

**ATTACHMENT V:
LEGISLATIVE AND REGULATORY BASIS FOR FORMS**

FR Doc 04-7282

[Federal Register: April 9, 2004 (Volume 69, Number 69)]

[Rules and Regulations]

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[DOCID:fr09ap04-10]

Subpart G--Performance Accountability

Sec. 641.700 What performance measures apply to SCSEP grantees?

(a) The OAA, at section 513(b), enumerates 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.

Sec. 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 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 served to the total 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 Sec. 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 Sec. 641.140, to the total number authorized positions. (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 Sec. 641.140, compared to the total number of those who are employed in the first quarter after exit--i.e., the number placed. (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.

Sec. 641.715 What are the common performance measures?

The common performance measures are a Government-wide initiative adopted by the Department that apply to DOL-funded 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 the common performance measures as required under Sec. 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.

(d) Program efficiency is defined as the cost per participant.

Sec. 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 Sec. Sec. 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 for the SCSEP. The Department will require grantees to collect data for the common performance measures as a reporting requirement under Sec. 641.879.

Sec. 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)).

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(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.

Sec. 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 levels 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 levels for the performance measures. Performance in excess of 100 percent constitutes exceeding the levels 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.

(d) The Department will impose the sanctions outlined in section 514 of the OAA and in Sec. Sec. 541.750, 541.760, 541.770 and 541.790 when a grantee fails to meet overall negotiated levels of performance.

(e) 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.

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

Sec. 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 grant funds, to a competition of all of the grant funds.

(b) Until the Department establishes baseline levels for customer satisfaction measures, 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.

Sec. 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. The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(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)). The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(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) whose positions were the subject of the competition. (OAA sec. 514(e)(2)(D)).

Sec. 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, taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA, or size of the project. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance within a State, 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 project(s) 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)).

Sec. 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 an 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

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

Sec. 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.

Sec. 641.795 Will there be incentives for exceeding performance measures?

Yes, the Department will address non-financial incentives in 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

Sec. 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 Organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments" (10/07/1994) (further amended 08/29/1977), codified at 29 CFR part 97.

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

Sec. 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 90 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 90 days after the ending date of the grant. The Department will provide instructions 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 an 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 90 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 90 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 are 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 Sec. Sec. 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 about the demographic characteristics 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 section. 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)).

(i) 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 Sec. 641.440 and section 514(d) of the OAA.