does so in terms of a State receiving its portion of SCSEP funds. Under section 506, the territories receive a reservation of funds and therefore, do not receive funds as part of the formula distribution among the States. The Department distinguishes this use of the word "State" in the funding context from its use in the regulations. Therefore, to ensure that the title V provisions are administered equitably, the Department has defined "State grantee" as including the territories. Thus, territories will be held to the same requirements regarding State plans, coordination with the Workforce Investment Act, services to participants, section 502(e), eligibility review, responsibility review, performance measures, sanctions, administrative costs, and appeal procedures as the States.

#### *Subpart B—Coordination With the Workforce Investment Act*

This subpart incorporates those provisions of the 2000 Amendments to the Older Americans Act that require coordination with the Workforce Investment Act of 1998 (WIA). This subpart does not cover every WIA provision relevant to SCSEP.

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

SCSEP is a required partner under the Workforce Investment Act. As such, SCSEP grantees and subgrantees must ensure that they are familiar with the WIA statutory and regulatory provisions. WIA is due to be reauthorized by September 30, 2003. Reauthorization may bring changes in

the law. SCSEP grantees and subgrantees must ensure that they keep current on any changes in the law.

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

The underlying notion of the One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. The Department envisions that a variety of programs could use common intake, case management, and job development systems in order to take full advantage of the One-Stop Delivery System's potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs can, therefore, be available through the One-Stop. The proposed regulation requires SCSEP grantees to make arrangements to provide their participants, eligible individuals the grantees are unable to serve, as well as other SCSEP ineligible individuals with access to other services available in the One-Stop.

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

This proposed provision clarifies that in the One-Stop environment, OAA funds may only be used to provide title V services to individuals eligible for SCSEP. Some eligible participants may not be able to receive all of the services he or she requires through SCSEP. Such individuals must be referred to programs under WIA that may assist the SCSEP eligible participant in obtaining a job. The Department encourages grantees to enroll or refer those individuals who do not meet the income eligibility criteria to programs under WIA. Grantees may want to negotiate how these individuals will be served in the Memorandum of Understanding.

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

There was much discussion during the Town Hall Meetings about whether

the One-Stop Delivery System would accept and use SCSEP IEPs as part of the assessment process. This proposed regulation mirrors the statutory requirement at section 502(b)(4) of the OAA and clarifies that the SCSEP IEP and the WIA title I IEP have similar purposes—to determine what services individuals need to meet their employability objectives, which may include transition into appropriate unsubsidized employment. The information collected by each must be sufficient to assist in making an informed judgment between the staff and the individual about the specific service strategy for that individual. The specific activities that may be provided by each program differ. In the SCSEP program, beyond core services, intensive services (such as creation of a SCSEP IEP) and community service activity are the major program components. Some other training services may be provided. Placement in a full-time unsubsidized job is a goal for some participants; others would prefer to have part-time employment, while still others would prefer to continue in a community service activity. The WIA title I program, on the other hand, is aimed at job placement through core services, intensive services, and training. As a practical matter, the SCSEP IEP and WIA IEP must be sufficiently comprehensive to provide the information needed to place a participant who is eligible for both programs in the correct service mix. This may well require modifying existing SCSEP IEP and WIA IEP information collection practices, which should be negotiated during the development of the local MOU.

There was also much related discussion that demonstrated concern that the SCSEP IEP would not be accepted at the One-Stop, especially if WIA developed a more extensive IEP than the SCSEP IEP, when the participant was assessed through SCSEP and not at the One-Stop. This outcome is clearly not intended and the Department expects One-Stop operators to accept SCSEP IEPs and SCSEP grantees to accept One-Stop originated IEPs. Both SCSEP's IEP and WIA's IEP are meant to be "living documents," updated on a continuing basis as part of an ongoing assessment process. The intent of the provision authorizing WIA and SCSEP grantees to use each other's IEPs is simply to avoid unnecessary duplication and to reduce the burden on participants.

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

Under the OAA, although SCSEP participants are not automatically eligible to receive intensive and training services under WIA, Local Boards now have the authority to deem SCSEP participants eligible to receive intensive and training services under title I of WIA. WIA eligibility is not based on income except in the adult program where a local area determines that funds are insufficient; rather, WIA eligibility is based on the need for and utility of intensive and training services to obtain employment. SCSEP participants who seek unsubsidized employment may need training services, which may be provided by the SCSEP grantee, subgrantee, host agency, or by another provider, like the WIA adult program, as agreed to in the MOU. The SCSEP IEP itself is an intensive service.

The issue of eligibility for WIA title I adult services has been raised by some SCSEP partners, who are concerned that the WIA title I grantees would refuse to provide intensive or training services to SCSEP participants because their income, including their OAA title V payments, would be too high to meet the WIA title I local priority of service policies. The Department does not believe that title V payments should be considered income when determining an individual's eligibility for intensive or training services for two reasons. First, the individual's income level is already considered at the time of enrollment in SCSEP for initial eligibility purposes. Second, SCSEP provides work opportunities that are analogous to work experience activities under 20 CFR 663.200 of the WIA regulations, which are not counted against the individual's income. This type of income historically has not been included as wages for eligibility determination purposes. If work experience payments were to be considered as income, it could mean that the individual might be precluded from other program activities, which is clearly not intended.

*Subpart C—The State Senior Employment Services Coordination Plan*

This subpart of the regulations implements the new provisions in section 503 of the OAA, which direct the Governor of each State to submit a State Senior Employment Services Coordination Plan (State Plan) to the Department annually. State Plan development is a participatory process that includes Governors, State and area agencies on aging, State and Local

Boards, national grantees, and stakeholders in the aging network. It is intended to ensure a participatory planning process and to provide an opportunity for public comment on the State Plan for SCSEP services within the State. The State planning process requirements do, however, provide an exemption for national grantees serving older American Indians at section 503(8). Under this provision, national grantees serving older American Indians are not required to be a part of the State planning process, although the Department encourages them to participate. These national grantees are required to collaborate with the Department in developing a plan for projects and services to older American Indians. The Department will provide instructions on how and when this collaboration will occur.

The State Plan is separate and distinct from the SCSEP grant application and the plan required under WIA. The Department will provide instructions on how these three types of plans relate to each other in an administrative issuance.

Section 503 also allows the Governor to submit recommendations to the Department on any application for SCSEP funds that proposes a project in his or her State. This provision is limited to recommendations on the proposed distribution of positions and may impact the Department's decision to award or not award SCSEP funds to a particular applicant.

#### What Is the State Plan? (§ 641.300)

This proposed section defines the State Plan and emphasizes that it is intended to foster collaboration among SCSEP stakeholders.

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

Although developing the State Plan is a participatory process involving SCSEP grantees operating programs within the State, the OAA assigns the responsibility for developing the Plan to the Governor.

#### May the Governor Delegate Responsibility for Developing and Submitting the State Plan? (§ 641.310)

This section permits the Governor to delegate responsibility for the State Plan. The Department recognizes that the State Plan requires a sizable time commitment to make certain that stakeholders are consulted, to collect and publish comments, and submit a well-drafted State Plan for Department review. Therefore, the Department is allowing Governors to utilize their resources that are best suited for

developing the State Plan, consistent with any applicable State laws or regulations. A Governor who chooses to delegate his or her State Plan responsibility will be required to submit a signed statement to the Department indicating such intent. The Department will issue the required format for this statement in an administrative bulletin. The Department will also accept the signature of the Governor's delegate for the State plan as long as there is a valid statement on file indicating the Governor's intent.

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

This provision lists the stakeholders and others that the Governor is required to consult for advice and recommendations related to the State Plan. It is important that all SCSEP grantees operating programs within the State, including national grantees serving older American Indians, the State and Local Boards, and the State and area agencies on aging have an opportunity to actively participate in developing the State Plan. The development of the State Plan is a participatory process that is designed to allow for comments from all interested organizations and individuals.

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

Section 503(a)(2) of the OAA requires the Governor to seek the advice and recommendations of a number of different parties for providing SCSEP services in the State, but does not require national grantees to participate in the State planning process. Proposed § 641.320 places a requirement on national grantees to collaborate with the Governors of each State where they operate a SCSEP program consistent with the intent of the statute. The Department strongly believes that it is in the best interest of all national grantees to work with the Governors in this process. Not only will national grantees be a part of the planning process for serving SCSEP participants, but the decisions made as a result of this consultation help national grantees meet the eligibility criteria at section 514(c)(5) of the OAA. Further, any national grantee that fails to collaborate for State Plan purposes may be deemed ineligible for SCSEP funds in the following Program Year under section 514(c)(5).

The proposed regulation exempts national grantees serving older American Indians, who may choose not to participate in the State planning process, consistent with the statute,

although the Department encourages American Indian grantees to participate in the State planning process. These national grantees must collaborate with the Department to develop a plan for projects and services to older American Indians in the locations that they serve.

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

This section lists the minimum requirements of the State Plan consistent with section 503(a)(4) of the OAA. The Department will issue more detailed instructions about what must be included in the State Plan. Governors are encouraged to use the equitable distribution report that State grantees submit to the Department each year in preparing their State plans. The Department will also provide more detailed information about the collaboration efforts to grantees serving older American Indians.

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

This proposed provision expands on section 503(a)(4)(E) of the OAA, which requires the State Plan to identify and address the localities and populations for which community service projects of the type authorized by this title are most needed.

#### How Should the Governor Address the Coordination of SCSEP Services With Activities Funded Under Title I of WIA? (§ 641.335)

Proposed § 641.335 expands on the State Plan requirement found in section 503(a)(4)(F) of the OAA, which requires coordination of SCSEP activities in the State with WIA activities carried out in the State.

#### Must the Governor Submit a State Plan Each Year? (§ 641.340)

The Department received suggestions through the Town Hall Meetings that the State Plans and the SCSEP grants cover the same time period, with an annual modification process to allow for any necessary revisions. The Department recognizes the merits of these suggestions. In addition, the Department recognizes that the data used in developing State Plans may not be updated annually and that a substantial amount of staff time is required to fully carry out the State planning requirements. Therefore, the Department is not requiring each State to develop and submit a completely new State Plan each year. However, the Department will require States to seek the advice and recommendations of the individuals and organizations identified in the statute at section 503(a)(2) about

what changes are needed, if any, and to publish the changes to the State Plan for public comment. States will then submit a modification to the Department based on any updated information, including any new comments received and a summary of those comments. This slightly abbreviated process allows States to comply with the legislative requirements, but reduces the burden of the requirement.

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

Section 641.345 discusses when modifications to the State Plan are required. In general, modifications are required when there is a major change affecting the underlying basis for the State Plan. This section mirrors the WIA regulations at 20 CFR 662.230.

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

Because State procedures vary, the Department recommends that Governors use established methods for soliciting and collecting public comments. In general, however, soliciting and collecting public comments should ensure that the title V planning process is coordinated with other related State planning processes, such as the WIA 5-year plan and the title III OAA plan. The process should be open and inclusive in order to provide a meaningful opportunity for the public to review the proposed plan and offer comments.

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

This section clarifies that any individual or organization may comment on the State Plan, which is consistent with section 503(a)(2) of the OAA.

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

The equitable distribution report is a report that shows where positions are located throughout a State on a grantee-by-grantee basis and is required by section 508 of the OAA. State agencies are responsible for preparing it at the beginning of each fiscal year. SCSEP grantees use the equitable distribution report to improve on the distribution of SCSEP positions within the State.

The information contained in the ED report is used in preparing the State Plan; however, the State Plan requires additional information, such as plans for facilitating the coordination of activities of grantees in the State under WIA, and consultation with individuals and organizations in the State. The State Plan is submitted annually. The

Department intends for these documents to work together to ensure that services are fairly distributed in the State.

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

The Department recognizes the difficulty of balancing these provisions in the daily operation of SCSEP projects. Section 508 of the OAA requires the State agency for each State receiving funds to prepare and submit a report to the Department each year on how the State is allocating its SCSEP funds in an equitable manner taking the priorities established in the State Plan into consideration. Section 503(a)(6) of the OAA provides that when developing the State Plan, disruptions to current participants must be avoided to the greatest extent possible. The Department proposes, in § 641.325(h) to require Governors to include a description of the steps that are being taken to comply with section 503(a)(6) on avoiding disruptions in the State Plan. When there is new census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized jobs to make positions available for eligible individuals in areas where there has been an increase in the eligible population. The Department encourages interested organizations and individuals to use the State Plan review and comment process to make recommendations for how their State can achieve an equitable distribution of SCSEP positions while avoiding disruptions to current participants. The Department does not define disruptions to mean that participants are entitled to permanently remain in their current subsidized community service employment positions. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time.

#### *Subpart D—Grant Application, Eligibility, and Award Requirements*

This subpart covers the grant application, eligibility, and award requirements for all SCSEP grants under section 506 of the OAA. The procedures in this subpart support increased emphasis on the grantees' accountability for results in order to achieve enhanced

program performance. Relevant sections describe organizations eligible to apply for SCSEP grants, application requirements, eligibility criteria, responsibility reviews, and how the Department will select grantees. The OAA contains a new requirement that the Department arrange for competition should grantees fail to meet performance measures, which are discussed in Subpart G. The OAA also reinforces the responsibility tests that were established in the former regulations. Should a grantee fail one or more of these tests, the Department is required to compete the funds of such grantee. This subpart provides procedures that the Department will use when awarding SCSEP funds under competitive and noncompetitive conditions.

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

The OAA, at section 502(b)(1), authorizes the Secretary to enter into agreements with State and national public and private nonprofit agencies and organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations.

This proposed rule clarifies the Department's policy on how these entities may apply for SCSEP funds. The proposed rule clarifies the list of eligible entities that may apply for SCSEP funds to preserve the balance of funds established in section 506 of the OAA, as well as the definitions of "national grants" and "State" in section 506(g)(5) and 506(g)(6). Entities that are eligible to apply for national grants are: nonprofit organizations, Federal public agencies, and tribal organizations. These entities must be capable of administering a multi-State grant. States, agencies of a State, political subdivisions of a State, and combinations of political subdivisions of a State are not eligible to apply for national grant funds. The Department has defined "public agencies" as Federal agencies in order to maintain the statutory distinction between national grants and grants to States and to give effect to the use of the separate terms "national public and private nonprofit agencies and organizations" and "agencies of a State government or a political subdivision of a State \* \* \* or a combination of such political subdivisions" in section 502(b)(1) of the OAA. The definition of national grantee is expanded in § 641.140 to mean an organization that

is capable of administering multi-State programs. An organization does not have to operate in more than one State, but must have the capacity to administer multi-State programs. This requirement allows the Department to negotiate with successful applicants to ensure that positions that did not receive a proposal continue to be served in an effort to minimize disruptions to participants. This requirement also aligns with the current practice of awarding SCSEP funds to organizations that are "national" in scope and further distinguishes these grants from grants to States. As such, State and local public agencies are not permitted to serve as national grantees.

Section 514(e)(3) of the OAA lists the eligible entities that can apply for national grant funds in a State, but as a result of poor performance. Under section 514(e)(3), States, nonprofit organizations, and public agencies are eligible for a transfer or competition of funds when a national grantee in a State fails to meet its performance measures. This list of eligible entities is discussed further at § 641.760 of Subpart G (performance measures).

In the case of grants to States, the Department is required to allocate SCSEP funds to each State under section 506(e) of the OAA. However, it is often an agency of the State, such as the State agency on aging, that operates SCSEP projects for the State. The Department will continue the practice of allocating funds to each State or the State's designee (such as the State agency on aging). Other entities, such as, political subdivisions, a combination of political subdivisions, or a national grantee operating in the State may operate SCSEP projects on the State's behalf if State policy permits; however, these entities may only apply independently for the State's funds as a result of a competition under section 514(f) of the OAA. The Department believes that this list of eligible applicants is a common sense approach to managing the State portion of the SCSEP funds. It also aligns with current State practice of selecting an agency, local government, or national grantee operating in the State as agents or subgrantees to administer its SCSEP projects. However, as discussed in § 641.881, the Department will not negotiate with or directly fund such entities. The State remains responsible for receiving the grant and for selecting an agent or subgrantee to operate the grant in accordance with its own procurement procedures.

#### How Does an Eligible Entity Apply? (§ 641.410)

Proposed § 641.410 directs interested applicants, including States, to follow instructions in administrative issuances to apply for a SCSEP grant. The Department decided not to include more specific information in this section because the parameters for applying for a SCSEP grant may change from Program Year to Program Year. Also, the instructions for State applications may vary from the application instructions for national grants.

Proposed paragraph (b) of this section reiterates the statutory requirement that applicants for national grants, with the exception of organizations applying to serve older American Indians, must submit a copy of their applications to the Governor of each State where a project is proposed prior to submission to the Department. This provision is intended to allow the Governor to make recommendations on position distributions in the State only and not on the quality of an application or whether the Department should fund a particular applicant. In the case of a full and open competition, Governors may elect to only review the applications of successful applicants to reduce the burden on the States and applicants.

Organizations proposing to serve older American Indians do not have to meet this requirement because they are exempt from State planning under section 503(a)(8) of the OAA. The Department encourages such entities to submit applications to the Governors in the State(s) they propose to serve so that the Governors may better plan the activities in their State.

Paragraph (c) of this section allows the States to apply for State grant funds as a part of its WIA State Unified Plan.

#### What Factors Will the Department Consider in Selecting Grantees? (§ 641.420)

This section describes the selection criteria to be used on a program-wide basis for the selection of all SCSEP grantees, whether selected competitively or on a noncompetitive basis. This proposed rule identifies the eligibility and responsibility requirements in section 514 of the OAA. The selection criteria must also be used to replace any grantee that fails to meet the performance measures listed in section 513 of the OAA and when new or additional grantees are funded.

#### What Are the Eligibility Criteria That Each Applicant Must Meet? (§ 641.430)

The eligibility criteria listed in this proposed section reflect the statutory

language at section 514(c) of the OAA dealing with eligibility criteria, which must be reviewed each time an applicant applies for SCSEP funds. The OAA codified the provisions of the previous regulations. Proposed § 641.430(e) clarifies the statutory language to include the One-Stop center in the coordination requirement so that applicants understand that such coordination is mandated. The OAA, at section 514(c)(7), permit the Department to add additional criteria as appropriate to minimize disruptions to current participants. The Department has added proposed § 641.430(g)—a requirement to minimize disruptions. The Department must conduct an eligibility review each time an applicant applies for SCSEP funds.

#### What Are the Responsibility Conditions That an Applicant Must Meet? (§ 641.440)

This section contains the responsibility review provisions codified in section 514(d) of the OAA. These provisions were published in the previous regulations. The responsibility review provisions in this section address such matters as debt recovery deficiencies, significant fraud or criminal activity, serious administrative deficiencies such as failure to maintain a financial management system, maintaining excess cash or having deficient internal controls, willful obstruction of auditing or monitoring or failure to correct deficiencies, failure to provide services to applicants or to meet applicable performance measures, failure to return outstanding cash advances, failure to submit required reports, failure to ensure subgrantee compliance with applicable audit requirements, and final disallowed costs in excess of five percent of the grant or contract award.

The Department understands that Congress' intent was to make the SCSEP program more performance-oriented and to assure that the SCSEP was well managed. Consistent with that intent, the Department intends to enforce the responsibility tests more strictly than it has in the past.

The Department is interpreting the first criterion to mean that if an applicant fails to make payments on a debt owed to the Department, whether incurred on its own or through subgrantees or subcontractors, after the grantee has received three demand letters from the Department, it will no longer be eligible to receive SCSEP funds. This interpretation is consistent with the former SCSEP regulations, as well as the Department's requirements for finding any grantee or contractor

responsible as outlined in 29 CFR 95.14 and 97.12.

The Department will determine whether an applicant for SCSEP funds has met the responsibility requirements before awarding funds.

#### Are There Responsibility Conditions That Alone Will Disqualify an Applicant? (§ 641.450)

The OAA defines two criteria that will automatically disqualify an applicant. They are: (1) Efforts by the organization to recover debts, after three demand letters have been sent, that are established by final agency action and have been unsuccessful, or that there has been failure to comply with an approved repayment plan; and (2) established fraud or criminal activity of a significant nature within the organization.

As discussed in § 641.440, the Department is interpreting the first criterion to mean that if an applicant fails to make payments on a debt owed to the Department, whether incurred on its own or through subgrantees or subcontractors, after the grantee has received three demand letters from the Department, it will no longer be eligible to receive SCSEP funds. The Department interprets the second criterion strictly. A plain reading of the statute indicates that whenever there is fraud or criminal activity within an organization of a significant nature, the entity must be deemed non-responsible. Under this interpretation, the entity could be deemed non-responsible even if the act was done by an individual within the organization without the approval or knowledge of the organization. The remaining responsibility tests require a substantial or persistent (for 2 or more years) finding before the applicant is found ineligible.

#### How Will the Department Examine the Responsibility of Eligible Entities? (§ 641.460)

This proposed regulation addresses how the Department will examine applicants to determine if they are responsible as required by section 514 of the OAA. Section 514(d)(1) specifically requires the Department to review available records to assess an applicant's overall responsibility to administer Federal funds. Additionally, section 514(d)(2) allows the Department to consider any other information relevant to responsibility, including the applicant's history with managing other grant funds.

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

Once an application has been submitted, whether competitively or non-competitively, the Department may question any proposed project component if it believes that the component will not serve the purposes of SCSEP. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative. The Department may also reject an application, if in the Grant Officer's opinion, the application does not serve the program well, or if the applicant does not meet the eligibility or responsibility criteria. Where grants are competitively selected, the Department may reject an application that is determined to be less advantageous to the Department than another competitive application, even if the application is out of rank order.

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

This section is reserved for the Department's policy on providing remedies for applicants that are not selected to receive a SCSEP grant and that are successful in appealing the Department's decision.

The Department is particularly interested in receiving comments on this section. The Department is particularly interested in comments on available remedies and the timing of those remedies.

Competitions for SCSEP projects will not necessarily be "one-on-one" competitions. Because applicants may seek to operate projects scattered all over the country, applications may not necessarily compete against each other on a one-on-one basis. An applicant might propose projects in 10 different States, and compete against one of more other applications for each of the 10 projects. An applicant that proposes to serve one area may compete against several applicants, each of which seeks only a portion of that area. In addition, the Department may negotiate a grant award that differs somewhat from the original application. The Department also has an obligation to minimize disruption to existing participants. Finally, the Department's experience is that there is a certain minimum size grant needed to give a grantee a good chance at success within the program's administrative cost limits (which is a grant size of approximately \$6 million or approximately 840 positions), and to adhere to the required level of activities in section 506 of the OAA.

These factors can lead to some complications in fashioning a remedy that will meet the Department's obligations to minimize disruptions and that will ensure that programs are successful. How should a remedy be fashioned that will take these factors into account? For example, how should the remedy be fashioned if an appeal succeeds only in part and the resulting award would be below the minimum standards for a grant or if the result would leave an existing grantee below that standard? How should the remedy take into account the results of negotiations? If, as a result of negotiations, a grantee has acquired additional projects that neither it nor its competitor applied for, should the remedy take that into account? If an appeal is successful, to what extent should the Department be able to negotiate the grant agreement that will result? May the Department propose a different configuration of projects than was applied for in order to minimize disruptions or optimize results for the successful appellant and other existing grantees? If the Department can negotiate with the successful appellant, what happens if the negotiations are not successful? In cases where the applicant to jurisdiction relationship is not one-on-one, complexities of arranging a grant that will both minimize disruption and provide both the successful appellant and the grantee(s) that lose projects with grants that can be successfully operated, should the remedy be limited to recovering the cost of creating a proposal or something else? Are the remedies currently available under the Workforce Investment Act (WIA), Migrant and Seasonal Farmworker Program (*see* 20 CFR 633.205) appropriate for this program and why or why not? What remedy should be available for one-year grants?

Another important issue is the timing of the remedy. How long is an appropriate transition period? What factors associated with the complexity of the transition involved should affect the length of an appropriate transition period? Should a period of time for negotiations be built in? How should the Department remedy an applicant when the decision was rendered in close proximity to the next program year? Should there be a cut off point after which a grant will not be awarded as there is in the WIA Migrant and Seasonal Farmworker Program? What should that cut-off point be?

### May the Governor Make Recommendations to the Department on Grant Applications? (§ 641.480)

Proposed § 641.480 clarifies the Governor's statutory authority under section 503(a)(5) of the OAA to make recommendations to the Department on grant applications before funds are awarded. The Governor's recommendations must relate to the distribution of positions in the State. Any comments received relating to the quality of a particular application will not be considered. Under non-competitive conditions, the Governor may make recommendations on all submitted applications. Under competitive conditions, the Governor has the option of either making recommendations on every proposal that will be submitted to the Department or providing recommendations on the applications of successful applicants. It is incumbent on each Governor to inform the Department whether he or she wishes to review all applications or only successful applications. As stated in § 641.410, organizations applying to serve older American Indian participants are exempt, but are encouraged to submit applications to the Governor in the State(s) they are proposing to serve.

### When May SCSEP Grants Be Awarded Competitively? (§ 641.490)

Proposed § 641.490 outlines the circumstances under which the Department may compete SCSEP funds. Section 514 of the OAA requires a competition for national grantee, national grantee in a State, or State funds if the organization fails to meet its performance measures or fails to meet the eligibility or responsibility tests of section 514(c) and (d) of the OAA.

The Department may also compete national grant funds through a full and open competition. The details of such competition will be issued through a Solicitation for Grant Application and published in the **Federal Register**. The Department favors full and open competition because it provides the Department with an opportunity to ensure that the best applicants are awarded grants and the program is administered to its full potential. It also allows new and different entities, including faith-based and community-based organizations, to become a part of the grantee community.

### Subpart E—Services to Participants

This subpart covers services to SCSEP participants. More specifically, it covers who is eligible to receive services, priorities in enrollment of participants,

the types of services and benefits that participants may receive, termination from the program, and the grantee's responsibility to participants.

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

Proposed § 641.500 establishes the statutorily defined eligibility criteria. According to section 516(2) of the OAA, only those individuals who are at least 55 years of age and a member of a family with an income 125 percent or less of the poverty guidelines are eligible to receive SCSEP services. Participant income eligibility criteria was the area that received the most attention in Town Hall Meetings and recommendations submitted in response to **Federal Register** notices. Individuals offered various suggestions, all directed at providing greater flexibility in the income eligibility criteria. More specifically, some individuals suggested a higher income threshold to serve those individuals who may be just above the 125 percent income threshold issued by the Department of Health and Human Services and approved by the Office of Management and Budget. The Department has decided not to increase the income eligibility threshold because SCSEP currently serves only a small percentage of individuals who are within the 125 percent income threshold. Individuals who are in need of the services provided under the SCSEP but who do not meet the income eligibility requirement, should be referred to or enrolled in WIA.

### When Is Eligibility Determined? (§ 641.505)

This section discusses when the eligibility of a participant is determined. Clearly, the first time eligibility is determined is when an individual applies to participate in SCSEP. Once an individual becomes a SCSEP participant, however, grantees are responsible for verifying the individual's income eligibility at least once every 12 months. Grantees are encouraged to verify a participant's income more frequently, however, when circumstances dictate.

### What Types of Income Are Included and Excluded for Participant Eligibility Determinations? (§ 641.507)

The Department is seeking comments on the types of income that grantees must consider when determining a participant's eligibility. Older Worker Bulletin 95–5 lists the current inclusions and exclusions for determining a participant's income. The Department is specifically seeking comments on whether certain

provisions should be consolidated or eliminated, or if other new categories should apply. The Department is considering eliminating the exclusion of the first \$500.00 of a participant's income for re-certification purposes because this provision is not consistent with the income eligibility requirements under the 2000 Amendments. See OW Bulletin 95–5, section 2(g) under the Exclusions. Further, in order to serve the populations that the program is intended to serve, (*i.e.*, those most in need), the Department is also considering placing limitations on the amount of assets a participant may have to be eligible for the program. See OW Bulletin 95–5, section 2(h) under the Exclusions. Similarly, the Department is considering placing limitations on the amount of one-time unearned income that may be excluded. See OW Bulletin 95–5, section 2(j) under the Exclusions. The Department intends to provide additional guidance on the calculations through an administrative issuance.

### What Happens if a Grantee/Subgrantee Determines That a Participant Is No Longer Eligible for the SCSEP Due to an Increase in Family Income? (§ 641.510)

Grantees are required to terminate participants who are no longer income eligible for the program according to § 641.580. Participants who are no longer income eligible for SCSEP must receive a written notification of termination within 30 days of the termination date. Grantees must assist these individuals by referring them to the WIA One-Stop or to another appropriate partner program. (See § 641.255). Any participant who disagrees with a termination on the basis of income may grieve the decision according to the grantee's grievance procedures in accordance with Subpart I of this regulation.

### How Must Grantees/Subgrantees Recruit and Select Eligible Individuals for Participation in the SCSEP? (§ 641.515)

Proposed § 641.515 outlines the general statutorily required means for recruiting and selecting eligible individuals for participation in SCSEP. Generally, grantees are required to develop a method for recruiting and selecting eligible individuals. To the extent possible, grantees must meet the statutory requirement at section 502(b)(1)(M) to develop methods of recruitment and selection that offer services to minorities, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, in proportion to their numbers in the State

and based on the rates of poverty and unemployment.

Grantees are also required by section 502(b)(1)(H) of the OAA, to list job vacancies with the State Workforce Agencies and utilize existing methods of recruitment and selection, including by participating in the One-Stop.

Beyond these requirements, grantees have a great deal of flexibility to determine how to recruit and select individuals and are encouraged to be as creative as possible.

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

This section emphasizes the statutory requirement at section 516(2) of the OAA, which requires that priority of services be given to individuals who are at least 60 years old, as well as the veterans' priority requirement in the Jobs for Veterans Act, Pub. L. 107-288 (2002). The latter requirement provides a priority of services for veterans and for certain spouses: Spouses of a veteran who died of a service-connected disability; spouses of a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, or who has been captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power; spouses of any veteran who has a total disability resulting from a service-connected disability; and spouses of any veteran who died while a disability so evaluated was in existence. To receive the priority, the veteran or qualified spouse must meet program eligibility requirements.

The Department interprets the Jobs for Veterans Act so as to harmonize the two priority provisions. Under this interpretation, both priorities would apply. That is, within the group of eligible individuals age 60 and over, the veteran or qualified spouse would receive SCSEP services before non-veterans within that age group. Within the group of individuals who are age 55 to 59, veterans and qualified spouses would again receive a priority over other eligible individuals.

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

In addition to the priorities outlined in § 641.520, the OAA also require grantees to give special consideration to individuals who have income below the poverty level, who have poor employment prospects, who have the greatest social and/or economic need, or who are minorities, limited English

speaking, or who are Indians, to the extent feasible. The addition of the priority under the Jobs for Veterans Act does not alter this preference. These preferences operate within the context of the two priorities (age and status under the Jobs for Veterans Act); that is, grantees should apply the priority in selecting among individuals who are eligible, and then provide services within the priority to those who meet the preference first.

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

The statutory priorities must always be applied first. However, the Department understands that there may be a limited number of individuals who fall outside of the prescribed statutory preference characteristics, but who may still be in need of SCSEP services. The Department is providing grantees/subgrantees with the flexibility to exercise their judgment when they determine that a non-preference eligible individual should receive services over a preference eligible individual described above. For example, grantees/subgrantees may choose to serve former SCSEP participants who left the program due to illness and now seek to return to the program, or they may choose to serve a former SCSEP participant who was placed in an unsubsidized job and who seeks to return to the program, over the preference individuals. The flexibility to serve these individuals reassures participants who leave the program under these circumstances and can be used as a motivator to encourage them to take unsubsidized jobs. Grantees should take care to document why a particular participant who is not entitled to a preference has received services. Grantees must balance the use of this discretion with the performance measures in subpart G that require grantees to service those of greatest economic need, greatest social need, or poor employment history or prospects and must not use this discretion to avoid applying the statutory priorities. The Department intends to monitor these requirements through the quarterly reports as well as when determining whether a grantee has met its performance measures.

#### What Services Must Grantees/Subgrantees Provide to Participants? (§ 641.535)

This section sets forth those services that grantees/subgrantees must provide to all SCSEP participants. It includes a listing of what each participant assessment must include and clarifies

that the information gathered during the participant assessment must be used as the basis for preparing the SCSEP IEP. It is particularly important that grantees thoroughly assess each participant and ensure that all of the required information is included in the SCSEP IEP, since it is considered an intensive service under title I of WIA. Assessments must be updated on a quarterly basis so that the SCSEP IEP is a "living document." The information gathered during the assessment and recorded in the IEP serves as the basis for determining the services that a participant needs, most appropriate host agency assignments/reassignments for participants and for ensuring that participants are getting the training necessary to achieve their unsubsidized placement goals.

The listing of services in proposed § 641.535 is not intended to be all-inclusive. Grantees should refer to operating procedures and guidelines issued by the Department, such as Older Worker Bulletins and technical assistance guides, for additional requirements. Participants may not be enrolled in SCSEP solely for the purpose of receiving job search assistance and job referral services. SCSEP staff working in a One-Stop Delivery System, however, may provide these services to individuals who are not being enrolled in the SCSEP, as long as the staff time is appropriately charged to the appropriate program under the WIA cost allocation principles or the SCSEP staff may refer such individuals to appropriate One-Stop partners.

#### What Types of Training May Grantees/Subgrantees Provide to SCSEP Participants? (§ 641.540)

Training may take many forms, including skills training, on-the-job training, work experience, community service training, job search and job referral services. Training may be provided through lectures, seminars, classroom instruction, individual instruction, or other arrangements, including, arrangements with other workforce development programs. The Department also encourages participants to continue to self-develop by engaging in training through other programs or sources when they are not working in a community service activity. The Department believes that self-development training is beneficial to participants because it facilitates their placement into unsubsidized employment.

Also, the Department expects grantees to review regulations outlining the limitations on the use of funds and the OMB cost principles when proposing to

use funds for travel or room and board associated with training.

Only a limited amount of SCSEP funds are available for training purposes. SCSEP grantees/subgrantees should look to other resources, such as those available under title I of WIA, for training of SCSEP participants.

#### What Supportive Services May Grantees/Subgrantees Provide to Participants? (§ 641.545)

Section 641.545 lists some of the supportive services that grantees/subgrantees may provide to participants. Supportive services may be provided while a participant is enrolled in the SCSEP and until a participant has been retained by an employer for 6 months. This list of supportive services is not intended to be all-inclusive. Grantees/subgrantees should seek to ensure that participants receive those supportive services necessary for them to participate in the program and to realize the goals set forth in their SCSEP IEPs. Grantees are especially encouraged to ensure that individuals who are placed in unsubsidized positions have the necessary supportive services to enable them to retain those positions. Since only a limited amount of SCSEP funds are available to provide supportive services, grantees/subgrantees should seek to obtain such services from other sources.

#### What Responsibility Do Grantees/Subgrantees Have To Place Participants in Unsubsidized Employment? (§ 641.550)

Because a major purpose of SCSEP is to increase the number of individuals who may participate in the program, grantees/subgrantees should make every reasonable effort to prepare participants who desire unsubsidized employment for such employment, in accordance with the employability goals listed in their SCSEP IEPs. In offering participants unsubsidized employment, grantees/subgrantees must take into account whether the job will allow participants to achieve economic self-sufficiency. Grantees must also strive to match the participant with the best job instead of just filling jobs with participants. The objective of the program is to place participants in positions that will maximize the use of their skills, based on their job readiness, skills, and preferences. Thus, grantees must contact private and public employers directly or through the One-Stop to develop or identify suitable unsubsidized employment opportunities. Also, grantees and subgrantees must encourage host agencies to assist participants in their

transition to unsubsidized employment by hiring the participants who are placed there through the community service component of the SCSEP.

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

This proposed section outlines a grantee's responsibilities to participants after they have been placed in unsubsidized positions. This section requires grantees to contact placed participants within 6 months of the starting date to determine whether the employer has retained them. This provision is consistent with the statute, at section 513, which uses retention in unsubsidized positions after 6 months as a performance measure. (Refer also to subpart G on performance measures). Therefore, grantees must contact participants 6 months after placement to ensure that participants are still employed. Grantees/subgrantees are encouraged to conduct follow-up before 6 months when possible, to ensure that the placement is successful. Grantees/subgrantees may also want to check with the employer at this time to see if it has other positions that may be offered to SCSEP participants.

During this period of follow-up grantees are permitted to provide supportive services to participants to the extent possible. The Department encourages grantees to provide supportive services to participants during this time because it ensures that participants are able to remain in the unsubsidized position. The Department distinguishes supportive services from wages, and these services are therefore not considered a subsidy. Supportive services are discussed at § 641.545.

#### May Grantees Place Participants Directly Into Unsubsidized Employment? (§ 641.560)

This proposed rule emphasizes the importance that grantees serve the most difficult seniors to place. Grantees are encouraged to work with individuals who are in need of skills training, *etc.*, and develop those individuals through the assessment and IEP so that ultimately they may be placed in an unsubsidized position. Individuals who already have employable skills and who may be directly placed in an unsubsidized position without further development should be referred to the services provided under the One-Stop Delivery System.

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

This provision requires grantees to pay participants the highest applicable minimum wage for time spent in orientation, required training, and for work in community service assignments. The applicable minimum wage may be the highest of the Federal minimum wage, the State or local minimum wage, or the prevailing rate of pay for persons employed in similar public occupations by the same employer. The Department is aware that because funding calculations are statutorily based on the Federal minimum wage, when a particular grantee is required to pay at a higher minimum wage for its location, the result is that the program is underfunded for its activities.

A number of stakeholders asked that the Department address the situation of States that have a higher minimum wage than the Federal minimum wage. The two main suggestions were that either grantees in those States should receive additional funding to cover their additional expenses for wages, or that the Department should reduce the number of positions for which grantees in those States will be held accountable, particularly in light of the new emphasis on performance measures.

The Department agrees that grantees in States with a higher-than-Federal minimum wage, or similarly, grantees in areas where the prevailing rate of pay for persons employed in similar public occupations by the same employer is higher than the Federal minimum wage, will not be able to fully fill the authorized level of positions allotted to them. If the Department receives additional appropriations that are not required to create more positions, the funding gap will decrease. Also, it is not the Department's intent for this issue to negatively impact grantees when reviewing whether grantees have met their performance measures. The Department will address this issue and its impact on the number of positions that may be filled through the performance accountability process in subpart G.

Paragraph (b) of this section addresses fringe benefits. With some exceptions, discussed in the regulation, grantees must assure that participants receive the fringe benefits required by law. Fringe benefits must also be administered uniformly among participants of a grantee's projects, unless the Department waives this requirement because it is in the best interest of the participants. Physical examinations are

a fringe benefit that grantees/subgrantees must offer annually to each participant. Physicians commonly recommend annual physical examinations for people over the age of 50 as a means of early identification of any serious medical problems. The Department's policy is to actively promote this program benefit for each participant. Grantees/subgrantees should encourage participants to take advantage of this important benefit.

Grantees may not provide physical examinations to determine a participant's "fitness to work." Physicals can be useful, however, in helping participants make informed judgments about their ability to perform certain work assignments. After an individual is enrolled (on the payroll) and the grantee/subgrantee is developing a suitable assignment, job-related medical inquiries are permissible to assist in matching the participant with an assignment. These inquiries, if made, should be made of every participant to ensure that each participant is receiving the same level of service.

The Department continues the policy of discouraging the use of title V funds for unemployment insurance and retirement fund contributions.

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

There is no time limit on participation in the SCSEP because the Department recognizes that some participants may never transition to unsubsidized employment. It is expected, however, that most SCSEP participants will receive services for only a reasonable period of time, *i.e.*, not more than 24 to 36 months. Due to the increased emphasis in the OAA for unsubsidized employment placements, and the Government Performance and Results Act goals, grantees/subgrantees should work to place as many participants as feasible in unsubsidized jobs in order to create additional community service opportunities. Grantees/subgrantees may also require that participants rotate to different host agency assignments after specified periods of time.

The Department may authorize the establishment of a maximum duration of enrollment in the grantee's grant agreement, on the condition that the grantees provide a process for transitioning participants into unsubsidized employment or other assistance before the maximum duration period has expired.

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

Some grantees have found that they have been able to increase their unsubsidized placement rate by limiting the amount of time their participants can spend at each host agency. The regulations clarify that this is an allowable practice, provided that the time limit is established in the grant agreement and included in the participants' IEPs. Grantees that intend to establish a limit on the amount of time a participant may spend at a host agency must submit this plan in their application proposal. If the Department approves the grant application, this process will become part of the grant agreement.

#### Under What Circumstances May a Grantee Terminate a Participant? (§ 641.580)

Grantees/subgrantees may serve only those individuals who are eligible for the SCSEP. Should a grantee/subgrantee learn that an individual is no longer eligible for the program, the grantee/subgrantee must terminate the participant from the program.

Grantees/subgrantees may terminate participants for cause, including behavior that is inconsistent with their SCSEP IEP, or for refusing to accept a reasonable number of referrals to jobs or training. The Department expects grantees to inform participants of the conditions that could lead to a termination from the program in writing and review the requirements with each participant in person at the time of enrollment.

As provided in § 641.570, grantees may terminate participants based on an approved maximum duration of enrollment provision in the grant agreement approved by the Department as long as they provide appropriate services to help the participants transition to other available programs.

Grantees/subgrantees may not terminate a participant because of age, nor may they impose an upper age limit for participation in the SCSEP.

#### Are Participants Employees of the Federal Government? (§ 641.585)

This regulation clarifies that participants are not Federal employees. If, however, the grantee or host agency of a participant is a Federal agency, whether or not the participant qualifies as an employee depends on the laws defining an employer/employee relationship. (*See* § 641.590).

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

Proposed § 641.590 addresses the issue of whether a participant is an employee of the grantee, local project, or host agency. The Department is unable to concretely answer this question because whether a participant is an "employee" depends on the laws defining an employee/employer relationship. Thus, grantees and participants should consult with an attorney to determine if there are circumstances that qualify a participant as an employee.

#### *Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA*

This section describes private sector training projects authorized under section 502(e) of the OAA, including information on allowable activities, eligibility, co-enrollment, and administration. The Department received many suggestions for changing the section 502(e) program, particularly to allow for more flexibility in the use of the funds, and two suggestions to eliminate the program altogether due to the additional reporting and budgeting requirements. The section 502(e) program is required by the OAA, which authorizes the Department to reserve up to 1.5 percent of the total appropriation to place individuals into private sector job opportunities. The Department believes that the section 502(e) program will complement grantee efforts to promote training for older individuals and move participants into unsubsidized employment in the general SCSEP program. The Department recognizes the need for improved technical assistance, however, and will work to help section 502(e) grantees and subgrantees better implement and take advantage of the program.

One of the biggest changes to the administration of the section 502(e) program, is the Department's decision to sponsor a full and open competition for the funds so that all eligible entities may apply. The Department has made this change to be more in line with the statutory requirements, as well as Department policy on having full and open competition. The Department believes that competing this program will strengthen the unsubsidized placement goals of the program as a whole and will integrate private industry into the SCSEP community.

### What Is the Purpose of the Private Sector Training Activities Authorized Under Section 502(e) of the OAA? (§ 641.600)

The purpose of section 502(e) is to facilitate the unsubsidized employment of program participants in the private sector, particularly in different work modes such as job sharing, flex-time, flex-place, and to encourage the development of arrangements related to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

The amendments to the OAA eliminated the reference to "experimental" activities under section 502(e). The Department interprets this action to mean that section 502(e) funds may be used to fund private sector training activities whether or not they are experimental in nature; however, the Department encourages section 502(e) grantees to be innovative.

### How Are Section 502(e) Activities Administered? (§ 641.610)

This section discusses how the Department administers section 502(e) projects. It generally provides that the Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to fund proposed projects. It also emphasizes the types of activities that should occur, such as job sharing, flex-time, flex-place, etc. Finally, this section reiterates the importance of coordinating section 502(e) activities with programs carried out under WIA and with other SCSEP projects in the area.

### How May an Organization Apply for Section 502(e) Funding? (§ 641.620)

This proposed section provides that eligible organizations may apply for section 502(e) funds through a full and open competitive process. If the Department competes these funds through a full and open competition it will issue a Solicitation for Grant Applications for these funds for each Program Year in which a competition is held.

### What Private Sector Training Activities Are Allowable Under Section 502(e)? (§ 641.630)

Proposed § 641.630 lists the activities that are authorized for private sector training under section 502(e). This list is not intended to be exhaustive. Section 502(e) grantees should note that many of these activities align with activities under WIA. Section 502(e) grantees are statutorily required to

coordinate section 502(e) projects with the WIA programs.

### How Do the Private Sector Training Activities Authorized Under Section 502(e) Differ From Other SCSEP Activities? (§ 641.640)

Generally, the provisions in subpart E also apply to private sector training activities, including equitably distributing positions by region of the country. Because most participants work at a private sector worksite, however, section 502(e) activities are not required to have a community service component. One major difference between the general SCSEP program and the section 502(e) program is the list of applicants that are eligible to receive section 502(e) funds. For section 502(e) only, the Department is authorized to enter into agreements with private business concerns, in addition to nonprofit organizations, States, and public agencies. Also, where in the general SCSEP program participants may be placed with a nonprofit organization, State agency (when permissible), or Federal agency (when permissible), section 502(e) specifically requires participants to be placed in employment opportunities with private business concerns. Section 502(e) organizations that serve as training sites (on-the-job or other), or provide work experience that lead to unsubsidized employment do not have to be designated as section 501(c)(3) organizations as defined in the Internal Revenue Code. Finally, the Department may pay all of the costs of a 502(e) project, which is not authorized for the general SCSEP program.

### Does the Requirement That Not Less Than 75 Percent of the Funds Be Used To Pay Participant Wages and Fringe Benefits Apply to Section 502(e) Activities? (§ 641.650)

This proposed rule clarifies that the requirement to use 75 percent of funds for wages and fringe benefits applies to all grants awarded under title V of the OAA. Section 502(c)(6)(B) of the OAA specifically requires that 75 percent of the grant funds be used to pay wages and benefits for older individuals who are employed under SCSEP projects. The Department has interpreted this section to mean that when a SCSEP grantee receives section 502(e) funds and funds for community service projects under a single grant, the 75 percent requirement will apply to the total amount of SCSEP funds that the grantee received. The Department is not authorized to waive this requirement.

### Who Is Eligible To Participate in Section 502(e) Private Sector Training Activities? (§ 641.660)

This rule adopts the eligibility criteria used in subpart E to determine an eligible participant. According to subpart E, section 502(e) grantees are required to serve low-income individuals who are age 55 and over. Priority must also be given to those eligible individuals who are age 60 or over and to veterans and qualified spouses under the Jobs for Veterans Act. Section 502(e) grantees must also give special consideration to those individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need or who are minorities, limited English speaking, or who are Indians. Preference may also be given to former SCSEP participants who reapply after having left the program because of illness or to take an unsubsidized job.

### When Is Eligibility Determined? (§ 641.665)

This provision mirrors the requirements at § 641.505, however, it has been modified to address the nature of this program as a job placement program. As such, grantees are not required to verify a participant's income every 12 months since it is a single Program Year project, but grantees may verify income as often as circumstances require verification.

### May an Eligible Individual Be Enrolled Simultaneously in Section 502(e) Private Sector Training Activities Operated by One Grantee and a Community Service SCSEP Project, Operated by a Different SCSEP Grantee? (§ 641.670)

This proposed rule clarifies that an eligible individual may be simultaneously enrolled in section 502(e) and a community service SCSEP project operated by two different SCSEP grantees. The Department encourages co-enrollment when participants can benefit from services provided by two different grantees. For example, participants may receive training from a section 502(e) activity while they continue to receive wages, benefits, and supportive services from a community service project. Under these circumstances, the Department expects grantees to work jointly to ensure that they are providing complementary and not duplicative services.

How Should Section 502(e) Grantees Report on Participants Who Are Co-Enrolled? (§ 641.680)

This provision establishes that the Department's reporting instructions, which are used for the general SCSEP program, should also be used to report on section 502(e) participants.

How Is the Performance of Section 502(e) Grantees Measured? (§ 641.690)

This provision establishes the performance measures that section 502(e) grantees will be responsible for meeting. These measures incorporate the common performance measures. The common performance measures that will apply to this program are: (1) Entered employment; (2) retention in employment; and (3) earnings increase. These measures are defined at proposed § 641.715.

Section 502(e) grantees must follow the definitions and rules that apply to the general SCSEP program in Subpart G of this regulation (with the exception of sanctions) and any Department administrative issuances relating to performance accountability as they specifically apply to these measures. In this case, if a section 502(e) program grantee fails to meet its performance measures, the Department may require corrective action and provide technical assistance, or it may decline to fund that grantee in the next Program Year.

#### *Subpart G—Performance Accountability*

This subpart covers the requirements for performance accountability established by the OAA, including performance indicators, the provision of technical assistance, and the imposition of sanctions. The Department is strongly committed to a system-wide continuous improvement approach, grounded upon proven quality principles and practices. The development and establishment of these performance accountability provisions reflect the commitment of the broad range of organizations and entities involved with the implementation of the OAA, as well as the continuous effort of SCSEP to align itself with the WIA performance measures to the extent possible. They are intended to apply to national grantees as well as State grantees unless otherwise distinguished. These areas are covered in general in the regulations, and will be supplemented by administrative issuances providing greater detail.

The OAA established a new performance accountability process for SCSEP. Sections 513(a)(1) and 513(c)(1) of the OAA call for a broad consultation process in establishing and defining

performance measures. The Department relied upon Town Hall Meetings, **Federal Register** notices soliciting comments, and the recommendations of a workgroup of entities interested in SCSEP to address the consultation requirements. Intergovernmental organizations representing the general WIA community were also consulted and participated in workgroup activities.

Most notably different about the SCSEP performance system is the distinction that is made among the grantees. Section 514 of the OAA establishes a technical assistance and sanction scheme that addresses national grantees, national grantees in a State, and State grantees. The concept "national grantee in a State" addresses the individualized performance that a national grantee must meet within each State in which it operates. It is another means to ensure that national grantees are performing well on all levels.

In addition, SCSEP is part of the Administration's new common performance measures initiative for employment and job training programs. This initiative has identified new indicators that will be applied across Federal job training programs and have a common set of definitions and data sets. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers.

Adoption of these common measures across Government will help to integrate service delivery through the One-Stop Career Centers at the local level. The Department will seek to amend title V of the Older Americans Act when it is reauthorized to conform the SCSEP performance measures to the new common performance measures. The Department cannot fully adopt the common measures at this time because the definitions for the two performance measures that are part of both the common measures and the SCSEP statutory measures, entered employment and retention in employment differ. These regulations represent an interim step in which grantees will be required to collect performance measurement information based on the current OAA, as well as on the new common measures that will be proposed as part of the Older Americans Act reauthorization.

What Performance Measures Apply to SCSEP Grantees? (§ 641.700)

Section 513(b) lists the required indicators that form the basis for SCSEP performance measures. This list

includes: (1) The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60; (2) community services provided; (3) placement into and retention in unsubsidized public or private employment; (4) satisfaction of the participants, employers, and host agencies with the experiences and the services provided; and (5) any additional indicators of performance that the Department determines to be appropriate to evaluate services and performance. The Department has added the earnings increase common performance measures as an additional indicator of performance. This measure is discussed further at proposed § 641.710 and § 641.715. Grantees will report on the additional common performance measures as discussed at § 641.720.

How Are the Performance Indicators Defined? (§ 641.710)

The OAA, at section 513, lists four indicators of performance. Several of the indicators have multiple subparts. Thus, the Department has severed many of the indicators so that grantees are clearly accountable for each part of each indicator and so that the indicators are easier to implement. For example, the first indicator is "the number of persons served, with particular attention given to individuals with the greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60." Conceivably this one indicator could be divided into multiple parts and result in several different measures. The Department decided to divide this measure into two parts. The first indicator measures the number of persons served, and the second indicator measures the characteristics of those who are served. For the number served portion of the indicator, the Department will continue the past practice of establishing a minimum performance level of 140 percent of a grantee's authorized positions. This is a measure that has been in place for some time as a goal. The regulations address the second portion of the indicator in part through the statutory definitions provided for greatest economic need and greatest social need; and in part through a common sense approach to defining poor employment history or prospects and individuals over the age of 60. The OAA, at section 101(27), defines "greatest economic need" as the need that results from an income level at or below the poverty line. Section

101(28) of the OAA defines "greatest social need" as the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. The definition also includes individuals with a poor employment history or prospects and individuals over age 60. Grantees may identify individuals with poor employment history or prospects from the information participants provide during the initial assessment process.

The second indicator in the OAA is "community services provided." This indicator has not been previously used in SCSEP. However challenging it is to measure, it is important because it recognizes the dual purpose of the SCSEP program and provides a tracking measurement in furtherance of the community benefit goal. The Department considered several variations on how it should measure community services provided to participants. Some of these variations include: Reviewing the accomplishments (*i.e.*, "SCSEP participants helped more than 750 children to read over the past year"); hours of community services provided (*i.e.*, "SCSEP mentors provided more than 6,000 hours of tutoring"); value added to the community expressed as a dollar amount (*i.e.*, multiply the hours of service by an appropriate wage level); some way of looking at or comparing general services to the community with services to the elderly community or aging network; and adding questions on the American Customer Satisfaction Index (ACSI) survey that relate to community service. The Department decided that the number of hours of community services provided was a good measure for this indicator because it represents the most accurate way of capturing this information and also allows the Department to establish a level of performance. The OAA defines "community services," at section 516(1), as social, health, welfare, and educational services (including literacy tutoring), legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts;

weatherization activities; economic development; and such other services essential and necessary to the community as the Department may prescribe. At this time, we have not prescribed any services in addition to those specified in the OAA.

The placement and retention measure is the third statutory indicator and is found at section 513(b)(3) of the OAA. The Department intends to divide this measure into two measures: one measure that captures placement into unsubsidized employment, and one measure that captures retention in unsubsidized employment. The placement indicator is defined in the OAA, at section 513(c)(2)(A), as full- or part-time paid employment in the public or private sector by a participant under this title for 30 days within a 90-day period without the use of funds under this title or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earning of a participant through the use of wage records or other appropriate methods. Therefore, the placement indicator will stand alone and be measured based on the number of participants who move into unsubsidized employment during each year, compared to the total number of participants. Unsubsidized employment includes both full- and part-time jobs consistent with the definition found in section 513(c)(2)(A) of the OAA. Part-time is defined as at least 20 hours of workweek employment. (OAA sec. 515(a)).

Retention 6 months after placement is a new measure for SCSEP and is defined in the OAA, at section 513(c)(2)(B). It requires grantees to evaluate the retention of participants in an unsubsidized position 6 months after the starting date of placement into the unsubsidized employment in the public or private sector, without the use of Federal or State employment subsidy program funds, not to include supportive services.

The fourth indicator, "customer satisfaction of participants, employers and host agencies," is a required measure under section 513(b)(4) of the OAA. The Department interprets this provision as requiring 3 separate and distinct measures of customer satisfaction: one measure for participant satisfaction; one measure for employer satisfaction; and one measure for host agency satisfaction. Since these three groups vary in size, focus, and expectations, measuring them separately will give equal weight to the needs of each group and ensure that program operators are attending to their diverse needs. Customer satisfaction for all

three groups will be determined using the American Customer Satisfaction Index (ACSI). The ACSI is the most widely used indicator of general customer satisfaction. It captures common customer satisfaction information that can be aggregated and compared at different levels. The ACSI will allow the SCSEP program to not only look at its performance, but also to benchmark its performance against other entities within and outside of the employment and training system. It is the methodology used to measure customer satisfaction under WIA, and was recently adopted by the U.S. Employment Service. The ACSI also has a history of usefulness in tracking changes over time, making it an ideal way to gauge progress in continuously improving performance—one of the essential tenets of the 2000 Amendments of the OAA. Through the ACSI, the Department will collect national samples from each of the three populations. Each sample will be large enough to collect statistically valid results for each State grantee and each national grantee. Grantees will be responsible for distributing written survey instruments using the methodology established by the Department in administrative guidance. Completed surveys will be sent to a central collection point for collation and analysis. The Department will publish administrative guidance in the **Federal Register** that provides more information about the licensing of ACSI and the responsibility of grantees to this process, and about how information will be collected for this indicator. Customer satisfaction data collection and analysis are costly. Data will be collected for performance measures purposes for States, national grantees, and national grantees in a State, and the territories. According to the OAA, at section 513(b)(5), the Department may create any additional indicators of performance that it determines are appropriate to evaluate services and performance. The Department has decided to add the earnings increase common performance measures as an additional performance measure. This measure is defined as the percentage change in earnings pre-registration to post-program; and between the first quarter after exit and the third quarter. The methodology for determining this measure is calculated in two parts. The first part measures the change pre-registration to post-program. The second part measures the earning increase from the start of employment to 6 months after.

The Department will issue further administrative guidance, to be published in the **Federal Register**, implementing the performance indicators and explaining the timing and specific definitions of data elements to be collected, and the methods used to calculate each indicator.

#### What Are the Common Performance Measures? (§ 641.715)

Proposed § 641.715 outlines the indicators of the common performance measures. The first measure, entered employment, is defined as the percentage employed in the first quarter after program exit. This measure identifies those individuals who are not employed at registration, but who have entered employment by the end of the first quarter. Retention in employment is the second measure. It is defined as the percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit. This measure is similar to the retention measures under the OAA, however, it tracks a participant's retention with an employer for an additional three months. The third measure, earnings increase, has been added as a program performance measure in § 641.700 and defined in § 641.710. Grantees will be required to report on all three common performance measures as identified in § 641.879.

#### How Do the Common Performance Measures Affect Grantees and the OAA Performance Measures? (§ 641.720)

Proposed § 641.720 discusses the common performance measures and how they relate to grantees and the OAA performance and competition scheme. SCSEP is part of the Department's new common performance measures initiative for employment and job training programs. This initiative has identified new indicators that will apply across Federal job training programs and have a common set of definitions and data sets. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers. The Department will seek to amend title V of the Older Americans Act when it is reauthorized to conform the SCSEP performance measures to the new common performance measures. As this legislation will not be introduced until after completion of these regulations, these regulations represent an interim step in which grantees will be required to collect performance measurement information based on the current statute

as well as on the new common measures that will be proposed as part of the Older Americans Act reauthorization. The Department will provide instructions on how the information will be collected through an administrative issuance. See § 641.879 on reporting requirements.

#### How Will the Department Set and Adjust Performance Levels? (§ 641.730)

The proposed rule establishes the method that the Department will use to set and adjust negotiated levels of performance. In setting negotiated performance levels, the Department is adopting a method similar to the WIA method of negotiating levels of performance. For SCSEP, levels of performance will be negotiated before the beginning of each Program Year. Under section 513(a)(2)(C) of the OAA, the "placement into unsubsidized public or private employment" measure has a statutory "floor" of 20 percent; however, the Department may negotiate with grantees to establish a higher level.

In negotiating levels with grantees, the Department will first establish baseline goals. The end result levels are the adjustments made to those goals for each grantee. Adjustments to the established negotiated levels of performance, including the "placement into unsubsidized public or private employment" measure, may be made only if they are based on those factors delineated in section 513(a)(2)(B). Those factors are: (1) High rates of unemployment, poverty, or welfare reciprocity in the areas served by a grantee, relative to other areas of the State or Nation; (2) significant downturns in the areas served by the grantee or in the national economy; and (3) significant numbers or proportions of enrollees with one or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. As part of the process of negotiating with grantees to set baseline levels of negotiated performance, the Department will offer grantees the opportunity to propose adjustments to those levels based on the conditions specified in the OAA. Since many of the factors enumerated in the OAA can change dramatically during the program year, grantees will have the opportunity to request adjustments both at the beginning of the program year and during the program year. The Department will issue administrative guidance outlining the parameters for claiming one or more of the three permissible adjustments of performance levels.

#### How Will the Department Determine Whether a Grantee Meets, Exceeds, or Fails To Meet Negotiated Levels of Performance? (§ 641.740)

The OAA requires the Department to determine whether a grantee has met its performance measures overall (*i.e.*, in the aggregate). Under proposed § 641.740, overall performance is calculated by combining the "percentage results" achieved on each of the individual measures to obtain an average score. If this average score for the total of all measures is between 80 and 100 percent, the grantee has performed satisfactorily, or is meeting performance. Grantees with an average above 100 percent are exceeding on the performance measures. Grantees that fall below 80 percent, however, are considered to have failed to meet negotiated levels of performance and, thus, are subject to the sanctions outlined in section 514 of the OAA. This approach aligns the SCSEP program with WIA and ensures that very low performance on any single indicator has full weight when assessing overall performance. A national grantee serving in a State, however, is required by section 514(e)(3)(A) of the OAA to meet both 80 percent of the negotiated national measures and the levels established for the State in which it serves. The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. Grantees will also receive the results for each individual performance indicator. The advantage of grantees having this information is two-fold—grantees will know about any performance indicator on which they need to improve; and the Department can provide technical assistance to the grantee on a specific indicator to improve performance.

One indicator that is distinct among the performance measures is the "placement into unsubsidized employment" measure. This measure has a statutory "floor" of 20 percent before the allowable adjustments are made; however the Department may negotiate higher, but not lower, levels with individual grantees. Thus, if the negotiated performance indicator remains at the floor, performance levels between 80 and 100 percent will require grantees to place 20 percent to 25 percent of their participants into unsubsidized employment, unless one or more adjustment factor applies. A placement rate of more than 25 percent would mean that a grantee is exceeding

on this measure, and a placement rate of less than 20 percent would be a failure on that measure, unless one of more adjustment factor applies. All of the levels will be negotiated with the Department on a grantee-by-grantee basis, which will then become the basis for determining the range for each indicator as discussed in proposed § 641.740.

**What Sanctions Will the Department Impose if a Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.750)**

Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. These sanctions range from requiring the grantee to submit a corrective action plan and receive technical assistance, to competition of part of the funds, to a competition of all of the funds. Technical assistance may take many forms depending on the needs of the grantee and the availability of resources within the Department. In some cases, review of reports and discussions with a grantee may be sufficient. In other cases, recommending participation in formal training may be warranted, and in still other cases, direct on-site assistance provided by Department staff, peers, or contractors may be necessary. The degree of assistance available will largely be determined by the nature of the problem, the extent of the failure, and the resources available to address it.

The statutory scheme for applying sanctions is grantee specific (*i.e.*, national grantee, national grantee in a State, or State grantee). (*See* proposed §§ 641.760–641.790). The Department will determine if sanctions should be applied not later than 120 days after the end of each Program Year. (*See* OAA sec. 514). Therefore, grantees and the Department will not know if a grantee has failed its performance measures until the grantee has already begun the next Program Year. As a result, the Department strongly encourages all grantees to regularly monitor their performance and seek technical assistance when problems arise.

Additionally, if a grantee fails only the customer satisfaction performance measure, that failure will not in itself trigger the imposition of sanctions if the grantee has met its other performance measures and the failure to meet the customer satisfaction measure causes a grantee to fail to meet its performance measures in the aggregate. The Department is taking this position in recognition of the difficulty it understands grantees may face in obtaining this information and because

of the potential difficulties in obtaining response rates high enough to assure survey accuracy at an acceptable level. The Department will provide additional instructions for how customer satisfaction will be measured.

**What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance Under the Total SCSEP Grant? (§ 641.760)**

Proposed § 641.760 outlines the sanctions required under section 514(e) of the OAA that apply when a national grantee fails to meet its performance measures for its entire SCSEP grant. In the first year of failure, the Department will provide technical assistance and the national grantee must submit a corrective action plan no later than 160 days after the end of the Program Year. If a grantee fails to meet the national performance measures for a second consecutive Program Year, the Department will have a national competition in the next Program Year for 25 percent of the funds that were awarded to the grantee, while also minimizing disruptions to current participants to the extent possible. Thus, the failing grantee will receive only 75 percent of its former grant award. The Department reserves the right to specify the locations of the positions that will be subject to competition. Further, the Department may explore a number of options to determine how this competition will be conducted. The Department will establish the parameters of a competition through a Solicitation for Grant Application or comparable instrument.

If a grantee fails to meet its performance measures for a third consecutive Program Year, the Department will conduct a national competition for the full amount of the reduced grant in the following Program Year. Any new national grantee selected through this process must serve the geographic areas served by the former grantee. Any entity eligible to apply for national grants may compete for such funds, including Federal public agencies and organizations, private nonprofit organizations, and tribal organizations. (*See* proposed § 641.400 on eligible entities).

**What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance in Any State That It Serves? (§ 641.770)**

Proposed § 641.770 outlines the sanctions that apply to a national grantee that fails to meet its performance measures in any State that

it serves. This provision is required under section 514(e)(3) of the OAA and is intended to monitor those national grantees that may be meeting national performance goals but are failing their goals in a particular State. In any Program Year that a national grantee attains levels of 20 percent or more below the national performance measures and fails to meet the State's performance levels for a project carried out in the State, the Department will take corrective action. The Department interprets this requirement as applying when the Department determines that there is a failure, and there are no justifications that the national grantee can provide, such as the size of the project or the adjustment factors described in § 641.730. Thus, national grantees in a State must perform at 80 percent of the national performance measures and meet the State's level of performance to meet performance objectives, unless there is a justification for lower performance. The Department proposes to monitor national grantee State-by-State performance each Program Year or at the Governor's request. (*See* OAA §§ 514(e)(3)–514(e)(4) and proposed § 641.780). The Department interprets the phrase "project carried out in a State" to mean all of a grantee's projects in a State so that no single project in a State will provide a basis to initiate a review or sanctions.

The first Program Year in which a national grantee fails to meet its performance measures in a State, the Department will require a corrective action plan and may require the transfer of the responsibility for the project to other grantees, provide technical assistance, and take other appropriate actions. After a second consecutive year of failure to meet the performance criteria, the Department will either transfer all or part of the responsibility for a project to a State, public agency, or private nonprofit agency or organization, or compete all or a portion of the funds. After a third consecutive year of failure to meet the performance criteria, the Department will conduct a competition for the remaining funds. Any entity eligible to receive a SCSEP grant may apply for these funds, with the exception of the grantee that is subject to the sanction.

**When Will the Department Assess the Performance of a National Grantee in a State? (§ 641.780)**

Proposed § 641.780 provides the Department's interpretation of the requirements in section 514(e)(3)–(e)(4) of the OAA. These provisions require the Department to assess the

performance of a national grantee in every State in which it has projects. The Department will monitor national grantee performance in a State every Program Year. Grantees will submit such information as part of their national performance information. The Department will also conduct a review of any national grantee's project performance in a State upon request of the Governor, as required under section 514(e)(4) of the OAA.

**What Sanctions Will the Department Impose if a State Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.790)**

Proposed § 641.790 outlines the requirements for imposing sanctions on States that fail to meet negotiated levels of performance, as required by section 514(f) of the OAA. The Department will determine if a State has met its performance measures no later than 120 days after the end of a Program Year. In the first year of failure, the Department will provide technical assistance and require the State to submit a corrective action plan no later than 160 days after the end of the Program Year. After a second consecutive year of failure, the Department will require the State to conduct a competition to award 25 percent of the funds available to the State to another eligible organization. The Department reserves the right to specify the locations of the positions that will be subject to competition. After a third consecutive year of failure, the State must compete its entire SCSEP award. Any eligible entity, except the entity that caused the failure, may compete for such funds, including other agencies of the State, or public and private nonprofit organizations.

**Will There Be Incentives for Exceeding Performance Measures? (§ 641.795)**

Proposed § 641.795 addresses incentives for grantees that exceed their performance measures. It clarifies that the Department is committed to providing incentives to grantees that exceed performance when possible. These incentives may take the form of a non-financial incentive, which will be addressed in administrative guidance, or it may be in the form of an incentive grant. The Department is authorized under section 515(c)(1) of the OAA to award incentive grants from recaptured unexpended funds at the end of the Program Year, among other permissible uses of such funds. The Department may exercise this authority at its discretion.

#### *Subpart H—Administrative Requirements*

Subpart H covers the administrative requirements that apply to all SCSEP grantees. Throughout this subpart, the regulations refer to "recipient" and "subrecipient" rather than to the terms "grantee" and "subgrantee," which are generally used elsewhere in this Part to refer to the same types of entities. The terms "recipient" and "subrecipient" are used in this subpart in order to be consistent with the style of the Government-wide requirements from which these provisions were derived. Grantees and recipients receive grant awards directly from the Department. Subgrantees and subrecipients receive financial assistance subawards from grantees and other recipients of direct awards from the Department, or higher tier subgrantees or subrecipients.

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

Section 503(f)(2) of the OAA is a new provision requiring title V grantees to comply with the uniform allowable cost principles and administrative requirements applicable to most Federal financial assistance programs. The former regulations included similar requirements. This subpart includes requirements relating to lobbying as well as subjects covered by the Department's regulatory administrative requirements at 29 CFR 95.2(bb) and 29 CFR 97.25(b). Recipients also must ensure that their subrecipients follow these uniform requirements.

**What Is Program Income? (§ 641.803)**

This section describes program income as income earned or generated by the recipient or subrecipient during the grant period that is generated by an allowable activity under the grant. The term "grant period" as used here is consistent with the Department's regulations at 29 CFR parts 95 and 97. Grantees are accountable for program income earned or generated during the grant period, which may exceed the period of availability of the funds used to generate the income (*see* § 641.812). This regulation also identifies license fees and royalties as program income. This requirement is a permissible modification under 29 CFR 95.24(e) and 29 CFR 97.25(e). As provided in § 641.806, any organization that continues to receive SCSEP grant funds is required to use program income earned or generated after the Program Year for program purposes.

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

The program income provisions of the proposed rule clarify the application of the Department's uniform administrative requirements to SCSEP activities by indicating what types of income earned or generated by recipients and subrecipients are considered program income, how the costs of producing program income are to be treated, and by directing recipients to follow the addition method described in 29 CFR 95.24 and 29 CFR 97.25 and add program income to Federal and non-Federal resources provided for SCSEP activities. More specifically, paragraph (b) requires all recipients/grantees with a continuous relationship with the Department—that is organizations that continue to be funded with SCSEP funds for succeeding grant periods—to use such income for SCSEP purposes in the Program Year it is received. Paragraph (c) requires all recipients/grantees that do not continue to receive a SCSEP grant after the grant period to remit all program income earned or generated to the Department. These sections are permissible modifications under 29 CFR 95.24 and 29 CFR 97.25. The purpose of this requirement is to leverage Federal funds for the benefit of the program, which will enhance the services provided to SCSEP participants. This requirement would also apply to income earned or generated through copyrighted material or other intellectual property as provided in § 641.803.

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

The regulations underscore the 10 percent non-Federal share requirement in section 502(c) of the OAA, which applies even to other Federal agencies that may receive SCSEP funds, unless such entity has a statutory exemption from the requirement. Section 502(c)(1) allows the Department to pay all of the costs of only those projects that are emergency or disaster projects, or located in an economically depressed area. Additionally, the amendments to the OAA did not alter the Department's authority in section 502(e) of the OAA, to pay for all of the costs of private employment projects. Therefore, the Department expects to continue the present practice of using this authority for section 502(e) projects, when applicable. Also, proposed § 641.809(d) defines the non-Federal share as cash or in-kind. It further provides that if a recipient (grantee) plans to obtain its non-Federal share from a subgrantee or

host agency, it may not make providing the funds a condition of becoming a subgrantee or host agency.

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

Proposed § 641.812 details the period of availability of SCSEP funds. According to section 515(b), SCSEP funds are available for obligation on a Program Year basis (July 1–June 30). Under no circumstances, however, is an SCSEP recipient permitted to obligate SCSEP funds before July 1. Also, the Department may extend the period of availability of SCSEP funds beyond June 30 as discussed in proposed § 641.815.

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

Proposed § 641.815 permits SCSEP recipients to receive an extension beyond June 30 to expend funds. The Department will provide instructions each year on how and when SCSEP recipients must request an extension. In general, however, SCSEP recipients must justify the necessity of the extension either by submitting a letter to the Department with the request and the justification, or by submitting a proposed SF–424 to the Department. The Department will process the request and notify the SCSEP recipients in writing of the Department's approval or disapproval. Any approval of a grant extension will be accomplished through a modification to the grant. However, SCSEP recipients are strongly encouraged to spend funds throughout the Program Year to minimize the need for an extension.

The former authorization to extend funds for one year and two months (through August 31st) no longer applies. This provision was replaced by section 515(b), which authorizes the Secretary to extend the period of the grant as necessary to assure the effective obligation expenditure of the funds. Thus, grant extensions may be made for a longer period, if justified.

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

Section 515(c) of the OAA gives the Department the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year and reobligate those funds within the 2 succeeding Program Years to be used for incentive grants, technical assistance, or grants or contracts for any other SCSEP program. The Department intends to issue administrative guidance to provide SCSEP recipients with additional details.

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

Proposed § 641.821 details the general audit requirements that apply to all recipients of Federal funds. This section provides that recipients and subrecipients, including entities receiving Federal awards of SCSEP funds under cost-reimbursement contracts, must follow the Department's uniform audit requirements. The Department is responsible for audits of commercial organizations that are recipients for SCSEP funds as well. Commercial organizations that are subrecipients must either have an organization-wide audit or a program specific financial and compliance audit that meets OMB Circular A–133 standards, if they expend \$300,000 or more (as of July 1, 2001).

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

This proposed rule continues the Department's policy in the former regulations concerning lobbying. There are two provisions relating to lobbying. The proposed rule requires recipients to report on their lobbying activities, under the uniform administrative rule on lobbying codified at 29 CFR part 93. Proposed § 641.850(c) prohibits the use of grant funds for lobbying State or Federal legislators.

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

Recipients, subrecipients, and host agencies must comply with the Department's generally applicable nondiscrimination requirements for recipients at 29 CFR parts 31 and 32. The WIA nondiscrimination requirements at 29 CFR part 37 apply to SCSEP activities that are administered in conjunction with the One-Stop Delivery System.

#### What Nondiscrimination Protections Apply Specifically To Participants in SCSEP Programs? (§ 641.830)

The proposed rule establishes nondiscrimination protections to participants in SCSEP programs. Specifically, the proposed rule lists the Federal programs on nondiscrimination that apply to SCSEP, such as, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and title VI of the Civil Rights Act of 1964. The proposed rule also provides information to participants about how and where to file a complaint alleging discrimination or to whom they may address questions.

#### What Policies Govern Political Patronage? (§ 641.833)

The proposed rule provides the Department's policy on political patronage. This provision existed in the former regulations. Generally, recipients and subrecipients are prohibited from selecting, rejecting, promoting, or terminating an individual based on political services provided by the individual, or based on the individual's political affiliations or beliefs. Further, recipients and subrecipients are prohibited from providing funds to any entity based on political affiliation.

#### What Policies Govern Political Activities? (§ 641.836)

Proposed § 641.836 outlines the Department's policies governing political activities. In general, recipients are prohibited from using SCSEP funds for political activities. The proposed rule also requires SCSEP recipients to provide participants with a written explanation about allowable and unallowable political activities under the Hatch Act (5 U.S.C. 1501 *et seq.*), and to post this explanation in every workplace where SCSEP activities are conducted. Also, all such notices must be approved by the Department and must contain the address and telephone number of the Department of Labor Inspector General, as required by section 502(b)(1)(P) of the OAA. Further, it is prohibited for any participant or staff person to engage in political activities during hours paid with by SCSEP funds. The regulation also prohibits the placement of participants in certain offices and positions that might involve political activities. It prohibits placement of SCSEP participants in the offices of elected legislators. It also prohibits placements in the offices of other elected officials unless the grantee provides safeguards to assure that such position performs no political activities.

#### What Policies Govern Union Organizing Activities? (§ 641.839)

The proposed rule emphasizes the Department's policy that no Federal funds may be used to assist, promote, or deter union organizing. This provision existed in the former regulations and is aligned with the WIA regulations.

#### What Policies Govern Nepotism? (§ 641.841)

This proposed rule outlines the Department's policy on nepotism. Specifically, the Department's policy prohibits recipients from hiring and participants from working in an SCSEP position if the participant is a member of the decision-maker's immediate

family. The Department's goal is to decrease the opportunities for a recipient to show "favoritism" to a relative. "Immediate family" is defined as a wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild. The Department may waive this provision, however, for worksites on Indian reservations and in rural areas if it can be documented that no other persons are eligible and available for participation in the program. If a State or local nepotism rule is stricter, it must be followed.

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

The proposed rule outlines the responsibilities of recipients when they accept SCSEP funds. For instance, recipients that receive SCSEP funds have a duty to ensure that: Currently employed workers are not displaced, existing contracts are not impaired or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed, positions are not filled that were occupied by a person who is on layoff, and SCSEP funded positions are not substituted for existing federally assisted jobs, as required by sections 502(b)(1)(F) and 502(b)(1)(G) of the OAA. The purpose of this requirement is to ensure that there will be an increase in employment opportunities over those opportunities that would otherwise be available, as discussed in section 502(b)(1)(F) of the OAA.

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

As previously mentioned, section 503(f)(2) of the OAA requires grantees to comply with the applicable uniform allowable cost principles under the OMB Circulars, according to the type of organization that incurs SCSEP costs (e.g., governmental units, nonprofit organizations). This section codifies the previous regulations on administrative cost principles. The allowable cost principles establish requirements for the treatment of costs generally, rules as to what types of costs are allowable, unallowable, or allowable under certain circumstances, and acceptable methodologies for allocating costs among Federal grant programs. An example of a general cost principle is the requirement to treat refunds and rebates as reductions in previously charged costs whenever possible, rather

than treating them as program income or as revenue for which the recipient is not accountable under Federal financial management principles. An example of a cost allowable under certain circumstances is the cost of claims against the Federal government. Such costs are generally unallowable (see, for example, OMB Circular A-122, Attachment B, item 7.g.), but Federal agencies differ on whether they consider an appeal from a Grant Officer's determination to be a claim against the Government. Proposed § 641.850(b) indicates that costs incurred in connection with appeals to Administrative Law Judges are unallowable costs.

The Department received several suggestions relating to allowable cost issues in response to the March 19, 2001, **Federal Register** notice and Town Hall Meetings. The principal issue involved the distribution of costs among the participating programs in One-Stop centers. The uniform cost principles that apply to SCSEP activities require costs to be allocated to Federal programs in proportion to the benefits received from goods and services for which the costs were incurred. This requirement aligns with the WIA statutory and regulatory requirements for required partners to the One-Stop, which includes SCSEP. Thus, SCSEP recipients and subrecipients are responsible for their fair share of the costs of operating One-Stop centers.

Cost allocation, however, is only one of the issues involved in providing SCSEP financial support to a One-Stop center. Another issue is resource allocation. Several of the responses supported the idea of SCSEP recipients making in-kind contributions in payment of their fair share of One-Stop center costs. In-kind contributions are acceptable forms of payment if the other partners are agreeable. A local One-Stop MOU may include a resource allocation arrangement that permits some of the partners to make cash contributions toward center costs, permit others to donate paid office space, and allow still others to contribute volunteer services, and so on. The resource allocation arrangement should indicate what costs and non-cash charges need to be allocated, what resources are available to pay for or otherwise absorb the costs and charges, and describe each partner's fair share based on the benefits-received principle.

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

The proposed rule supplements the generally applicable allowable cost

provisions with requirements relating to costs of claims against the Government, lobbying, premises, and participants' fringe benefits to reflect provisions of applicable legislation and Departmental policies. The lobbying costs provision is based on a requirement included in Department of Labor Appropriation Acts for many years. The limitation on costs of purchasing or constructing buildings reflects the Department's policy of discouraging the use of grant funds for major capital expenditures in order to conserve scarce resources for other costs. If the limitations did not exist, each such expenditure would require prior approval by the Department.

#### How Are Costs Classified? (§ 641.853)

The proposed rule discusses whether costs are classified as administrative costs or program costs, and how grantees must categorize participant wages and fringe benefit costs within that framework. For instance, program costs may include participant wages and fringe benefits and other enrollee costs, such as training and supportive services. Administrative costs, such as salaries, equipment, etc., expended for administrative functions continue to be attributed to administrative costs. (See §§ 641.856 and 641.864). When participants perform an administrative function for a grantee or subgrantee, the cost of the function is charged to the administrative cost category. The cost of the participant's wages and fringe benefits, however, are charged to the program cost category.

#### What Functions and Activities Constitute Costs of Administration? (§ 641.856)

The proposed rule discusses the functions and activities that constitute the costs of administration. It provides a detailed list of those costs that are administrative as permitted under section 502(c)(4) of the OAA. This section of the OAA aligns the WIA administrative cost provisions.

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

The OAA imports the WIA cost classification scheme into the SCSEP program. This includes the division of costs into administrative costs and program costs, and the WIA definitions of administrative cost components. This has the effect of making it easier to operate title V activities within the One-Stop Delivery System established under WIA. In addition to the material on cost classification, the proposed rule contains additional requirements for allocating costs to the "administrative

costs” or “program costs” categories. The proposed rule is based on the same principles used in the WIA and Welfare-to-Work programs for determining how to allocate particular types of cost and how to classify costs incurred by particular types of organizations. However, when participants are assigned to functions normally classified as administrative costs, recipient charges to the “administrative cost” category are reduced from levels that would exist if such functions were performed by regular staff members since all participant wage and fringe benefit costs must be charged to the “program costs” cost category.

#### Must SCSEP Recipients Provide Funding for the Administrative Costs of Subrecipients? (§ 641.861)

Section 502(b)(1)(R) of the OAA requires that each project ensure that sufficient funding is provided for the administrative costs of entities below the recipient level. The Department has determined to implement this requirement by requiring each SCSEP recipient to indicate in its grant application how it will achieve compliance. The Department has chosen this course in order to avoid prescribing needlessly detailed requirements while enabling recipients and subrecipients to achieve the objectives of the law by establishing arrangements consistent with their own unique funding and organizational structures.

#### What Functions and Activities Constitute Program Costs? (§ 641.864)

The OAA also includes a description of programmatic functions and activities that may be performed with SCSEP funds and charged to the program cost category in section 502(c)(6)(A). Except for participant wages and fringe benefits provided in connection with community service assignments, the services comprising all of the described functions and activities are available through the One-Stop Delivery System for WIA participants. The Department believes that SCSEP participants will have easier access to these services through the One-Stop Delivery System than they had before its development.

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

The proposed rule outlines the administrative cost limitations found in section 502(c)(3) of the OAA. Under this provision, SCSEP administrative costs are limited to 13.5 percent. The Department is authorized to increase the limit, but only up to 15 percent.

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

This section continues the Department’s previous regulations concerning administrative cost limitations. The Department will continue to allow increases in administrative cost limits as permitted under section 502(c)(3) of the OAA, if the recipient demonstrates that such an increase is necessary to carry out the project and if the recipient demonstrates that major administrative cost increases are being incurred in necessary program components, such as liability insurance, workers’ compensation, *etc.*; that the number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of the administration is not increased; or that the size of the project is so small that the amount of administrative expenses incurred to carry out the project exceeds 13.5 percent of the amount for such project. The burden of justification is on the recipient requesting an increase in administrative costs. A request for an increase in administrative costs may be submitted at any time.

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

Section 502(c)(6)(B) of the OAA provides that participant wages and fringe benefit costs must comprise not less than 75 percent of the funds made available for community service projects under title V. The proposed regulation clarifies that the statute applies to community service projects conducted by a recipient in the aggregate and not to each such project or subproject. Funds used for programs and activities under section 502(e) are also covered by this requirement. (*See* proposed § 641.650). If a recipient receives a regular title V SCSEP grant as well as a section 502(e) grant, the 75 percent requirement applies to the total of both grants.

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

This proposed rule establishes that a recipient’s compliance with cost limitations and minimum expenditures levels will be determined under the standard used in other Department-funded financial assistance programs. Thus, the Department will assess a recipient’s compliance with cost limitations on the earlier of the date

when all funds are expended or the end of the availability period.

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

Section 503(f)(3) of the OAA establishes reporting requirements that were required by the previous regulation. The proposed regulation requires electronic submission to the Department via the Internet of a quarterly financial status report, a final financial status report, a non-financial progress report, and a final progress report. Final financial status reports and progress reports are due 90 days after the end of the Program Year. The Department will issue reporting instructions indicating whether progress reports must be submitted quarterly or semiannually. Quarterly financial status reports are due 30 days after the end of each quarter. Progress reports, other than the final progress report, will be due 30 days after the end of each reporting period. The proposed rule requires recipients to develop their financial status reports on an accrual basis. The proposed rule also requires submission of an annual equitable distribution report, a report on section 502(e) activities, reports for the common performance measures, and reports from Federal agencies operating SCSEP programs and activities. The Department will hold grantees accountable for accurate reporting. Any report that cannot be validated or verified as accurate may be considered a failure to submit reports, which is a factor to be considered in applying the responsibility test at section 514(d) of the OAA.

#### What Are the SCSEP Recipient’s Responsibilities Relating to Awards to Subrecipients? (§ 641.881)

The proposed rule clarifies that the recipient is responsible for all SCSEP activities performed with SCSEP funds and for ensuring that subrecipients comply with SCSEP requirements. Any recipient that fails to recover debts to the Federal government, including all debts owed to the recipient by a subrecipient, will be in violation of the responsibility tests in section 514(d) of the OAA. Also, recipients must follow the organization or State procedures for allocating funds to other entities. At no time, however, will the Department grant funds to another entity on the recipient’s behalf. Each entity must follow its own procedures for subgranting/subcontracting with other entities to administer its SCSEP projects. (*See also* 29 CFR 95.21 and 29 CFR 95.41).

### What Are the Grant Closeout Procedures? (§ 641.884)

The proposed rule continues the requirement of the previous regulation concerning closeout procedures. The Department requires all recipients to follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71. The Department will also issue supplementary closeout instructions to all SCSEP recipients as necessary.

#### *Subpart I—Grievance Procedures and Appeals Process*

Subpart I describes the grievance procedure requirements and the Department's appeals process for grant applicants, SCSEP State grantees and national grantees. These provisions are similar to equivalent provisions in previous regulations.

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

The Department is considering having an appeals process for applicants that believe the Department has inappropriately denied them a grant. The Department is seeking comments on whether there should be an administrative appeal process and how an appeals process should be structured given the complexities of fashioning a remedy for an applicant. The Department encourages comments that demonstrate how to successfully appeal the grant decisions.

The Department also seeks comments on procedures for operating an appeals process, should the Department decide to adopt one. Under one scenario, the Department could model the appeals process after the Indian and Native American Program under WIA (*see* 20 CFR 667.800). Under that process, there are time limits on when an entity could file an appeal and it allows an appeal of an Administrative Law Judge's opinion to an Administrative Review Board. The Department would like comments on whether this process would work, including your reasons why or why not. If you do not think this process would work, the Department would like comments on other suggestions for a process that it could use, including how the process would work for this program. The Department also seeks comments on whether it should make available an appeals process for one-year grant applicants, including applicants for section 502(e) projects and any supporting justifications for having an appeals process for these applicants. Specifically include comments on how the appeal rights

should differ from one-year grants to multi-year grants, if applicable.

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

Section 641.910(a) requires State and national grantees to establish grievance procedures for handling employee, participant, and applicant complaints, and requires that the procedures be described in the grant agreement. The Department will not review final decisions reached under the grantees' grievance procedures, except to assure that the grantee's procedures were followed. Under paragraph (c), individuals may file allegations that an SCSEP grantee has not complied with applicable Federal law (except for allegations of discrimination, which are handled under § 641.910(d)) with the Chief of the Division of Older Worker Programs. The Department will only accept such a filing when the individual has first sought resolution through the grantee's grievance procedures and has not reached resolution within 60 days. Allegations determined to be substantial and credible will be investigated. Section 641.910(d) specifies that allegations of discrimination will be handled under the WIA nondiscrimination regulations at 29 CFR 37.70–37.80. Questions, or complaints alleging discrimination, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210.

### What Actions of the Department May a Grantee Appeal and What Procedures Apply to Those Appeals? (§ 641.920)

Section 641.920 describes those actions that may be appealed to the Department and the rules of procedure and timing of decisions for Office of Administrative Law Judge (OALJ) hearings. These rules are similar to those that were in effect under the previous regulations. Appeals from a disallowance of costs as a result of an audit are discussed at 29 CFR 96.6, and appeals of suspensions or terminations of grants on the grounds of discrimination are discussed in 29 CFR parts 31 or 37, as appropriate. Other Grant Officer final determinations relating to costs, payment, suspension, or termination may be appealed to the OALJ under the procedures described in § 641.920(c). The decision of the ALJ is final, unless the grantee files a petition for review with the Administrative Review Board within 20 days under the requirements of § 641.920(d).

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

This proposed rule allows grantees to use the alternative dispute resolution system in lieu of requesting a hearing with an ALJ. Any decision rendered through this process will be considered a final determination.

## **IV. Administrative Information**

### *A. Paperwork Reduction Act*

The proposed rule establishes new information collection requirements that did not previously exist. Currently, grantees are required to submit and a collection is approved for: Quarterly and Final Progress Reports; Quarterly and Final Financial Status Reports (SF 269); annual Equitable Distribution Reports; Budget Information (SF 424 and SF 424-A); demographic information; participant characteristic information; and the political activity poster notice under section 502(b)(1)(P). The proposed rule would extend this requirement to include additional collections as required by the 2000 Amendments to the Older Americans Act, and therefore, would increase the reporting burden. The additional collections are as follows: the State Senior Employment Services Coordination Plan (State Plan) described in section 503 of the Act and proposed subpart C (641.300–641.365) of this proposed rule; a section 502(e) activity report to accompany the activities described in subpart F (641.600–641.690) and listed in proposed section 641.879 for reporting requirements; and additional information under the Quarterly and Final Progress/Status Reports, including the new performance measures and common performance measures at subpart G (641.700–642.795). Other information collections subject to the Paperwork Reduction Act are: the Solicitation for Grant Applications or comparable instrument used to make funding determinations for National grants and under the section 502(e) program; and the orientation information that grantees are required to provide each participant, including, but not limited to, notices of termination, assessments, Hatch Act information, and complaint resolution procedures. In order to provide a coherent reporting package, these requirements, including those that have already been approved and those that are new and contained in this proposed rule, have been submitted to the Office of Management and Budget (OMB) as one reporting package for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The reporting

burden for these collections of information is estimated to average 450 hours per year, per respondent, including the time to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the information for submission to the Department.

Comments about these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent directly to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management Budget, Washington, DC 20503. The Department welcomes suggestions on all aspects of the burden associated with this NPRM.

#### *B. Executive Order 13132 (Federalism)*

The Employment and Training Administration (ETA) has reviewed this proposed rule in accordance with Executive Order 13132 on Federalism, and has determined that it does not have "federalism implications." After the enactment of the 2000 amendments to the OAA, the Department consulted with public interest groups and intergovernmental groups on the development of regulations necessary to implement the amendments to the OAA. Included in the consultation process were the Intergovernmental Organizations; interested individuals; and representatives of the grantee community, including State representatives and representatives from the U.S. Forest Service; National Senior Citizens Education and Research Center; National Council on the Aging; AARP Foundation; Green Thumb, Inc.; National Urban League, Inc.; National Center and Caucus for the Black Aged, Inc.; Asociacion Nacional Por Personas Mayores; National Asian Pacific Center on Aging; and National Indian Council on Aging.

#### *C. Regulatory Flexibility and Regulatory Impact Analysis, SBREFA; Family Well-Being*

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided) and small nonprofit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental

entities (those in areas with fewer than 50,000 residents). This rule will affect primarily the 50 States, the District of Columbia, and certain Territories; however it also affects those national organizations and any subgrantees that have fewer than 500 employees. As described in this preamble, ETA has taken a variety of measures to consult with grant recipients of this program. The Department has assessed the potential impact of the proposed rule in order to identify any areas of concern. Based on that assessment, the Department certifies that these Rules, as promulgated, will not have a significant impact on a substantial number of small entities.

In addition, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(s). The Department certifies that the proposed rule has been assessed in accordance with Pub. L. 105-277, 112 Stat. 2681, for its effect on family well-being. The purpose of SCSEP is to provide community service activities and employment opportunities to individuals age 55 and over who are low income and have poor employment prospects. This program is designed at the State and local level to fulfill this purpose with the effect of enhancing family well-being through increased skills and earnings and to promote self-sufficiency for older individuals.

#### *D. Executive Order 12866*

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that these rules are consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects the Department's response to suggestions received in writing and through work groups.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. The Department consulted with the Department of Health and Human Services, as well as with State and local officials and their representative organizations, in addition to a broad range of stakeholder groups and others to obtain their views before the publication of this proposed rule. The Department also considered the numerous suggestions received in writing and through work groups. The Department has responded to some of the suggestions received in the

"Summary and Explanation" section of the preamble.

To a considerable degree, these rules reflect the suggestions received. They also reflect the intent of the Act to improve the SCSEP by integrating SCSEP into the One-Stop Delivery System and improving the performance of the grantee community. The Department has determined that the proposed rule will not have an adverse effect in a material way on the nation's economy.

However, this rule is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 because it includes many provisions that are new to SCSEP and, therefore, the proposed rule has been reviewed by OMB in accordance with that Order.

#### *E. Executive Order 13211 (Energy Effects)*

Executive Order 13211 requires all agencies to provide a Statement of Energy Effects for regulatory actions that effect energy supply, energy distribution, or energy use. The Department has analyzed this proposed rule and determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this proposed rule does not require a Statement of Energy Effects under Executive Order 13211.

#### *F. Unfunded Mandates Reform Act of 1995*

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

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

The Department has determined that the proposed rule will not require the expenditure by State, local, or Tribal

governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, the Department has not prepared a budgetary impact statement specifically addressing the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely affected small government.

*G. Executive Order 12988 (Civil Justice Reform)*

The Department drafted and reviewed this rule according to Executive Order 12988, and determined that it will not unduly burden the Federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*H. Executive Order 13175 (Tribal Summary Impact Statement)*

Executive Order 13175 requires consultation and coordination with Indian Tribal Governments and also requires a tribal summary impact statement in the preamble of the regulation, which describes the extent of the agency's prior consultation with tribal officials, a summary of nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met. The Department has reviewed this regulation for tribal impact and has determined that no provision preempts tribal law or the ability of tribes to self-govern. The Department has encouraged input from members of tribal organizations as well as other individuals through a series of Town Hall meetings.

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

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

For the reasons stated in the Preamble, 20 CFR Part 641 is proposed to be revised to read as follows:

**PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM**

**Subpart A—Purpose and Definitions**

Sec.

- 641.100 What does this Part cover?
- 641.110 What is the SCSEP?
- 641.120 What are the purposes of the SCSEP?
- 641.130 What is the scope of this Part?
- 641.140 What definitions apply to this Part?

**Subpart B—Coordination with the Workforce Investment Act**

- 641.200 What is the relationship between SCSEP and the Workforce Investment Act?
- 641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?
- 641.220 Does title I of WIA require SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?
- 641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title IB of WIA?
- 641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

**Subpart C—The State Senior Employment Services Coordination Plan**

- 641.300 What is the State Plan?
- 641.305 Who is responsible for developing and submitting the State Plan?
- 641.310 May the Governor delegate responsibility for developing and submitting the State Plan?
- 641.315 Who participates in developing the State Plan?
- 641.320 Must all national grantees operating within a State participate in the State planning process?
- 641.325 What information must be provided in the State Plan?
- 641.330 How should the State Plan reflect community service needs?
- 641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?
- 641.340 Must the Governor submit a State Plan each year?
- 641.345 What are the requirements for modifying the State Plan?
- 641.350 How should public comments be solicited and collected?
- 641.355 Who may comment on the State Plan?
- 641.360 How does the State Plan relate to the equitable distribution (ED) report?
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**Subpart D—Grant Application and Responsibility Review Requirements**

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

### Subpart A—Purpose and Definitions

#### § 641.100 What does this Part cover?

This Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under the title V of the Older Americans Act, 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Amendments of 2000 (OAA), Pub. L. 106–501. This Part, and other pertinent regulations expressly incorporated by reference, set forth the regulations applicable to the SCSEP.

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

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

(c) Subpart C of this part sets forth the requirements for the State Senior Employment Services Coordination Plan (State Plan), such as required coordination efforts, public comments, and equitable distribution.

(d) Subpart D of this part establishes grant planning and application requirements, including grantee eligibility, and responsibility review.

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

(f) Subpart F of this part provides the rules for projects designed to assure second career training and the placement of eligible individuals into unsubsidized jobs in the private sector.

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

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

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

#### § 641.110 What is the SCSEP?

The Senior Community Service Employment Program or the SCSEP is a program administered by the Department of Labor that serves low-income persons who are 55 years of age

and older and have poor employment prospects by placing them in part-time community service positions and by assisting them to transition to unsubsidized employment.

**§ 641.120 What are the purposes of the SCSEP?**

The purposes of the SCSEP are to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years of age or older; to foster individual economic self-sufficiency; and to increase the number of older persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors.

**§ 641.130 What is the scope of this Part?**

The regulations in this Part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this Part, phrases such as, “according to instructions (procedures) issued by the Department” or “additional guidance will be provided through administrative issuance” refer to the SCSEP Bulletins, technical assistance guides, and other SCSEP directives.

**§ 641.140 What definitions apply to this Part?**

The following definitions apply to this Part:

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

*Community service* includes, but is not limited to, social, health, welfare, and educational services (including literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts;

weatherization activities; and economic development. (OAA sec. 516(1)).

*Comprehensive One-Stop Center* means a facility located in each Local Workforce Investment Area that provides core services, and provides access to other programs and activities carried out by the One-Stop partners. (See WIA sec. 134(c)(2)).

*Core Services* means those services described in section 134(d)(2) of WIA.

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

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

*Grant period* means the time period between the effective date of the grant award and the ending date of the award, which reflects any modifications extending the period of performance, whether by the Department’s exercise of options contained in the grant agreement or otherwise. Also referred to as “project period” or “award period.”

*Grantee* means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include States, tribal organizations, territories, public and private nonprofit organizations, agencies of a State government or a political subdivision of a State, or a combination of such political subdivisions that receive SCSEP grants from the Department. (OAA sec. 502). In the case of the section 502(e) projects, grantee may be used to include private business concerns. As used here, “grantees” include “grantees” as defined in 29 CFR 97.3 and “recipients” as defined in 29 CFR 95.2(g).

*Greatest economic need* means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget. (OAA sec. 101(27)).

*Greatest social need* means the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical

isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. (OAA sec. 101(28)).

*Host agency* means a public agency or a private nonprofit organization exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship, which provides a work site and supervision for one or more participants. (See also OAA sec. 502(b)(1)(C)). A host agency may be a place of sectarian worship or instruction as long as the work experience provided for the participant is not for sectarian purposes.

*Indian* means a person who is a member of an Indian tribe. (OAA sec. 101(5)).

*Indian tribe* means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which:

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA sec. 101(6)).

*Individual employment plan or IEP* means a plan for a participant that includes an employment goal, achievement of objectives, and appropriate sequence of services for the participant based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the participant. (See OAA sec. 502(b)(1)(N)).

*Intensive services* means those services authorized by section 134(d)(3) of the Workforce Investment Act.

*Jobs for Veterans Act* means the program established in section 2 of Pub. L. 107–288 (2002) (38 U.S.C. 4215), that provides a priority for veterans and the spouse of a veteran who died in a service-connected disability, the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements to receive services in any Department of

Labor-funded workforce development program.

*Local Workforce Investment Area or local area* means an area established by the Governor of a State under section 116 of the Workforce Investment Act.

*Local Board* means a Local Workforce Investment Board established under section 117 of the Workforce Investment Act.

*National grantee* means Federal public agencies and organizations, private nonprofit agencies and organizations, or tribal organizations that operate under title V of the OAA that are capable of administering multi-State projects under a national grant from the Department. (See OAA sec. 506(g)(5)).

*OAA* means the Older Americans Act as amended by the Older Americans Act Amendments of 2000 (Pub. L. 106-501; 42 U.S.C. 3056 *et seq.*).

*One-Stop Delivery System* means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to core services is available regardless of where the individuals initially enter the statewide workforce investment system. (WIA sec. 134(c)(2)).

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

*Other participant (enrollee) cost* means participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to assist a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection, intake orientation, and assessments. (OAA sec. 502(c)(6)(A)).

*Participant* means an individual who is eligible for the SCSEP, has been enrolled and is receiving services as prescribed under subpart E of this part.

*Placement into public or private unsubsidized employment* means full-or

part-time paid employment in the public or private sector by a participant for 30 days within a 90-day period without the use of funds under title V or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earnings of a participant through the use of wage records or other appropriate methods. (OAA sec. 513(c)(2)(A)).

*Poor employment prospects* means the likelihood that an individual will not obtain employment without the assistance of SCSEP or any other workforce development program. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, and/or English-language proficiency; displaced homemakers, school dropouts, persons with disabilities, including disabled veterans, homeless individuals, and individuals residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

*Program year* means the one-year period beginning July 1 and ending on June 30. (OAA sec. 515(b)).

*Project* means an undertaking by a grantee or subgrantee according to a grant agreement that provides community service, training, and employment opportunities to eligible individuals in a particular location within a State.

*Recipient* means grantee. As used here, "recipients" include "recipients" as defined in 29 CFR 95.2(g) and "grantees" as defined in 29 CFR 97.3.

*Retention in public or private unsubsidized employment* means full-or part-time paid employment in the public or private sector by a participant for 6 months after the starting date of placement into unsubsidized employment without the use of funds under title V or any other Federal or State employment subsidy program. (OAA sec. 513(c)(2)(B)).

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

*Service area* means the geographic area served by a local SCSEP project.

*State Workforce Agency* means the State agency that administers the State Wagner-Peyser program.

*State Board* means a State Workforce Investment Board established under section 111 of the Workforce Investment Act.

*State grantee* means the entity designated by the Governor to enter into a grant with the Department to

administer a State or territory SCSEP project under the OAA. Except as applied to funding distributions under section 506 of the OAA, this definition applies to the 50 States, Puerto Rico, the District of Columbia and the following territories: Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

*State Plan* means the State Senior Employment Services Coordination Plan as required under section 503(a) of the OAA.

*Subgrantee* means the legal entity to which a subaward of financial assistance, which may include a subcontract, which is made by the grantee (or by a higher tier subgrantee or recipient), and that is accountable to the grantee for the use of the funds provided. As used here, "subgrantee" includes "subgrantees" as defined in 29 CFR 97.3 and "subrecipients" as defined in 29 CFR 95.2(kk).

*Subrecipient* means a subgrantee.

*Title V of the OAA* means 42 U.S.C. 3056 *et seq.* or title V of Pub. L. 106-501.

*Training Services* means those services authorized by section 134(d)(4) of the Workforce Investment Act.

*Tribal organization* means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA sec. 101(7)).

*Workforce Investment Act or WIA* means the Workforce Investment Act of 1998 (Pub. L. 105-220—Aug. 7, 1998; 112 Stat. 936); 29 U.S.C. 2801 *et seq.*

*Workforce Investment Act regulations or WIA regulations* means regulations at 20 CFR part 652 and parts 660-671.

## Subpart B—Coordination With the Workforce Investment Act

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

SCSEP is a required partner under the Workforce Investment Act. As such, it is a part of the One-Stop Delivery System. SCSEP grantees are required to follow all applicable rules under the WIA and its regulations.

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

In addition to providing core services, SCSEP grantees must make arrangements to provide eligible and ineligible individuals with access to other activities and programs carried out by other One-Stop partners.

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

No, SCSEP requirements continue to apply. Title V resources may only be used to provide title V services to title V-eligible individuals. The Workforce Investment Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop Delivery System. Although the overall effect is to provide universal access to core services, SCSEP resources may only be used to provide services that are authorized and provided under SCSEP to eligible individuals. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in SCSEP, should be referred to or enrolled in WIA or other appropriate partner programs. (WIA sec. 121(b)(1)). These arrangements should be negotiated in the MOU.

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

Yes, section 502(b)(4) of the OAA provides that an assessment or IEP completed by SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. These reciprocal arrangements and the contents of the SCSEP IEP and WIA IEP should be negotiated in the MOU. (OAA sec. 502(b)(4)).

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

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

(b) SCSEP participants who have been assessed through an SCSEP IEP have received an intensive service according to 20 CFR 663.240(a) of the WIA regulations. SCSEP participants who seek unsubsidized employment as part of their SCSEP IEP, may require training to meet their objectives. The SCSEP grantee/subgrantee, the host agency, the WIA program, or another One-Stop partner may provide training as

appropriate and as negotiated in the MOU.

(c) SCSEP provides opportunities for eligible individuals to engage in part-time community service activities for which they are compensated. These assignments are analogous to work experience activities or intensive service under 20 CFR 663.200 of the WIA regulations.

**Subpart C—The State Senior Employment Services Coordination Plan**

**§ 641.300 What is the State Plan?**

The State Senior Employment Services Coordination Plan (the State Plan) is a plan, submitted by the Governor in each State, as an independent document or as part of the WIA Unified Plan, that describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees operating within the State and to facilitate the efforts of stakeholders, including State and Local Boards under WIA, to work collaboratively through a participatory process to accomplish the SCSEP program's goals. (OAA sec. 503(a)(1)). The State Plan provisions are listed at proposed § 641.325.

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

The Governor of each State is responsible for developing and submitting the State Plan to the Department.

**§ 641.310 May the Governor delegate responsibility for developing and submitting the State Plan?**

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

**§ 641.315 Who participates in developing the State Plan?**

(a) In developing the State Plan the Governor must obtain the advice and recommendations of representatives from:

- (1) The State and area agencies on aging;
- (2) State and Local Boards;
- (3) Public and private nonprofit agencies and organizations providing

employment services, including each grantee operating an SCSEP project within the State, except as provided for in § 641.320(b);

- (4) Social service organizations providing services to older individuals;
- (5) Grantees under title III of the OAA;
- (6) Affected communities;
- (7) Underserved older individuals;
- (8) Community-based organizations serving older individuals;
- (9) Business organizations; and
- (10) Labor organizations

(b) The Governor may also obtain the advice and recommendations of other interested organizations and individuals, including SCSEP program participants, in developing the State Plan. (OAA sec. 305(a)(2)).

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

(a) Yes, although section 503(a)(2) requires the Governor to obtain the advice and recommendation of SCSEP national grantees with no reciprocal provision requiring the national grantees to participate in the State planning process, the eligibility provision at section 514(c)(5) requires grantees to coordinate with other organizations at the State and local level. Therefore, any national grantee that does not participate in the State planning process may be deemed ineligible to receive SCSEP funds in the following Program Year.

(b) National grantees serving older American Indians are exempted from participating in the planning requirements under section 503(a)(8) of the OAA. These national grantees may choose not to participate in the State planning process, however, the Department encourages participation. If a national grantee serving older American Indians does not participate in the State planning process, it must describe its plans for serving older American Indians in its application for SCSEP grant funds.

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

The Department issues instructions detailing the information that must be provided in the State Plan. At a minimum, the State Plan must include information on the following:

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

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

(c) The employment situations and the types of skills possessed by eligible individuals;

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

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

(f) A description of the State's procedures and time line for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment;

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

(h) A description of the steps taken to avoid disruptions to the greatest extent possible (*see* § 641.365); and

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

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

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

**§ 641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?**

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

**§ 641.340 Must the Governor submit a State Plan each year?**

The Governor is not required to submit a full State Plan each year; however, at a minimum, the Governor must seek the advice and

recommendation of the individuals and organizations identified in the statute at section 503(a)(2) about what, if any, changes are needed, and publish the changes to the State Plan for public comment each year and submit a modification to the Department.

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

(a) Modifications are required when:

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

(2) There are changes in the State's vision, strategies, policies, performance indicators, or organizational responsibilities;

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

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

(b) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the State Plan under §§ 641.325 and 641.350.

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

**§ 641.350 How should public comments be solicited and collected?**

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

**§ 641.355 Who may comment on the State Plan?**

Any individual or organization may comment on the Plan.

**§ 641.360 How does the State Plan relate to the equitable distribution (ED) report?**

The two documents address some of the same areas, and are prepared at different points in time. The ED report is prepared by State agencies at the beginning of each fiscal year and provides a "snapshot" of the actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census data. It provides a basis for improving the distribution of SCSEP positions within the State. (*See* OAA sec. 508). The State plan is prepared by the Governor and covers many areas in

addition to equitable distribution, as discussed in proposed § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the subsequent year's ED report, which then forms the basis for the proposed distribution in the next year's State plan. This process is iterative in that it moves the authorized positions from over-served areas to underserved areas over a period of time.

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

Governors must describe the steps that are being taken to comply with the statutory requirement to avoid disruptions in the State Plan. (OAA sec. 503(a)(6)). When there is new census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized employment to make positions available for eligible individuals in the areas where there has been an increase in the eligible population. The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service employment position indefinitely. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time.

**Subpart D—Grant Application, Eligibility, and Award Requirements**

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

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

(b) *National Grants in a State*. Section 514(e)(3) of the OAA permits nonprofit organizations, public agencies, and States to receive SCSEP funds when a national grantee in a State fails to meet its performance measures in the second and third year of failure. Any entity that

was the subject of the competition is not eligible to receive SCSEP funds.

(c) *State Grants.* Section 506(e) of the OAA requires the Department to enter into agreements with each State to provide SCSEP services. States may use individual State agencies, political subdivisions of a State, a combination of such political subdivisions, or a national grantee operating in the State to administer SCSEP funds. If the State's funds are competed under section 514(f) of the OAA, other agencies within the State, political subdivisions of a State, a combination of political subdivisions of a State, and national grantees operating in the State are eligible to apply for funds. Other States may not apply for this funding.

**§ 641.410 How does an eligible entity apply?**

(a) *General.* An eligible entity must follow the application guidelines issued by the Department. The Department will issue application guidelines announcing the availability of State and national SCSEP funds whether they are awarded on a competitive or noncompetitive basis. The guidelines will contain application due dates, application instructions, and other necessary information. All entities must submit applications in accordance with the Department's instructions.

(b) *National Grant Applicants.* All applicants for SCSEP national grant funds, except organizations proposing to serve older American Indians, must submit their applications to the Governor of each State in which projects are proposed before submitting the application to the Department. (OAA sec. 503(a)(5)).

(c) *State Applicants.* A State that submits a Unified Plan under WIA may include the State's SCSEP community service project grant application in its Unified Plan. Any State that submits an SCSEP grant application as part of its WIA Unified Plan must address all of the application requirements as published in the Department's instructions. State plan applications, and modifications are addressed in §§ 641.340 and 641.345.

**§ 641.420 What factors will the Department consider in selecting grantees?**

The Department will select grantees from among applicants that are able to meet the eligibility criteria and responsibility review at section 514 of the OAA. (Section 641.430 contains the eligibility criteria and §§ 641.440 and 641.450 contain the responsibility criteria). If there is a full and open competition, the Department also will take the rating criteria described in the

Solicitation for Grant Application into consideration, including the applicant's/grantee's past performance in any prior Federal grants or contracts for the past 3 years.

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

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

(a) An ability to administer a program that serves the greatest number of eligible participants, giving particular consideration to individuals with greatest economic need, greatest social need, poor employment history or prospects, and over the age of 60;

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

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

(d) An ability to move participants with multiple barriers to employment into unsubsidized employment;

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

(f) An ability to properly manage the program, including its plan for fiscal management of the SCSEP program;

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

(h) Any additional criteria that the Secretary deems appropriate in order to minimize disruptions for current participants.

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

Each applicant must be able to meet the following responsibility tests:

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

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

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

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

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

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

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

(h) Failure to submit required reports.

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

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

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A-133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

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

(n) Failure to establish a mechanism to resolve a subgrantee's audit in a timely fashion.

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

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

**§ 641.460 How will the Department examine the responsibility of eligible entities?**

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

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

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

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

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

[Reserved].

**§ 641.480 May the Governor make recommendations to the Department on grant applications?**

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

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

**§ 641.490 When may SCSEP grants be awarded competitively?**

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the

responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the **Federal Register**. The Department believes that full and open competition is the best way to assure the highest quality of services to eligible participants.

**Subpart E—Services to Participants****§ 641.500 Who is eligible to participate in the SCSEP?**

Anyone who is at least 55 years old and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by the Office of Management and Budget (poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 516(2)). A person with a disability may be treated as a "family of one" for income eligibility determination purposes. The Department will issue administrative guidance on the procedures for computing family income for purposes of determining SCSEP eligibility.

**§ 641.505 When is eligibility determined?**

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee/subgrantee is responsible for verifying their continued income eligibility at least once every 12 months. Grantees may also verify an individual's eligibility as circumstances require.

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

[Reserved].

**§ 641.510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?**

If a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP, the grantee/subgrantee must give the participant written notification of termination within 30 days, and the participant must be terminated within 30 days of receiving the written notification. Grantees/subgrantees must refer such individuals to the services provided under the One-Stop Delivery System or other appropriate partner program. Participants may file a grievance

according to the grantee's procedures and subpart I.

**§ 641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?**

(a) Grantees and subgrantees must develop methods of recruitment and selection that assure that the maximum number of eligible individuals have an opportunity to participate in the program. To the extent feasible, grantees should seek to enroll individuals who are eligible minorities, limited English speakers, Indians, or who have the greatest economic need at least in proportion to their numbers in the area, taking into consideration their rates of poverty and unemployment, should be afforded community service opportunities. (OAA sec. 502(b)(1)(M)).

(b) Grantees and subgrantees must notify the State Workforce Agency of all SCSEP community service opportunities and must use the One-Stop Delivery System in the recruitment and selection of eligible individuals. (OAA sec. 502(b)(1)(H)).

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

(a) Yes, in selecting eligible individuals for participation in the SCSEP, priority must be given to:

- (1) individuals who are at least 60 years old (OAA sec. 516(2)); and
- (2) a veteran, or the spouse of a veteran who died of a service-connected disability, a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements under section 2 of the Jobs for Veterans Act, Pub. L. 107-288 (2002).

(b) Grantees must apply these priorities in the following order:

- (1) Veterans and qualified spouses at least 60 years old;
- (2) Other individuals at least 60 years old;
- (3) Veterans and qualified spouses aged 55-59; and
- (4) Other individuals aged 55-59.

**§ 641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?**

Yes, in selecting participants from among those individuals who are

eligible, to special consideration must be given, to the extent feasible, to individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need and who are eligible minorities, limited English speakers, or Indians. (OAA sec. 502(b)(1)(M)).

**§ 641.530 Must the grantee/subgrantee always select priority or preference individuals?**

Grantees must always select qualified individuals in accordance with § 641.520. Grantees must apply the preference, to the extent feasible, when selecting individuals within the priority groups, unless the grantee determines based on an assessment of their circumstances and the available community service employment opportunities, that a non-preference individual should receive services over a preference individual. When the Department examines the characteristics of a grantee's participant population, the grantee may be asked to provide evidence that it is adhering to the enrollment priorities and preferences set forth in §§ 641.520 and 641.525.

**§ 641.535 What services must grantees/subgrantees provide to participants?**

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

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

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

(3) Using the information gathered during the assessment to develop IEPs for participants; except that if an assessment has already been performed and an IEP developed under title I of WIA, the WIA IEP will satisfy the requirement for an SCSEP assessment and IEP (see § 641.260) and updating the IEPs as necessary to reflect information gathered during the quarterly participant assessments (OAA sec. 502(b)(1)(N));

(4) Placing participants in appropriate community service activities in the

community in which they reside, or in a nearby community (OAA sec. 502(b)(1)(B));

(5) Providing or arranging for necessary training specific to the participants' community service assignments (OAA sec. 502(b)(1)(I));

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

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

(8) Providing participants with wages and fringe benefits for time spent working in the assigned community service employment activity (OAA sec. 502(c)(6)(A)(i));

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

(10) Verifying participant income eligibility at least once every 12 months;

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

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

(13) Assessing participants' progress in meeting the goals and objectives identified in their IEPs, and meeting with participants to reevaluate their community service assignments, training needs, supportive service needs and potential for transitioning to unsubsidized employment, making appropriate revisions to the SCSEP IEPs as necessary (OAA sec. 502(b)(1)(N)(iii));

(14) Following-up with participants placed into unsubsidized employment during the first 6 months of placement to make certain that participants receive any follow-up services they may need to ensure successful placements; and

(15) Following-up at 6 months with participants who are placed in unsubsidized employment to determine whether they are still employed (OAA sec. 513(c)(2)(B));

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

(c) Grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services.

**§ 641.540 What types of training may grantees/subgrantees provide to SCSEP participants?**

(a) Grantees and subgrantees must arrange skill training for participants that is realistic and consistent with the participants' IEP, and that makes the most effective use of their skills and talents.

(b) Training may be provided before or after placement in a community service activity.

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

(d) Grantees and subgrantees are encouraged to place a major emphasis on training available through on-the-job experience.

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

(f) Grantees/subgrantees may pay reasonable costs for instructors, classroom rental, training supplies and materials, equipment, tuition and other costs of training. (OAA sec. 502(c)(6)(A)(ii)).

(g) Grantees/subgrantees may reimburse participants for costs associated with travel and room and board necessary to participate in training.

(h) Nothing in this section prevents or limits participants from engaging in self-development training available through other sources during hours when not assigned to community service activities.

**§ 641.545 What supportive services may grantees/subgrantees provide to participants?**

(a) Grantees/subgrantees may provide or arrange for supportive services to assist participants in successfully participating in SCSEP projects, including but not limited to payment of reasonable costs of transportation; health care and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; child and adult care; temporary shelter; and follow-up services. (OAA sec. 502(c)(6)(A)(iv)).

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

**§ 641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?**

Because one goal of the program is to foster economic self-sufficiency, grantees and subgrantees should make reasonable efforts to place as many participants as possible into unsubsidized employment, in accordance with each participant's IEP. Grantees are responsible for working with participants to ensure that, for those participants whose IEPs include an unsubsidized employment goal, the participants are receiving services and taking actions designed to help them achieve this goal. Grantees and subgrantees must contact private and public employers directly or through the One-Stop Delivery System to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

**§ 641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?**

(a) Grantees must contact placed participants during the first 6 months to determine if participants have the necessary supportive services to remain in the job.

(b) Grantees must contact participants 6 months after placement to determine if they have been retained by the employer or use wage records to verify continued employment. (OAA sec. 513(c)(2)(B)).

**§ 641.560 May grantees place participants directly into unsubsidized employment?**

Grantees are encouraged to refer individuals who may be placed directly in an unsubsidized employment position to an employment provider, including the One-Stop for job placement assistance under WIA. The SCSEP encourages grantees to work closely with participants to develop an IEP and assessment to determine what training the individual may need. The Department encourages grantees to work with those participants who are the most difficult to place to provide them with the services necessary to develop the skills needed for job placement.

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

(a) *Wages.* Grantees must pay participants the highest applicable minimum wage for time spent in orientation, training required by the grantee/subgrantee, and work in community service assignments. The

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

(b) *Fringe benefits.*

(1) *Required fringe benefits.* Except as provided in paragraphs (b)(3) and (b)(4) of this section, grantees must ensure that enrollees receive all fringe benefits required by law.

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

(ii) Grantees must offer participants the opportunity to receive physical examinations annually.

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

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

(iii) When participants are not covered by the State workers' compensation law, the grantee or subgrantee must provide participants with workers' compensation benefits equal to those provided by law for covered employment.

(2) *Allowable fringe benefit costs.* Grantees may provide the following fringe benefits: annual leave; sick leave; holidays; health insurance; social security; and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A-87 and A-122, except for retirement costs. (See subpart H, §§ 641.847 and 641.850).

(3) *Retirement.* Grantees may not use grant funds to provide contributions into a retirement system or plan unless the grantee documents the following:

(i) The costs are allowable under the appropriate cost principles indicated at § 641.847; and

(ii) Such contributions bear a reasonable relationship to the cost of providing benefits to participants. A "reasonable relationship" exists when the benefits vest at the time contributions are made on behalf of the participants, or the charges to SCSEP funds are for contributions on behalf of participants to a "defined benefit" type of plan that do not exceed the amounts reasonably necessary to provide the specified benefit to participants, as determined under a separate actuarial determination.

(4) *Unemployment compensation.* Unless required by law, grantees may not pay the cost of unemployment insurance for participants.

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

No, there is no time limit for participation in the SCSEP; however, a maximum duration of enrollment may be established by the grantee in the grant agreement, when authorized by the Department. If there is such a time limit on enrollment established in the grant agreement, the grantee must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions for transition must be reflected in the participant's IEP.

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

Yes, grantees may establish limits on the amount of time that its participants may spend at a host agency. Such limits should be established in the grant agreement, as approved by the Department, and reflected in the participants' IEPs.

**§ 641.580 Under what circumstances may a grantee terminate a participant?**

(a) If, at any time, a grantee or subgrantee determines that a participant was incorrectly declared eligible as a result of false information given by that individual, the grantee or subgrantee must terminate the participant and provide the participant with a written notice that explains the reason for termination.

(b) If, during annual income verification, a grantee finds a participant to be no longer eligible for enrollment because of changes in family income, the grantee may terminate the participant. In order to terminate the participant in such a case, the grantee must provide the participant with a written notice and terminate the

participant 30 days after the participant receives the notice. (See § 641.505).

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

(d) A grantee and subgrantee may terminate a participant for cause. In doing so, the grantee or subgrantee must inform the participant, in writing, of the reason(s) for termination. Grantees must discuss the proposed reasons for such terminations in the grant application, and must discuss such reasons with participants and provide each participant a written copy of its policies for terminating a participant for cause or otherwise at the time of enrollment.

(e) A grantee or subgrantee may terminate a participant if the participant refuses to accept a reasonable number of job offers or referrals to unsubsidized employment consistent with the SCSEP IEP and there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(f) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility under paragraphs (a), (b), and (c) of this section, it must give the individual a reason for termination and, when feasible, should refer the individual to other potential sources of assistance, such as the One-Stop Delivery System.

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

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

**§ 641.585 Are participants employees of the Federal Government?**

(a) No, participants are not Federal employees. (OAA sec. 504(a)).

(b) If a Federal agency is a grantee or host agency, § 641.590 applies.

**§ 641.590 Are participants employees of the grantee, the local project and/or the host agency?**

Grantees must consult with an attorney to determine if a participant is an employee of the grantee, local project, or host agency as the definition

of an "employee" varies depending on the laws defining an employer/employee relationship.

**Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA**

**§ 641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?**

The purpose of the private sector training projects authorized under section 502(e) of the OAA is to allow States, public agencies, nonprofit organizations, and private businesses through an open competition, to develop and operate projects designed to provide SCSEP participants with second career training and placement opportunities in the private business industry. In addition, the OAA provides section 502(e) grantees or contractors with opportunities to initiate or enhance their relationships with the private sector, fostering collaboration with the One-Stop Delivery System, improving their ability to meet and exceed performance standards, and broadening the range of options available to SCSEP participants.

**§ 641.610 How are section 502(e) activities administered?**

(a) The Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to carry out section 502(e) projects.

(b) To the extent possible, private sector training activities should emphasize different work modes, such as job sharing, flex-time, flex-place, arrangements relating to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

(c) Grantees must coordinate section 502(e) private sector training activities with programs carried out under title I of WIA and with SCSEP projects operating in the area whenever possible.

**§ 641.620 How may an organization apply for section 502(e) funding?**

Organizations applying for section 502(e) funding must follow the instructions issued by the Department in a Solicitation for Grant Applications, which will be published in the **Federal Register**, or other similar instrument.

**§ 641.630 What private sector training activities are allowable under section 502(e)?**

Allowable activities authorized under section 502(e) include:

(a) Providing participants with services leading to transition to private sector employment, including:

- (1) Training in new technological skills;
- (2) On-the-job training with private-for-profit employers;
- (3) Work experience with private-for-profit employers;
- (4) Adult basic education;
- (5) Classroom training;
- (6) Occupational skills training;
- (7) In combination with other services listed in paragraphs (a)(1) through (6) of this section or in conjunction with the local One-Stop Delivery System, job clubs or job search assistance;
- (8) In combination with other services listed in paragraphs (a)(1) through (7) of this section, supportive services, which may include counseling, motivational training, and job development; or
- (9) Combinations of the above-listed activities.

(b) Working with employers to develop jobs and innovative work modes including job sharing, flex-time, flex-place and other arrangements, including those relating to reduced physical exertion.

**§ 641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?**

(a) The private sector training activities authorized under section 502(e) are not required to have a community service project component.

(b) The private sector training activities authorized under section 502(e) focus solely on providing SCSEP-eligible individuals with second career training, placement opportunities, and other assistance necessary to obtain unsubsidized employment in the private sector.

(c) The Department is authorized to pay all of the costs of section 502(e) activities (*i.e.*, there is no "matching funds" requirement).

(d) The Department may enter directly into agreements with private businesses for section 502(e) activities.

(e) Grantees may fund private-for-profit and other organizations that do not have the IRS 501(c)(3) designation or are not public agencies to conduct section 502(e) activities if provided for in their grant or contract agreement with the Department.

**§ 641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?**

Yes, under section 502(c)(6)(B) of the OAA, 75 percent of SCSEP funds made available through a grant must be used to pay for the wages and fringe benefits of participants employed under SCSEP

projects. This requirement applies to the total grant, and not necessarily to individual components of the grant. For entities that receive an SCSEP grant for both community service projects and section 502(e) projects, the requirement applies to the total grant. For entities that receive only a section 502(e) grant, the requirement applies to that grant.

**§ 641.660 Who is eligible to participate in section 502(e) private sector training activities?**

The same eligibility criteria used in the community service portion of the program apply for participation in the private sector training activities. (See subpart E, §§ 641.500, 641.510, 641.520, 641.525, 641.530).

**§ 641.665 When is eligibility determined?**

Eligibility is determined at the time individuals apply to participate in the SCSEP. Grantees may also verify an individual's eligibility as circumstances require.

**§ 641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?**

Yes, an eligible individual may be enrolled simultaneously in section 502(e) private sector training activities and a community service SCSEP project, operated by two different SCSEP grantees. This is known as co-enrollment. When a participant is co-enrolled, the projects that are providing services to the participant must jointly work to ensure that they are providing complementary rather than duplicative services and that they are providing the participant with the services required under § 641.535. Co-enrollment may also describe arrangements such as participants receiving services from both SCSEP and another One-Stop partner program, such as the WIA title I adult program.

**§ 641.680 How should grantees report on participants who are co-enrolled?**

The Department's reporting instructions provide information on how grantees should report on participants who are co-enrolled.

**§ 641.690 How is the performance of section 502(e) grantees measured?**

(a) The following performance measures apply to section 502(e) grantees:

- (1) Entered employment;
- (2) Retention in employment; and
- (3) Earnings increase.

(b) These measures are defined and governed by Subpart G of this Part and the applicable provisions of

administrative issuances implementing the SCSEP performance standards.

(c) If a section 502(e) grantee fails to meet its performance standards, the Department may require corrective action, may provide technical assistance, or may decline to fund the grantee in the next Program Year.

**Subpart G—Performance Accountability**

**§ 641.700 What performance measures apply to SCSEP grantees?**

(a) The OAA, at section 513(b), enumerate the indicators of performance as follows:

(1) The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60;

(2) Community services provided;

(3) Placement into and retention in unsubsidized public or private employment;

(4) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and

(5) Additional indicators of performance that the Department determines to be appropriate to evaluate services and performance.

(b) The additional indicator of performance is earnings increase.

**§ 641.710 How are these performance indicators defined?**

(a) For ease of calculation and to make the indicators better measures of performance, the Department has divided some of the indicators into multiple parts.

(b) The individual indicators are defined as follows:

(1) "The number of persons served" is defined by comparing the total number of participants served to a grantee's authorized number of positions adjusted for the differences in wages required to be paid in a State or area.

(2) "The number of persons served with the greatest economic need, greatest social need or with poor employment history or prospects and individuals who are over age 60" is defined by comparing the total number of participants to the number of participants who:

(i) Have an income level at or below the poverty line; (OAA sec. 101(27))

(ii) Have physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of the individual to perform

normal daily tasks, or threatens the capacity of the individual to live independently; or (OAA sec. 101(28))

(iii) Have poor employment history or prospects; and

(iv) Are over the age of 60.

(3) "Community services provided" is defined as the number of hours of community service provided by SCSEP participants. "Community service" is defined in the OAA at section 516(1) and in § 641.140.

(4) "Placement into unsubsidized public or private employment" is defined by comparing the number of participants placed into unsubsidized employment, as defined in § 641.140 to the total number of participants. (OAA sec. 513(c)(2)(A)).

(5) "Retention in public or private unsubsidized employment" means the number of participants retained in unsubsidized employment, as defined in § 641.140, compared to the total number of participants. (OAA sec. 513(c)(2)(B)).

(6) "Satisfaction of participants" means the results accumulated as the results of surveys of the participant customer group of their satisfaction with their experiences and the services provided.

(7) "Satisfaction of employers" means the results accumulated as the results of surveys of the employer customer group of their satisfaction with their experiences and the services provided.

(8) "Satisfaction of host agencies" means the results accumulated as the results of surveys of the host agency customer group of their satisfaction with their experiences and the services provided.

(9) "Earnings increase" means the percentage change in earnings pre-registration to post-program, and between the first quarter after exit and the third quarter after exit.

(c) The Department will publish administrative issuances that elaborate on these definitions and their application.

**§ 641.715 What are the common performance measures?**

The common performance measures are a Government-wide initiative adopted by the Department that apply to employment and job training programs. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers. Grantees will be required to report on these measures as required under § 641.879. The common performance measure indicators are:

(a) Entered employment, defined as the percentage employed in the first quarter after program exit;

(b) Retention in employment, defined as the percentage of those employed in the first quarter after exit who were still employed in the second and third quarter after program exit; and

(c) Earnings increase defined as the percentage change in earnings pre-registration to post program; and between the first quarter after exit and the third quarter after exit.

**§ 641.720 How do the common performance measures affect grantees and the OAA performance measures?**

One of the common performance measures, earnings increase, has been included as a performance measures under § 641.700 and § 641.710 under the Secretary's discretionary authority. The two additional common performance measures will be used to determine the overall success of the program as compared to other programs Government-wide. The results will be the basis for making funding determinations. The Department will require grantees to collect data for the common performance measures as a reporting requirement under § 641.879.

**§ 641.730 How will the Department set and adjust performance levels?**

(a) Before the beginning of each Program Year, the Department will negotiate and set baseline levels of negotiated performance for each measure with each grantee, taking into consideration the need to promote continuous improvement in the program overall, past performance, and, when applicable, the performance of similar programs.

(b) The baseline level of negotiated performance for "placement into public or private unsubsidized employment" is set at 20 percent. (OAA sec. 513(a)(2)(C)).

(c) Grantees may request adjustments from these baseline levels before or during the Program Year. Grantees may base such requests only on the factors in paragraph (d) of this section. The Department will issue guidance for negotiating adjustment requests.

(d) Adjustments to performance levels may be made based on the following conditions only:

(1) High rates of unemployment, poverty, or welfare reciprocity in the areas served by a grantee relative to other areas of the State or Nation;

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

(3) Significantly higher numbers or proportions of participants with one or

more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. (OAA sec. 513(a)(2)(B)).

(e) Grantees may seek an adjustment to their performance levels, based on the factors listed in paragraph (d) of this section, during the negotiation process or during the grant period.

**§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds negotiated levels of performance?**

(a) The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. The aggregate is calculated by combining the percentage results achieved on each of the individual measures to obtain an average score.

(b) Once the aggregate is determined, if a grantee is unable to meet 80 percent of the negotiated level of performance for the aggregate of all of the performance measures, that grantee has failed to meet its performance measures. Performance in the range of 80 to 100 percent constitutes meeting the level for the performance measures. Performance in excess of 100 percent constitutes exceeding the level for the performance measures.

(c) A national grantee in a State must meet 80 percent of the negotiated level of performance for its national measures, and it must meet the measures negotiated for the State in which the national grantee serves.

(c) The Department will impose the sanctions outlined in section 514 of the OAA when a grantee fails to meet overall negotiated levels of performance.

(d) When a grantee fails one or more measures, but does not fail to meet its performance measures in the aggregate, the Department will provide technical assistance on the particular measures that a grantee failed.

(e) The Department will provide further guidance through administrative issuances.

**§ 641.750 What sanctions will the Department impose if a grantee fails to meet negotiated levels of performance?**

(a) Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. The sanctions that apply are grantee specific (*i.e.*, national grantee, national grantee in a State, or State grantee). These sanctions range from requiring grantees to submit a corrective action plan and receive technical assistance, to competition of part of the funds, to a competition of all of the funds.

(b) Grantees that only fail the customer satisfaction performance measure, but meet or exceed all other performance measures, will not be subject to sanctions. The Department will provide additional instructions for how it will measure customer satisfaction.

**§ 641.760 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance under the total SCSEP grant?**

(a) The Department will annually assess the performance of each national grantee no later than 120 days after the end of a Program Year to determine if a national grantee has failed to meet its negotiated levels of performance. (OAA sec. 514(e)(1)).

(b) If the Department determines that a national grantee has failed to meet its negotiated levels of performance for a Program Year, the national grantee must submit a corrective action plan not later than 160 days after the end of that Program Year. The plan must detail the steps the national grantee will take to improve performance. The Department will provide technical assistance related to performance issue(s). (OAA sec. 514(e)(2)(A)–(e)(2)(B)).

(c) If a national grantee fails to meet its negotiated levels of performance for a second consecutive Program Year, the Department will conduct a national competition to award an amount equal to 25 percent of that organization's funds in the following full Program Year. (OAA sec. 514(e)(2)(C)). The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) If a national grantee fails to meet its negotiated levels of performance for a third consecutive Program Year, the Department will conduct a national competition to award an amount equal to the full amount of that organization's remaining grant after deducting the amount awarded in paragraph (c) of this section. (OAA sec. 514(e)(2)(D)).

(e) To the extent possible, the competitions outlined in paragraphs (c) and (d) of this section will be conducted in such a way as to minimize the disruption of services to participants. (OAA sec. 514(e)(2)(C)).

(f) The organizations selected to receive a grant through the national competitions discussed in paragraphs (c) and (d) of this section must continue to provide service to the geographic areas formerly served by the national grantee(s). (OAA sec. 514(e)(2)(D)).

**§ 641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?**

(a) Each national grantee must be assessed on the performance of the projects it operates within any State. Such an assessment may lead to a finding that the national grantee has failed to meet negotiated levels of performance for its projects in a particular State. A national grantee's failure to meet performance measures in a State may be mitigated by justifying the failure, such as the size of the project or taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance, the Department will require a corrective action plan and may take other appropriate actions, including transfer of the responsibility for the project to other grantees or providing technical assistance. (OAA sec. 514(e)(3)(B)).

(c) The Department will take corrective action if there is a second consecutive Program Year of failure by a national grantee operating within a particular State. Such corrective action may include transfer of, or a competition for, all or a portion of the operation of the national grantee in the State to another entity. Entities that were the subject of this corrective action will not be eligible to receive the funds of the transfer or to compete. (OAA sec. 514(e)(3)(C)).

(d) If there is a third consecutive Program Year of failure, the Department will conduct a competition for all of the funds available to a national grantee for operations within a particular State. Entities that are the subject of this corrective action will not be eligible to participate in the competition. (OAA sec. 514(e)(3)(D)).

**§ 641.780 When will the Department assess the performance of a national grantee in a State?**

(a) The Department will assess the performance of a national grantee in a State annually.

(b) The Department may also initiate the assessment of a national grantee's performance in a State if:

(1) The Department receives information indicating that a grantee is having difficulty implementing a particular performance indicator; or

(2) The Governor of a State requests the Department to review the performance of a particular national grantee serving in the State. (OAA sec. 514(e)(4)).

**§ 641.790 What sanctions will the Department impose if a State grantee fails to meet negotiated levels of performance?**

(a) The Department will annually assess the performance of State grantees no later than 120 days after the end of a Program Year to determine if the State has failed to meet its negotiated levels of performance. (OAA sec. 514(f)(1)).

(b) A State failing to meet its negotiated levels of performance must submit a corrective action plan not later than 160 days after the end of the Program Year in which the failure occurred. The plan must detail the steps the State will take to improve performance. The Department will also provide technical assistance. (OAA sec. 514(f)(2) and (f)(3)).

(c) If a State fails to meet its negotiated levels of performance after two consecutive years, then the State must conduct a competition to award an amount equal to 25 percent of its allotted funds for the following year. The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) In the event that a State fails to meet its negotiated levels of performance after three consecutive years, then the State must conduct a competition to award an amount equal to 100 percent of its allotted funds for the following year.

(e) Entities that operated any portion of the State's program that contributed to the failure will not be eligible to participate in the competitions.

**§ 641.795 Will there be incentives for exceeding performance measures?**

Yes, the Department will address non-financial incentives in its administrative issuances. The Department is authorized by section 515(c)(1) of the OAA to use recaptured funds to provide incentive grants. The Department will issue administrative guidance detailing how incentive grants will be awarded.

**Subpart H—Administrative Requirements**

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

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

(b) *Governments.* State, local, and Indian tribal government organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State

and Local Governments," codified at 29 CFR part 97. The allowable cost requirements for governmental recipients and subrecipients are in OMB Circular A-87.

(c) *Nonprofit and commercial organizations.* Institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A-110, codified at 29 CFR part 95. The allowable cost requirements for recipients and subrecipients subject to 29 CFR part 95 are cited in 29 CFR 95.27 (Allowable costs).

**§ 641.803 What is program income?**

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

**§ 641.806 How must SCSEP program income be used?**

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

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

(c) Recipients that do not continue to receive a SCSEP grant from the Department must remit program income earned or generated during the grant period from SCSEP funded activities to the Department after the end of the grant period.

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

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

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

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

(d) The non-Federal share of costs may be provided in cash, or in-kind, or a combination of the two. (OAA sec. 502(c)(2)). If, however, recipients plan to obtain the non-Federal share from a subgrantee or host agency, they may not require provision of non-Federal resources as a condition of such relationship.

(e) The Department may pay all of the costs of activities carried out under section 502(e) of the OAA. (OAA sec. 502(e)).

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

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

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

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

**§ 641.815 May the period of availability be extended?**

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

**§ 641.818 What happens to funds that are unexpended at the end of the Program Year?**

(a) The Department may recapture any unexpended funds at the end of any Program Year and use the recaptured funds during the two succeeding Program Years for:

- (1) Incentive grants;
- (2) Technical assistance; or
- (3) Grant and contract awards for any other SCSEP programs and activities.

(OAA sec. 515(c)).

(b) The Department will provide the necessary information through an administrative issuance.

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

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

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

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

(2) Commercial organizations that are subrecipients under the SCSEP program and that expend more than the minimum level specified in OMB Circular A–133 (\$300,000 as of July 1, 2001) must have either an organization-wide audit conducted in accordance with OMB Circular A–133 or a program-specific financial and compliance audit.

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

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

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

(a) SCSEP recipients, subrecipients, and host agencies are required to comply with the nondiscrimination

provisions codified in the Department's regulations at 29 CFR parts 31 and 32.

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

(1) The recipient operates programs and activities through the One-Stop Delivery System established under the Workforce Investment Act; or

(2) The recipient is a State agency that is also a recipient of WIA title I financial assistance.

**§ 641.830 What nondiscrimination protections apply specifically to participants in SCSEP programs?**

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

- (1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- (3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*). (OAA sec. 503(b)(3)).

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

**§ 641.833 What policies govern political patronage?**

(a) A recipient or subrecipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs.

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

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

**§ 641.836 What policies govern political activities?**

(a) No project under title V of the OAA may involve political activities. SCSEP recipients must ensure compliance with the requirements and prohibitions involving political

activities described in paragraphs (b) and (c) of this section.

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

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

(c) SCSEP recipients must provide all persons associated with SCSEP activities with a written explanation of allowable and unallowable political activities under the Hatch Act. A notice explaining these allowable and unallowable political activities must be posted in every workplace in which SCSEP activities are conducted. This notice must be approved by the Department of Labor and must contain the address and telephone number of the Department of Labor Inspector General. (OAA sec. 502(b)(1)(P)).

(d) SCSEP recipients must ensure that:

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

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

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

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

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

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

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in non-political assignments is permissible, however, provided that:

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

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

**§ 641.839 What policies govern union organizing activities?**

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

**§ 641.841 What policies govern nepotism?**

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

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

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

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

(a) Employment of a participant funded under title V of the OAA is permissible only in addition to employment that would otherwise be funded by the recipient, subrecipient and the host agency without assistance under the OAA. (OAA sec. 502(b)(1)(F)).

(b) Each project funded under title V:

- (1) Must result in an increase in employment opportunities in addition to those that would otherwise be available;
- (2) Must not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;
- (3) Must not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Must not substitute SCSEP-funded positions for existing federally assisted jobs; and

(5) Must not employ or continue to employ any participant to perform work that is the same or substantially the same as that performed by any other person who is on layoff. (OAA sec. 502(b)(1)(G)).

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

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

(b) *Allowable costs/cost principles.*

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments."

(2) Allowable costs for nonprofit organizations must be determined under OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A-21, "Cost Principles for Educational Institutions."

(4) Allowable costs for hospitals must be determined in accordance with appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(5) Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A-122 must be determined under the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

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

(a) Yes, in addition to the generally applicable cost principles in § 641.847(b), the cost principles in

paragraphs (b) through (e) of this section apply to SCSEP grants.

(b) *Claims against the Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

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

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

- (1) Minor remodeling of a public building necessary to make it suitable for use for project purposes;
- (2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and
- (3) Minor repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(e) *Accessibility and reasonable accommodation.* Recipients and subrecipients may use SCSEP funds to meet their obligations under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 to provide physical and programmatic accessibility and reasonable accommodation. (29 U.S.C. 794).

(f) *Participants' fringe benefit costs.* Recipients and subrecipients may use SCSEP funds for participant fringe benefit costs only under the conditions set forth in § 641.565.

#### **§ 641.853 How are costs classified?**

(a) All costs must be classified as "administrative costs" or "program costs." (OAA sec. 502(c)(6)).

(b) Recipients and subrecipients must assign participants' wage and fringe benefit costs and other participant (enrollee) costs, such as supportive services, to the "program cost" category. (See § 641.864). When participants are assigned to functions normally classified as administrative costs, recipient must charge the functions, but not the participants' wages and fringe benefits, to the "administrative cost" category.

#### **§ 641.856 What functions and activities constitute costs of administration?**

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

(b) The costs of administration are the costs associated with:

- (1) Performing overall general administrative and coordination functions, including:
  - (i) Accounting, budgeting, financial and cash management functions;
  - (ii) Procurement and purchasing functions;
  - (iii) Property management functions;
  - (iv) Personnel management functions;
  - (v) Payroll functions;
  - (vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;
  - (vii) Audit functions;
  - (viii) General legal services functions; and
  - (ix) Developing systems and procedures, including information systems, required for these administrative functions;
- (2) Oversight and monitoring responsibilities related to administrative functions;
- (3) Costs of goods and services used for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;
- (4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the program; and
- (5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems development and operating costs of such systems. (OAA sec. 502(c)(4)).

#### **§ 641.859 What other special rules govern the classification of costs as administrative costs or program costs?**

(a) Recipients and subrecipients must comply with the special rules for classifying costs as administrative costs or program costs set forth in paragraphs (b) through (f) of this section.

(b) Costs under awards to subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs.

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

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

(e) Except as provided in paragraph (b) of this section, all costs incurred by vendors are program costs. (See 29 CFR 99.210 for a discussion of factors differentiating subrecipients from vendors).

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

- (1) Tracking or monitoring of participant and performance information;
- (2) Employment statistics information, including job listing information, job skills information, and demand occupation information; and
- (3) Local area performance information.

#### **§ 641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?**

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

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

#### **§ 641.864 What functions and activities constitute program costs?**

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

- (a) Participant Wages and Fringe Benefits, consisting of wages paid and fringe benefits provided to participants for hours of community service assignments, as described in § 641.565;
- (b) Outreach, recruitment and selection, intake, orientation, assessment, and preparation and updating of IEPs;

(c) Participant training provided on the job, in a classroom setting, or utilizing other appropriate arrangements, consisting of reasonable costs of instructors' salaries, classroom space, training supplies, materials, equipment, and tuition;

(d) Job placement assistance, including job development and job search assistance, job fairs, job clubs, and job referrals; and

(e) Participant supportive services, as described in § 641.573. (OAA sec. 502(c)(6)(A)).

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

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

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

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

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

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

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Department;

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

(iii) The size of the project is so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent of the amount for such project. (OAA sec. 502(c)(3)).

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

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

(a) Not less than 75 percent of the SCSEP funds provided under a grant from the Department must be used to pay for the wages and fringe benefits of participants in such projects, including awards made under section 502(e) of the OAA. (OAA sec. 502(c)(6)(B)).

(b) An SCSEP recipient is in compliance with this provision if at least 75 percent of the total expenditures of SCSEP funds provided to the recipient were for wages and benefits, even if one or more subrecipients did not expend at least 75 percent of their SCSEP funds for wages and fringe benefits for community service projects.

(c) Recipients receiving general SCSEP funds and section 502(e) funds must meet the 75 percent requirement based on the total of both grants.

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

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

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

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each SCSEP recipient must submit an SCSEP Quarterly Progress Report (QPR) to the Department in electronic format via the Internet within 30 days after the end of each quarter of the Program Year (PY). The SCSEP recipient must prepare this report to coincide with the ending dates for Federal PY quarters. Each SCSEP recipient must also submit a final QPR to the Department within 45 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal Program Year quarter, the SCSEP recipient must submit the final QPR covering the entire grant period no later than 45 days after the ending date of the grant. Grantees submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit reports, which may result in failing one of the responsibility tests outlined in proposed § 641.440 and section 514(d) of the OAA. The Department will provide instructions, including instructions concerning

reporting frequency, for the preparation of this report. (OAA sec. 503(f)(3)).

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, each SCSEP recipient must submit a SCSEP Financial Status Report (FSR) in electronic format to the Department via the Internet within 30 days after the ending of each quarter of the Program Year. Each SCSEP recipient must also submit a final FSR to the Department via the Internet within 45 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal PY quarter, the SCSEP recipient must submit the final FSR covering the entire grant period no later than 45 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

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

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

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

(d) Each SCSEP recipient that receives section 502(e) funds must submit reports on its section 502(e) activities. The Department will provide instructions for the preparation of these reports. (OAA sec. 503(f)(3)).

(e) Each SCSEP recipient must collect data and submit reports regarding the program performance measures and the common performance measures. See §§ 641.700–641.720. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(f) Each SCSEP recipient may be required to collect data and submit reports regarding the demographics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(g) Federal agencies that receive and use SCSEP funds under interagency agreements must submit project fiscal and progress reports in accordance with this subsection. Federal recipients must maintain the necessary records that support required reports according to

instructions provided by the Department. (OAA sec. 503(f)(3)).

(h) Recipients may be required to maintain records that contain any other information that the Department determines to be appropriate in support of any other reports that the Department may require. (OAA sec. 503(f)(3)).

**§ 641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?**

(a) The SCSEP recipient is responsible for all grant activities, including the performance of SCSEP activities by subrecipients, and ensuring that subrecipients comply with the OAA and this Part. (*See also* OAA sec. 514 on responsibility tests).

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

**§ 641.884 What are the grant closeout procedures?**

SCSEP recipients must follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. The Department will issue supplementary closeout instructions to title V recipients as necessary.

**Subpart I—Grievance Procedures and Appeals Process**

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

[Reserved].

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

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

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

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations

determined to be substantial and credible will be investigated and addressed.

(d) Allegations of discrimination must be resolved according to complaint processing procedures meeting the requirements of 29 CFR 37.70 through 37.80 or any other applicable regulation. Questions about or complaints alleging discrimination may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210.

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

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

(b) Appeals of suspensions or terminations on the grounds of discrimination are processed under 29 CFR parts 31 or 37, as appropriate.

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

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge will designate an Administrative Law Judge to hear the appeal.

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

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

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

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and

Subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when they are considered reasonably necessary by the Administrative Law Judge conducting the hearing. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record.

(d) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2-96), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

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

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated

as a final decision of an Administrative Law Judge.

Signed at Washington, DC this 14th day of April, 2003.

**Emily Stover DeRocco,**  
*Assistant Secretary, Employment and Training Administration.*

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